

STATE OF MICHIGAN
COURT OF APPEALS

In re RIOPELLE, Minors.

UNPUBLISHED
December 10, 2020

No. 353046
Sanilac Circuit Court
Family Division
LC No. 18-36180-NA

Before: LETICA, P.J., and RIORDAN and CAMERON, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to her minor children, JRR, NMR, and RRR, under MCL 712A.19b(3)(c)(i) (failure to rectify conditions leading to the adjudication) and (ii) (failure to rectify other conditions), (g) (failure to provide proper care or custody) and (j) (reasonable likelihood of harm if returned to parent).¹ We affirm.

I. FACTS & PROCEDURAL BACKGROUND

Respondent’s three minor children were removed from her care and custody and placed with their father after allegations were substantiated regarding respondent’s ongoing substance abuse and drug manufacturing. The trial court acquired jurisdiction after respondent made a plea of admission to allegations in the amended petition. At the disposition hearing, the trial court ordered respondent to take the following actions:

1. obtain and maintain, for a minimum of three months, a legal source of income sufficient to meet the needs of the family and provide bi-weekly documentation;

¹ In some portions of respondent’s brief on appeal, she specifically seeks reversal of the trial court’s order as it pertains to RRR, but in other portions of her brief, specifically relating to her request for relief, she seeks reversal of the trial court’s order as it pertains to all her children. Despite this inconsistency, we review the trial court’s order as it pertains to all three minor children.

2. obtain and maintain, for a minimum of three months, safe and suitable independent housing and provide monthly documentation;
3. complete, follow through with, and benefit from a psychological and/or a psychiatric evaluation and all of the recommendations;
4. complete, follow through with, and benefit from a substance abuse assessment and all of the recommendations;
5. successfully complete and benefit from individual and/or family counseling;
6. participate in parenting time and follow all rules and policies of visitation and contact with the children;
7. complete and utilize skills acquired from parenting, life skills, parent mentor, domestic violence and/or anger management classes; and
8. submit to random drug and alcohol screenings with the understanding that any screens not completed would be deemed positive for use.

The trial court also directed respondent to adjust her methadone schedule so as not to cause inappropriate behavior during her parenting time.²

Between July and November 2018, respondent participated in services and the trial court expanded her parenting time because she was making adequate progress. However, at subsequent review hearings, petitioner reported that respondent's positive drug tests were increasing, including tests for methamphetamine, and that she was missing drug screens. The trial court concluded that respondent's substance abuse had escalated. In March 2019, respondent tested positive during parenting time and one of the children was injured during an unsupervised visit. The trial court concluded that respondent's continued and increased drug abuse posed a substantial risk of harm to the children and she was ordered not to transport the children anywhere. In June 2019, respondent continued to test positive for amphetamine and methamphetamine, including a test immediately following parenting time. Parenting time was suspended after the trial court concluded that respondent's methamphetamine abuse posed a substantial risk of harm to the children. In August 2019, respondent refused to attend mandatory in-patient substance abuse treatment.

On November 6, 2019, petitioner filed a supplemental petition to terminate respondent's parental rights because respondent had failed to substantially comply with and benefit from her parent agency treatment plan (PATP), which was designed to rectify conditions that had led to the adjudication, primarily ongoing substance abuse. Petitioner further alleged that respondent was unable to provide proper care and custody within a reasonable time, that the children would be

² Respondent was prescribed methadone as part of her substance abuse treatment and it caused her to be lethargic during parenting time.

harmful if returned to respondent's home, and that terminating respondent's parental rights was in the children's best interests.

On December 19, 2019, the trial court held a termination hearing. It took judicial notice of the record evidence that led to the trial court acquiring jurisdiction, specifically the evidence regarding respondent's substance abuse, and the trial court heard testimony from the DHHS caseworker who had been assigned to this matter since April 9, 2018. The caseworker testified that respondent had participated in and completed services, but that respondent's ongoing substance abuse, lack of housing, and lack of a legal income remained barriers to reunification. The caseworker testified that respondent's core problem was substance abuse, which had been an ongoing concern even before the children were removed from respondent's care in April 2018. The caseworker further testified that respondent completed a substance abuse assessment and a psychological evaluation in June 2018, but that respondent did not follow through with and benefit from substance abuse treatment, including out-patient counseling at Sacred Heart, individual counseling, and group therapy, as recommended by the evaluators.

