

STATE OF MICHIGAN
COURT OF APPEALS

In re A. N. D. WILLIAMS, Minor.

UNPUBLISHED
November 24, 2020

No. 352589
Ingham Circuit Court
Family Division
LC No. 18-000696-NA

Before: MARKEY, P.J., and METER and GADOLA, JJ.

PER CURIAM.

Respondent appeals as of right the trial court’s order terminating her parental rights to her minor child under MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), MCL 712A.19b(3)(g) (failure to provide proper care and custody), and MCL 712A.19b(3)(j) (reasonable likelihood of harm if returned to the parent). We affirm.

I. FACTS

The child in this case was removed from respondent’s care when the child was seven months old because respondent was failing to provide necessary care for the child, subjecting the child to a substantial risk of harm, and she and the child were living in an unfit home. At the time the child was removed from respondent’s care, respondent was 17 years old and was on juvenile probation related to charges of disorderly conduct and carrying a dangerous weapon (self-defense spray). At that time, she was failing to comply with the terms of her probation, had tested positive for marijuana, was unemployed, and had not completed high school. In addition, she had posted a picture on Facebook of herself holding a gun and making gang signs; the man next to her in the photo was known to be a gang member. Respondent admitted several allegations in the petition, and the trial court assumed jurisdiction of the child.

Shortly after the child was removed from respondent’s care, petitioner provided respondent with a psychological evaluation conducted by Dr. Shannon Lowder. Respondent was evaluated as having a borderline low IQ, and was diagnosed with mild Cannabis Use Disorder and Conduct Disorder. Dr. Lowder reported that respondent’s symptoms also indicated antisocial personality disorder, but that respondent was too young to be diagnosed with the disorder. Dr. Lowder opined that respondent’s diagnoses impacted her ability to emotionally function and as a result respondent could not safely parent the child. Dr. Lowder suggested that respondent participate in intensive

therapy and follow her probation. Dr. Lowder also recommended that respondent be involved in a program that offered special education or a residential program for young mothers.

As part of her probation, respondent was provided with services that included drug screening and assistance with parenting, housing, and education. Approximately five months after the child was removed from respondent's care respondent's probation services were concluded because she was not complying with those services. Thereafter, petitioner prepared an updated case service plan indicating the goal of reunification and stating the services offered to respondent to achieve that goal, including drug and alcohol screening, supervised parenting time, individual therapy, a hands-on parenting program, and home evaluations.

Respondent, however, failed to participate in most of the services offered. Respondent failed to participate in over 50 of the drug screens offered even though she was provided with gas cards and bus passes to enable her to attend; often, respondent failed to call to inquire whether a drug screen was scheduled. Some of the drug screens that she did participate in were positive for marijuana. Respondent was discharged from the parenting program for failure to participate, and respondent failed to provide petitioner with documentation to verify that she was attending school, was employed, and had registered for housing. Respondent also failed to consistently attend parenting time with the child. At the termination hearing, Dr. Lowder testified that respondent was not a safe parent because of her issues of anger, marijuana use, and her unwillingness to follow directions. She further testified that it was unlikely that respondent would be able to achieve the skills necessary for reunification within a reasonable time because respondent did not indicate a desire to change.

At the conclusion of the termination hearing, the trial court determined that termination was warranted under MCL 712A.19b(3)(c)(i), (g), and (j). The trial court found that petitioner had made reasonable efforts toward reunification by providing numerous services, but respondent had failed to participate in many of the services and had failed to benefit from the services. The trial court concluded that many of the barriers that led to adjudication continued to exist, such as respondent's lack of appropriate housing, lack of consistent employment, lack of parenting ability, and respondent's mental instability. The trial court further found that termination was in the child's best interests. Respondent now appeals.

II. DISCUSSION

A. STATUTORY BASIS FOR TERMINATION

Respondent contends that the trial court erred when it determined that clear and convincing evidence demonstrated a statutory basis to terminate her parental rights. We disagree.

