

STATE OF MICHIGAN
COURT OF APPEALS

In re C. MORGAN, Minor.

UNPUBLISHED
November 12, 2020

Nos. 353071, 353072
Kent Circuit Court
Family Division
LC No. 18-052390-NA

Before: SAWYER, P.J., and M. J. KELLY and SWARTZLE, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right the trial court’s order terminating their parental rights to the minor child under MCL 712A.19b(3)(c)(i) and MCL 712A.19b(3)(j). For the reasons discussed below, we affirm.

I. BASIC FACTS

In September 2018, respondent-mother asked the Department of Health and Human Services (DHHS) to remove her child from her home because respondent-mother “was in a bad situation and needed immediate help placing [the child] in foster care.” In response, the DHHS filed a petition seeking temporary custody of the child. The petition alleged that respondent-mother had requested the removal, noting that respondent-mother had admitted that she was in an abusive relationship with her current “Live Together Partner” and that her previous relationship with respondent-father also involved domestic violence. Respondent-mother also told the DHHS that she was unable to maintain stable housing and that she had a criminal history. Regarding respondent-father, the petition alleged that he had a significant criminal history and that he had absconded from probation. At the preliminary hearing, respondent-mother waived probable cause, and the child was removed from her care.

Subsequently, respondents pleaded to the allegations in the petition, and the court took jurisdiction over the child. Initially, respondent-mother was extremely motivated and participated in the case service plan. However, as the case proceeded, respondent-mother’s involvement in the case service plan diminished. She lost her housing, quit her job, and stopped seeing her YWCA counselor. Her parenting time also became inconsistent. When she missed visits the child was negatively impacted. The DHHS offered respondent-mother assistance in finding housing, but respondent-mother rejected the offers. She also did not follow through with her mental-health

counseling or domestic-violence treatment. Eventually, respondent-mother was incarcerated for a domestic-violence incident. Respondent-father, who was also incarcerated, completed homework assignments from his caseworker and signed up for services available in the facility he was housed in. However, due to his involvement in a fight at the prison, he was moved to another facility and lost access to the services he had signed up for. In addition, although respondent-father suggested his father as a possible relative placement, the steps necessary to place the child were not completed. At the time of the termination hearing, respondent-father remained incarcerated and still did not have any bond with the child. Because of respondents' lack of progress toward reunification, the DHHS filed a supplemental petition seeking termination of their parental rights. Following a termination hearing, the court found by clear and convincing evidence that statutory grounds existed to terminate their parental rights and found by a preponderance of the evidence that termination of their parental rights was in the child's best interests.

II. REMOVAL

Respondent-mother first asserts that the termination order must be reversed because the DHHS failed to make reasonable efforts to prevent the child's removal from her care. Respondent-mother, however, waived any challenge to the removal proceedings. The record reflects that she contacted the DHHS and requested removal. When the DHHS offered alternatives to placing the child in foster care, respondent-mother insisted that the child be removed for his own safety. The DHHS then filed the petition seeking removal of the child, and respondent-mother concurred with the request for the removal. "[W]aiver is the intentional relinquishment of a known right." *Sweebe v Sweebe*, 474 Mich 151, 156-157; 712 NW2d 708 (2006) (quotation marks and citations omitted). It "may be shown by express declaration or by declarations that manifest the parties' intent and purpose." *Id.* at 157 (quotation marks and citation omitted). Respondent-mother's express declaration that she wanted the child removed from her care and placed in foster care and her voluntary compliance with the removal proceedings shows that she has waived this issue. Because a waived error is extinguished, there is no error with the removal proceedings for this Court to review. See *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000). Moreover, given that respondent deemed removal proper in the lower court, even if the error was not waived, respondent-mother would not be entitled to relief. See *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011) ("Respondent may not assign as error on appeal something that she deemed proper in the lower court because allowing her to do so would permit respondent to harbor error as an appellate parachute.").

III. REUNIFICATION EFFORTS

A. STANDARD OF REVIEW

Respondent-mother next argues that the trial court erred by finding that the DHHS made reasonable efforts to reunify her with her child. We review for clear error a trial court's decision regarding reasonable efforts. *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

B. ANALYSIS

Generally, “the [DHHS] has an affirmative duty to make reasonable efforts to reunify a family before seeking termination of parental rights.” *In re Hicks/Brown*, 500 Mich 79, 85; 893 NW2d 637 (2017). “As part of these reasonable efforts, the [DHHS] must create a service plan outlining the steps that both it and the parent will take to rectify the issues that led to court involvement and to achieve reunification.” *Id.*