Respondent missed 36 random drug screens and had tested positive for methamphetamine five times since her parenting time was suspended in June 2019. She refused a drug screen on August 14, 2019. Respondent was referred for a parent education program (May, 2018), a life skills program (March 2018) to help her with housing, employment, and parenting skills, and a supportive visitation program (August 2018). She successfully completed all three of those programs but did not demonstrate any benefit. Respondent continued to have positive drug screens, including methamphetamine and cocaine, on days that she transported the children and attended parenting time, and failed to acquire independent housing.

At one point, respondent claimed she was employed at a local store, but upon the caseworker's inquiry, the store owner indicated that respondent was not working for the company and respondent did not provide any verification such as pay stubs or W-2 forms. Respondent also did not provide documentation of any other income source.

The caseworker testified that prior to the parenting time suspension, respondent and the children appeared bonded. Respondent spent a lot of time with the children and focused on them during the visits. Her behavior with the children was appropriate, but she lacked consistency in discipline and her substance abuse affected her parenting. She was unable to properly supervise her children as evidenced by an unsupervised visit when a crib fell on one of the children and a drug screen later showed that respondent was under the influence of drugs. Respondent also tested positive following another parenting time session. The caseworker opined that the children were strongly bonded with their father and his extended family and were living in a stable and safe environment. His home was appropriate and the children were happy and doing very well in his care. The caseworker opined that it was in the children's best interests to terminate respondent's parental rights because her escalated drug use, particularly her use of methamphetamine, put the children at risk and her positive drug screens showed that her drug use was more important to her than the safety of her children. Also, no home study was allowed and there was concern that methamphetamine was being manufactured in the home. Finally, the caseworker opined that respondent was unable to meet the children's medical and educational needs or provide them with a safe home.

The trial court found that the clear and convincing evidence supported terminating respondent's parental rights under MCL 712A.19b(3)(c)(i), (c)(ii) and (g) and (j). The court concluded that respondent had not overcome the major obstacle, her protracted substance abuse, which caused problems with housing and legal income, and that she had not fully complied with the court-ordered treatment plan and increasingly used illegal substances. However, the court concluded that it was not in the children's best interests to terminate respondent's parental rights. The trial court noted that the minor children had stability because they were in the care of their legal father, and found that allowing respondent more time to comply with her treatment plan would not negatively affect them. Respondent was given an additional 45 days to cooperate with petitioner and address her substance abuse.

The termination hearing resumed on February 12, 2020. At the onset, respondent's counsel told the court that he had received a call 20 minutes earlier from respondent's sister, advising him that respondent was in the hospital for some type of an evaluation. Respondent's motion for an adjournment was denied. No witnesses were called.

Petitioner's Updated Court Report for the period between December 18, 2019 and February 3, 2020 was admitted into evidence over respondent's objection. The report noted that respondent had not maintained consistent contact with petitioner and was uncooperative in allowing a home visit. Respondent was referred for in-patient substance abuse services, transportation services, employment services, and Families Together Building Solutions. She was also supposed to start services with Community Mental Health. However, despite petitioner's offers of assistance, respondent filled out an intake form, but had not followed through with receiving services. Additionally, she did not follow through with Families Together Building Solutions, she was not receiving any substance abuse treatment, and she had not attended any AA/NA meetings. She had three drug screens that were positive for amphetamine, methamphetamine, fentanyl and nor fentanyl, and had missed 19 screens because she was concerned that she would test positive. When asked about her substance abuse, respondent reportedly said that she had been using methamphetamine daily prior to the December 19, 2019 court hearing but that she could go a few days without using. She still did not have a vehicle and did not follow up with the transportation services provided by petitioner. Respondent was staying in a trailer with her sister and her sister's five children. When DHHS asked to view the home to determine its appropriateness, respondent refused access. Regardless, the home did not offer sufficient space to accommodate more occupants.

After reaffirming its statutory-grounds findings from the previous hearing, the trial addressed the children's best interests. The court concluded that all three children were similarly situated in the custody and care of their father. It believed that respondent and the children had a bond, but that it had been affected by respondent's substance abuse and that, regardless, the children needed stability and permanency. The court considered the opinion of the experts, especially the lawyer-guardian ad litem (LGAL), who had argued that not terminating respondent's parental rights would create a harmful environment of uncertainty for the children. The court concluded that a preponderance of the evidence established that it was in the children's best interests to terminate respondent's parental rights. Accordingly, the trial court entered an order terminating respondent's parental rights to the children. Respondent now appeals.