To terminate parental rights, the trial court must find that at least one basis for termination under MCL 712A.19b(3) has been proven by clear and convincing evidence. *In re Keillor*, 325 Mich App 80, 85; 923 NW2d 617 (2018). Although termination may be warranted under more than one statutory section, only one statutory basis must be demonstrated by clear and convincing evidence to terminate a parent's parental rights. *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). We review for clear error the trial court's decision that at least one statutory basis to terminate parental rights has been proven by clear and convincing evidence. *In re Keillor*, 325

Mich App at 85. The trial court's decision to terminate parental rights is clearly erroneous if "although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

In this case, the trial court terminated respondent's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j), which provide for the termination of parental rights as follows:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, although, in the court's discretion, financially able to do so, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

Termination under MCL 712A.19b(3)(c)(i) is warranted when "the totality of the evidence amply supports" that the parent has not accomplished "any meaningful change in the conditions" that led the trial court to assume jurisdiction of the child, *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009), and when there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child. MCL 712A.19b(3)(c)(i). In this case, the conditions that led to adjudication were respondent's failure to comply with her probation, her use of marijuana, and her participation in criminality. Respondent also lacked adequate housing, had not demonstrated employment, and had not completed high school

Although at the time of termination respondent had been discharged from her probation, she had failed to rectify the conditions that led to adjudication. She failed to comply with most of the services offered. She had stopped participating in drug screening, missing 52 of 64 scheduled drug tests in the six months before the termination hearing; in six of the 12 tests completed during that period respondent tested positive for THC. Respondent's substance use thus remained a barrier at the time of the termination hearing.

Respondent's connection to criminality also continued to exist. Throughout the case, respondent continued to post videos on Facebook threatening to "come after" people, and talking about illegal drugs, murder, and gangs in front of her infant son who was born while the trial court

proceedings were pending. In addition, although respondent reported having employment and participating in online classes, she failed to provide documentation for employment or education. Respondent continued to lack stable income and housing. Respondent did not visit consistently with the child. Dr. Lowder testified that respondent would not likely respond to services because she did not exhibit a desire to change her behavior. Accordingly, the trial court did not clearly err in finding that clear and convincing evidence demonstrated that the conditions that led to adjudication continued to exist and there was no reasonable likelihood that they would be rectified within a reasonable time considering the child's age. Termination was therefore supported under MCL 712A.19b(3)(c)(i).

Termination was also warranted in this case under MCL 712A.19b(3)(g) and (j). A parent's failure to participate in and benefit from a parent agency treatment plan is evidence that the parent will not be able to provide the child with proper care and custody, and is also evidence that the child will be harmed if returned to the parent's home. *In re Smith*, 324 Mich App 28, 49; 919 NW2d 427 (2018). As the trial court observed, respondent stopped participating in drug testing and therapy and made no progress toward parenting the child. Because respondent did not comply with the treatment plan and failed to gain insight into changes necessary for her to adequately parent the child, the trial court did not clearly err by terminating her parental rights under these additional statutory sections.

B. REASONABLE EFFORTS

Respondent contends, however, that the trial court clearly erred in terminating her parental rights because petitioner appointed several successive caseworkers to her case. Respondent argues that the lack of continuity resulted in failure by petitioner to make reasonable efforts to reunify her with her child. We disagree.

This Court typically reviews for clear error a trial court's findings regarding the reasonableness of the DHHS's efforts to reunify a family. *In re Smith*, 324 Mich App at 43. Factual findings are clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made considering the trial court's opportunity to observe the witnesses. *In re Pops*, 315 Mich App 590, 593; 890 NW2d 902 (2016). We will not conclude that a trial court's finding is clearly erroneous unless it is more than possibly or probably incorrect. *In re Ellis*, 294 Mich App at 33.