Here, the DHHS identified several barriers that respondent-mother had to overcome to secure reunification with the child: domestic violence, stable housing and employment, financial stability, and consistent parenting-time visits. The DHHS offered respondent-mother a number of services to rectify those barriers. Respondent, however, declined offers to aid her in obtaining stable and suitable employment. With respect to housing, the DHHS caseworker testified that respondent-mother was offered Section 8 housing, House of H.O.A.P., Salvation Army, and Project HEAL. However, a Section 8 housing voucher was unavailable and respondent-mother expressly declined to reside at House of H.O.A.P. Instead, she moved in with a friend in Kalamazoo, which complicated her access to the reunification services being provided in Grand Rapids. Further, regarding respondent-mother’s mental health, the DHHS offered YWCA counseling and referred her for outpatient mental-health services. She also received a psychological evaluation. Respondent-mother inconsistently attended her counseling. The DHHS also provided respondent-mother with bus passes; however, respondent-mother was banned from riding the bus. Thereafter, the DHHS caseworker offered to drive respondent-mother to her mental-health counseling in Kalamazoo. Respondent-mother never followed up with scheduling an appointment and declined the caseworker’s offer. Respondent-mother was also offered parenting-time visits, which she attended with decreased consistency throughout the case.

In sum, the record reflects that the DHHS offered reasonable services to respondent-mother tailored to address the barriers to reunification between respondent-mother and the child, but respondent-mother either did not participate in the services or participated inconsistently. Given that only reasonable reunification efforts are required, we discern no clear error in the court’s finding that the DHHS provided reasonable reunification efforts to respondent-mother.

IV. STATUTORY GROUNDS

A. STANDARD OF REVIEW

Respondent-mother¹ next asserts that the trial court clearly erred by finding statutory grounds to terminate her parental rights. The trial court’s finding that there are statutory grounds to terminate a respondent’s parental rights is reviewed for clear error. *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011).

¹ Respondent-father does not challenge the court’s finding that statutory grounds existed to terminate his parental rights. Accordingly, we will not review that aspect of the court’s termination decision.

B. ANALYSIS

The trial court terminated respondent-mother's parental rights under MCL 712A.19b(3)(c)(i) and MCL 712A.19b(3)(j). A court may terminate a parent's parental rights under subdivision (c)(i) if:

(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

(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.

It is undisputed that more than 182 days elapsed between the entry of the initial dispositional order and the termination hearing. Moreover, the record reflects that the conditions leading to the adjudication were domestic violence, the emotional and mental instability respondent-mother was experiencing due to the domestic violence, unstable housing, and lack of consistent employment.

The child, who was almost five years old, had been in care for over 17 months. During that time, respondent-mother was offered services to overcome the barriers to reunification. Yet, respondent-mother's participation in the services declined and she was unable to demonstrate a benefit from the services in which she did participate. With regard to her mental-health issues, respondent-mother was given a psychological evaluation and referred to counseling at the YWCA. Her attendance at the counseling, however, was inconsistent, and her counselor reported that they were unable to delve into the trauma respondent-mother had endured or her history of domestic violence because the focus was on meeting respondent-mother's basic needs and on the "red flags" of domestic violence. After respondent-mother was incarcerated for domestic violence in November 2019, her participation in her YWCA counseling increased. She also appeared to be more honest with her counselor regarding her past relationship and was able to make better progress. Despite that progress, respondent's caseworker testified that emotional stability remained a barrier, and she explained that it would take at least six months of continued progress after respondent-mother was released from prison to safely return the child to her care. Housing and lack of employment also remained barriers to reunification at the time of the termination hearing. Moreover, given that respondent-mother's participation in services, including parenting-time visits, decreased—rather than increased—as the case progressed, the record does not support the possibility that the conditions would, in fact, be rectified within a reasonable time considering the child's age. Thus, in light of the foregoing, we discern no clear error in the court's finding that statutory grounds to terminate respondent-mother's parental rights existed under MCL 712A.19b(3)(c)(i).

Termination of respondent's parental rights was also proper under MCL 712A.19b(3)(j). A trial court may terminate a parent's parental rights under MCL 712A.19b(3)(j) if it finds by clear and convincing evidence that "[t]here 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." MCL 712A.19b(3)(j). "[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.” *In re White*, 303 Mich App 701, 711; 846 NW2d 61 (2014). Under MCL 712A.19b(3)(j), harm can include either physical or emotional harm. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011).

The child was placed in foster care because of domestic-violence in respondent-mother’s home. Respondent-mother was provided with services, including counseling to address the emotional trauma she had sustained as a result of domestic violence. Nevertheless, respondent-mother was inconsistent in attending her counseling, and, while the case was pending, she was incarcerated for domestic violence. Eventually, she pleaded no contest to assault with a dangerous weapon. Respondent-mother continued to lack access to domestic-violence free housing, and she did not have a stable income. Although she was making progress in counseling while incarcerated, she also submitted homework sheets indicating that she did not have a pattern or cycle of abuse, which suggests that she had yet to benefit from her counseling. The DHHS caseworker also testified that respondent-mother’s dwindling attendance and inconsistency in attending parenting time had negatively affected the child’s emotional wellbeing. The child was experiencing a “lot of anxiety as far as when he does see [respondent-mother]” because “he’s not sure when he’ll see her again.” He was also in counseling due to the domestic violence he was exposed to, which was affecting his behaviors. Overall, given respondent-mother’s lack of progress with her case service plan—especially with regard to addressing domestic violence and her emotional instability—there is a reasonable likelihood that the child will be harmed either emotionally or physically if returned to her care. Consequently, the court did not clearly err by finding grounds to terminate her parental rights under MCL 712A.19b(3)(j).