II. ANALYSIS

Respondent first argues that the trial court clearly erred in finding that any statutory grounds for termination were proven by clear and convincing evidence. We disagree.

We review for clear error a decision that a statutory ground for termination has been proven by clear and convincing evidence. MCR 3.977(K); *In re White*, 303 Mich App 701, 709-710; 846 NW2d 61 (2014). A decision is clearly erroneous when, after reviewing the entire record, we are left with the definite and firm conviction that a mistake has been made. *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009) (citations and quotation marks omitted).

The trial court need only find that one statutory ground has been proven to support termination of parental rights. *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013). The burden of proof is on the party seeking termination. MCR 3.977(A)(3). MCL 712A.19b(3)(c)(i) and (ii), (g), and (j) provide:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(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.

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, 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.

The trial court did not clearly err in terminating respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i). The conditions that led to adjudication were substance abuse and improper supervision of the children. The proofs showed that petitioner provided respondent with myriad services designed to address her substance abuse, which was the primary reason the court acquired jurisdiction over the children. On July 15, 2018, respondent was ordered to comply with and benefit from a parent agency treatment plan (PATP) that required her to complete a substance abuse assessment and a psychological and/or a psychiatric evaluation and follow all of the recommendation, and successfully complete and benefit from individual and/or family counseling. Respondent was to provide random drug and alcohol screenings with the understanding that any screens not completed would be deemed positive for use. Further, respondent was to obtain and maintain, for a minimum of three months, a legal source of income and a safe and suitable independent house and provide monthly documentation. Petitioner provided documentation of numerous referrals for services before and after the children were removed from respondent's custody and care, along with services provided under the requirements of the court-ordered PATP.

Respondent argues that she complied with her PATP because she participated in a psychological evaluation and out-patient services, including three years of substance abuse treatment.³ She states that she provided random drug screens and stopped only after her visitation rights were suspended. She asserts that her compliance proves that she was capable, willing, and eager to make the changes necessary to regain custody of her children. However, throughout the pendency of this case, respondent's substance abuse escalated. She had a positive screen immediately after parenting time when she had transported the children and eventually, her parenting time sessions were discontinued because her methamphetamine abuse posed a substantial risk of harm to the children. She missed 36 drug screens. Contrary to her suggestion that the suspension excused her from providing drugs screens, the trial court clearly advised her that she was responsible for drug screens to show that she was not under the influence of drugs so that parenting time could resume. As the case progressed, screens showed that respondent tested positive for cocaine, methamphetamine, fentanyl and nor fentanyl. She repeatedly refused referrals for in-patient treatment and for services through community mental health, and did not attend recommended Narcotic Anonymous meetings. Her methadone treatment was terminated because she refused to enter into mandated in-patient substance abuse treatment. Respondent admitted to using methamphetamine leading up to the termination hearing in December 2019.

Respondent's methamphetamine use was uncontroverted despite her repeated denials. Her claim that her tests were false positives because she was taking Tylenol 3 was not credible. At the April 2019 review hearing, a toxicologist testified that respondent's positive drug screens were reliable and accurate because a liquid chromatography tandem mass spectrometry was used to positively identify each drug, which have different fingerprints, debunking any notion that positive drug screens were a result of prescribed or over-the-counter medications. Thus, there was

³ Respondent also challenges the allegations that two of the minor children were born with drugs in their system, arguing that the meconium screenings were negative. There is nothing in the record to suggest that these allegations were significant factors in the trial court's statutory grounds determination.

sufficient evidence to support the trial court's finding that the conditions that led to adjudication continued to exist.

The proofs also showed that the trial court did not clearly err in concluding that there was sufficient evidence to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(c)(ii). Despite more than 18 months of services, respondent did not obtain suitable housing and a legal income. Respondent argues that petitioner approved of her housing following the adjudication, and that at that the time of the termination hearing she had appropriate housing with her sister. However, the evidence showed that respondent was given assistance to find suitable housing. She lived with a family friend for almost one year. At the time of the termination hearing, she was residing in a small trailer with her sister and her sister's five children. The caseworker testified that the house was inappropriate because she was unable to determine whether there was toxic methamphetamine in the house. Further, she testified that the house was obviously too small to accommodate respondent and her three children.