Generally, to preserve an issue for appellate review, the issue must be raised before and decided by the lower court. *In re Killich*, 319 Mich App 331, 336; 900 NW2d 692 (2017). Specifically, to preserve a challenge to the adequacy of services provided to a respondent, the respondent must object or otherwise indicate before the trial court that the services offered are inadequate.¹ *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). In this case, respondent did not specifically challenge the reasonableness of the services provided before the trial court; however, respondent did bring to the trial court's attention that respondent had been assigned a succession of caseworkers. Even reviewing this issue as preserved, however, we nonetheless

¹ Although our Supreme Court has expressed some skepticism of this "categorical rule," it has not overturned it. See *In re Hicks/Brown*, 500 Mich 79, 88-89; 893 NW2d 637 (2017).

disagree that the frequent changes in caseworkers in this case interfered with petitioner's reasonable efforts to reunify respondent with the child.

Except in cases of aggravated circumstances under MCL 712A.19a(2), the DHHS must make reasonable efforts to reunify a child with his or her parents before a court may order termination of parental rights. *In re Hicks*, 500 Mich 79, 85; 893 NW2d 637 (2017). As part of these efforts, the DHHS is obligated to create a service plan outlining the steps that both the agency and the parent will take to address the issues that caused the court's involvement. *Id.* Reasonable efforts include agency referrals for appropriate services and active efforts to engage the respondent in the services. See *In re JL*, 483 Mich 300, 322 n 15; 770 NW2d 853 (2009). Failure to provide services aimed at reunification can render the termination of the parent's parental rights premature. See *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). But although the agency has the duty to provide reasonable services, it is not obligated to provide every possible service. See *In re Terry*, 240 Mich App 14, 27-28; 610 NW2d 563 (2000). In addition, the parent has a commensurate duty to cooperate with and participate in the services offered, and also to benefit from them. *In re TK*, 306 Mich App 698, 711; 859 NW2d 208 (2014).

In this case, petitioner provided respondent with a wide array of services aimed at reunifying respondent with the child, and respondent does not identify any circumstance of the change of caseworkers that prevented her from participating in services, only that certain caseworkers communicated with her more effectively than others. The caseworkers established parenting time, referred respondent for a psychological assessment, provided drug screens, provided respondent assistance with transportation, and sought verification from respondent of housing, employment, and her efforts at online schooling. There is no indication in the record that the frequent changing of caseworkers prevented petitioner from providing respondent with reasonable services for reunification or prevented respondent from participating in those services.

Respondent also argues that DHHS failed to provide her with intensive psychological services recommended by Dr. Lowder. However, Dr. Lowder explained that the suggested programs were likely not to have been effective given respondent's lack of cooperation. Moreover, petitioner referred respondent to a counseling program, but respondent failed to participate. Although the psychological services offered were not extensive, petitioner provided reasonable therapy services to respondent. We therefore conclude that the trial court did not err in determining that petitioner made reasonable efforts to reunify respondent with the child.

C. BEST INTERESTS

Respondent also contends that the trial court clearly erred in finding that a preponderance of the evidence demonstrates that termination is in the child's best interests. We disagree.

Once a statutory ground for termination has been demonstrated, the trial court is required to terminate the parent's parental rights if a preponderance of the evidence establishes that termination is in the best interests of the child. MCL 712A.19b(5); *In re Medina*, 317 Mich App 219, 237; 894 NW2d 653 (2016). This Court reviews for clear error the trial court's decision regarding a child's best interests. *Id.* at 226.

When determining whether termination of parental rights is in a child's best interests, the trial court is obligated to weigh all available evidence. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). The trial court should consider a variety of factors, including the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, the advantages of a foster home over the parent's home, the parent's compliance with the case service plan, the parent's visitation history with the child, the child's well-being in the foster home, and the possibility of adoption. *Id.* At this stage, the interest of the child in a stable home is superior to the interests of the parent. *In re Medina*, 317 Mich App at 237.

In this case, the trial court considered that there was a bond between the child and respondent, but also properly considered respondent's failure to comply with the services provided, the child's need for permanency, stability, and finality, and her bond with her foster family who were meeting her needs. We conclude that the trial court did not clearly err in concluding that a preponderance of the evidence demonstrates that termination of respondent's parental rights is in the child's best interests.

Affirmed.

/s/ Jane E. Markey

/s/ Patrick M. Meter

/s/ Michael F. Gadola