V. BEST INTERESTS

A. STANDARD OF REVIEW

Respondents both argue that the trial court erred by finding that termination of their parental rights was in the child’s best interests. We review for clear error the trial court’s determination of best interests. *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012).

B. ANALYSIS

“If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child’s best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.” MCL 712A.19b(5). “In deciding whether termination is in the child’s best interests, the court may consider the child’s bond to the parent, the parent’s parenting ability, the child’s need for permanency, stability, and finality, and the advantages of a foster home over the parent’s home.” *In re Olive/Metts Minors*, 297 Mich App at 41-42 (citations omitted). The trial court may also consider an unfavorable psychological evaluation, the child’s age, continued involvement in domestic violence, and a parent’s history. *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009).

Respondent-mother argues that the court’s best-interest findings were flawed because they were not supported by the facts on the record at the time of the termination hearing. She notes that her psychological evaluation was not “unfavorable” as it only indicated that she had a generalized

anxiety disorder and did not require medication. She highlights that she was making progress with her domestic-violence counseling. She argues that the record shows that she had transportation and physical health issues throughout the case that negatively impacted her ability to participate in services. And, during the case's pendency, she testified in an unrelated criminal trial that her mother's boyfriend had sexually assaulted her when she was a child. The record in this case reflects that testifying in the criminal case against her mother's boyfriend was traumatic for respondent-mother and that it impacted her behaviors. Respondent-mother also notes that her parenting skills were deemed appropriate when she attended parenting time, and she stresses that she had a very strong bond with the child. Respondent-mother's argument, however, focuses on herself, not her child. She suggests that because she was making progress and had good reasons for her noncompliance with services, termination of her parental rights would not be in the child's best interests.

Yet, when making its best-interests determination, the trial court properly focused on what was best for the child. Although there was evidence that the child had a close bond with respondent-mother, there was also testimony that the child was doing extremely well in his placement with the foster parents. And, despite making progress in her counseling while incarcerated, respondent-mother had a history of inconsistency with her counseling and had demonstrated an unwillingness to work through her mental-health issues. The caseworker's testimony indicated that it would be at least six months of beneficial counseling after respondent-mother's release before returning the child would be an option. The child had already been in care for 17 months and, despite his close bond with respondent-mother, he was being negatively impacted by her inconsistent parenting time. Moreover, there was evidence that the child's exposure to domestic violence negatively impacted him when he was with peers. Considering that respondent-mother was incarcerated following a domestic-violence incident, it is clear that despite counseling, domestic violence remained a part of respondent-mother's life. Given respondent-mother's inconsistent compliance with the case service plan and her lack of benefit from the services she participated in, she was not in a position to provide the child with permanence, stability, and finality. The trial court found that the child had already waited 17 months and that the wait had been extremely difficult for him. The court found that it would not be in his best interests to have to wait another 12 or 24 months before respondent-mother would—possibly—be in a position to provide him with proper care and custody. The trial court's determination that termination of respondent-mother's parental rights was in the child's best interests, therefore, was supported by the record.

Respondent-father argues that termination of his parental rights was not in the child's best interests. However, the record reflects that there was no bond between respondent-father and the child. Before the child-protective proceedings were initiated, respondent-father did not provide his son with care, custody, or support. It was only during the case, while respondent-father was incarcerated, that he realized that he wanted to have some sort of a relationship with the child, who was already over three years old. Respondent-father was not in a position to care for his child directly because he was incarcerated. He also had a history of domestic violence in his relationship with respondent-mother. That issue had yet to be resolved notwithstanding that the child had been in care for 17 months. Respondent-father also had ongoing substance-abuse issues that needed to be addressed before the child could conceivably be placed in his care. There was nothing on the record to support that respondent-father had any necessary parenting skills to actually care for the child. Respondent-father's ongoing issues support the court's finding that the child could not

expect to achieve any sort of permanence, stability, or finality with respondent-father. Again, the child was doing well in foster care. Making him wait for an uncertain future with respondent-father is not in his best interests. Thus, on this record, the trial court did not clearly err by finding termination of respondent-father's parental rights was in the child's best interests.

Affirmed.

/s/ David H. Sawyer

/s/ Michael J. Kelly

/s/ Brock A. Swartzle