Additionally, respondent failed to acquire a legal income source sufficient to support her children for a minimum of three months despite being referred many times to employment assistance services. At the time of the termination hearing, she was unable to provide any documentation that she had a job or another legal income source and the caseworker's numerous attempts to speak with her putative employer were unsuccessful. Based on this record, there was no evidence of a reasonable likelihood that any of the conditions that arose after adjudication could be rectified in any reasonable amount of time.

These proofs similarly support that trial court's findings to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(g) and (j). "A parent's failure to participate in and benefit from a service plan is evidence that the parent will not be able to provide a child proper care and custody." *In re White*, 303 Mich App at 710. "Similarly, a parent's failure to comply with the terms and conditions of his or her service plan is evidence that the child will be harmed if returned to the parent's home." *Id.* at 711.

Respondent argues that she was capable of caring for her children and that there was no evidence suggesting that they would be harmed if they were returned to her care. However, there was evidence that respondent's drug abuse caused actual harm. Respondent had a positive drug screen on the day of an unsupervised visit at which one child was injured from a falling crib while respondent was in another room. Also, the foster parent who cared for the children before their father assumed custody reported that when the children returned from unsupervised parenting time, they were lethargic, reeked of cigarettes and marijuana, and pulled on their ears and coughed.

Thus, the trial court did not err by finding that the statutory grounds for termination set forth in MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j) were established by clear and convincing evidence.

Respondent next argues that termination of her parental rights was not in the children's best interests. We disagree.

We review for clear error a trial court's determination regarding the children's best interests. *In re White*, 303 Mich App at 713. The focus of the best-interest inquiry is on the child,

not the parent. *In re Moss*, 301 Mich App at 87. The trial court may consider various factors when making its best-interest determination, including the child's bond to the parent, *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012), the parent's parenting ability, *In re Jones*, 286 Mich App 126, 129-130; 777 NW2d 728 (2009), and the child's need for permanency, stability and finality, *In re Gillespie*, 197 Mich App 440, 446-447; 496 NW2d 309 (1992). Further, the court may consider the parent's compliance with his or her case service plan, the parent's visitation history with the child, the child's well-being while in care, and the possibility of adoption. *In re White*, 303 Mich App at 713-714 (citations and quotation marks omitted).

Contrary to respondent's assertions, the trial court considered her bond with the children and the caseworker's testimony supported the trial court's finding that the children's bond with respondent had been affected by respondent's substance abuse. At the time of removal from respondent's custody and care, JRR was socially withdrawn and struggling in school, and after unsupervised parenting time sessions with respondent, he was more withdrawn and aggressive toward his younger siblings. At the time of the December 2019 termination hearing, he was extroverted and doing well in school. He had asked about respondent only once since parenting time was suspended in June, 2019. NMR and RRR also were well adjusted and the children's father reported to the caseworker that they did not ask to see respondent.

Respondent contends that the fact that the children were in their father's custody and care militated against termination and that they would not be harmed if she was given additional time to prove her ability to parent. However, respondent had more than 18 months to curb her drug abuse. After finding statutory grounds to terminate her parental rights on December 19, 2019, the trial court deferred its best-interest determination for 45 days to give respondent one more chance to stop using drugs, and start cooperating with petitioner and complying with her PATP. During that time, respondent ignored multiple referrals for substance abuse services, including inpatient treatment. She also declined housing and transportation assistance. She continued to test positive for amphetamine, methamphetamine, fentanyl and norfentanyl and missed 19 screens because she was concerned that she would test positive. When asked about her substance abuse, respondent reportedly said that she had been using methamphetamine daily prior to the December 19, 2019 court hearing but that she could go a few days without using. The lawyer guardian ad litem asserted that the uncertainty of respondent's parental status was harmful to the children, and the trial court properly consider his opinion and that of the caseworker that terminating respondent's parental rights would provide the children with finality and permanency. Reading the record as a whole, we are not left with a definite and firm conviction that a mistake was made in determining that termination was in the children's best interests or in terminating respondent's parental rights.

III. CONCLUSION

The trial court did not err when it determined that statutory grounds existed for termination of respondent's parental rights and that termination was in the children's best interests. Accordingly, we affirm.

/s/ Anica Letica
/s/ Michael J. Riordan
/s/ Thomas C. Cameron