STATE OF MICHIGAN

COURT OF APPEALS

In re BUSCH, Minors.

UNPUBLISHED
October 22, 2020

No. 353095
Clare Circuit Court
Family Division
LC No. 16-000106-NA

In re N. BUSCH, Minor.

No. 353096
Clare Circuit Court
Family Division
LC No. 17-000037-NA

Before: STEPHENS, P.J., and SAWYER and BECKERING, JJ.

PER CURIAM.

In these consolidated[1] appeals, respondent-mother appeals as of right the trial court's orders terminating her parental rights to the minor children, NB, WB, and TB pursuant to MCL 712A.19b(3)(c)(*i*) (no reasonable likelihood that the conditions will be rectified); (c)(*ii*) (failure to

[1] On May 5, 2020, this Court entered an order consolidating these two appeals. *In re Busch*, unpublished order of the Court of Appeals, entered May 5, 2020 (Docket Nos. 353095 and 353096).

rectify other conditions); (g) (failure to provide proper care or custody); and (j) (reasonable likelihood of harm if returned to the parent).[2] We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

In September 2016, the Department of Health and Human Services (DHHS) filed a petition requesting NB's removal from her father's care and termination of his parental rights after he abandoned NB on the doorstep of a couple he had met at church. Shortly thereafter, having received information that respondent had abandoned NB at birth, DHHS filed an amended petition requesting termination of respondent-mother's parental rights. The court authorized the petition and NB was removed on September 15, 2016. Subsequently, respondent admitted that she had not provided for NB physically or financially for the last four years of her life. On the basis of this admission, the trial court exercised jurisdiction and ordered that NB continue to be placed with DHHS for care and supervision. The trial court ordered respondent to obtain, and maintain, suitable housing, employment, and transportation, not use or possess illegal drugs or alcohol, submit to random drug testing,[3] complete and follow the recommendations of a psychological evaluation, and attend and benefit from counseling.

In January 2017, DHHS filed a petition requesting the removal of TB and WB from respondent's home because they were without proper care and custody. The court granted the petition. At an adjudication held on February 8, 2017, respondent admitted to a number of allegations in the petition, including that she did not have stable housing and that TB and WB were without proper care and custody. On the basis of respondent's admissions, the trial court found clear and convincing evidence to exercise jurisdiction and ordered respondent to apply for housing assistance, attend weekly psychological services and counseling services, gain positive coping and parenting skills, and implement those skills during visitations.

In January 2018, after respondent obtained employment and adequate housing, the children were returned to her care under the supervision of DHHS. The court ordered that respondent continue to attend counseling to address past trauma and anxiety concerns and participate in parenting education services to learn how to meet the children's needs and gain parenting skills. However, the record shows that respondent did not continue with counseling. Further, her job did not provide sufficient income to meet her expenses. Respondent did not timely apply for housing assistance and did not accept DHHS's assistance in reapplying. Respondent eventually fell behind on rent and utilities and received an eviction notice. In addition, CPS received multiple reports of the children being without supervision and potentially at risk, respondent's relationship with DHHS was strained, and court reports indicated that respondent became defensive, argumentative, and distraught when interacting with caseworkers.

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[2] During the course of these proceedings, the rights of the children's father were also terminated; however, he is not a party to this appeal. Accordingly, the term "respondent" as used in this opinion refers only to respondent-mother.

[3] Notwithstanding the court's orders, substance abuse was never an issue in these proceedings.

Alleging improper supervision and physical neglect, petitioner filed supplemental petitions requesting removal of all three children from respondent's home. During the removal hearing, respondent testified that she was overwhelmed and not able to adequately supervise the children because of her current work responsibilities and being a single parent and that it was in the best interest of the children to be placed elsewhere. The trial court removed the children from respondent's home in June 2018 and ordered respondent's continued compliance with the treatment plan.

After this second removal, DHHS put in place a staggered service plan intended to help ease respondent's stress and sense of feeling overwhelmed. However, subsequent review hearings and court reports indicate that respondent made minimal progress at best, and was unable to sustain even that progress. Respondent repeatedly insisted that she did not think she needed counseling, that it was not helpful, and that she did not trust her counselor. Respondent also demonstrated a persistent unwillingness or inability to understand the part her choices played in her children's removal. As to parenting skills, court reports indicated that respondent did not use skills learned from the parenting program during her weekly parenting times, but would "revert back to interactions she thought were best for her family." As this downward trajectory continued, DHHS filed supplemental petitions seeking termination of respondent's parental rights.

At the termination hearing, foster care specialist Samantha Dush testified that respondent had had adequate housing for more than two years, and that she had a job that provided income sufficient to take care of the children. Dush testified, however, that a persistent barrier to respondent's benefitting from services was her belief that she did not need them. As to counseling, Dush testified that respondent had stated throughout the case, but especially since the second removal, that she was not crazy and did not need counseling. As to parenting education, Dush testified that a "[l]ack of knowledge of child development and social/emotional competence were concerns" and that respondent showed a "lack of insight as to her children's developmental level, there [sic] capabilities, even including their capability to supervise themselves for periods of time." Dush testified with regard to parenting time that there were periods when respondent attended parenting time very consistently and other times when she did not, but noted that, even after 15 months of parenting education, concerns persisted about respondent's inability to perceive and effectively respond to actions by the children that were unsafe and to recognize and respond to their emotional needs. Dush opined that there was a reasonable likelihood that the children would be harmed if returned to respondent-mother based on the lack of supervision that respondent demonstrated while the children were in her care from January to June 2018, and the lack of supervision she had observed during parenting time. Dush further opined that she saw no indication that respondent would benefit from additional services due to her "resistance to services and her lack of insight as to her role in the child coming into care."

Respondent testified that she had been participating in counseling services for five years and that she did not like it, but would continue to do it if required. She said she did not believe that her past traumas affected her ability to parent and that she did not need counseling because her psychological evaluation stated that she was "levelheaded" and that she had "dealt with all [her] trauma in [her] own terms." Respondent testified that she had learned how to discipline her children appropriately, had used the new discipline techniques with one of her children, and had benefitted from services. She conceded that she had left the children unsupervised prior to the

second removal, but could hire babysitters and have people in her life to help her watch the children.

After hearing testimony, taking judicial notice of the social and legal files, and taking the matter under advisement, the trial court rendered an oral opinion on February 21, 2020. The court concluded that DHHS had made reasonable efforts to preserve and reunify the family and found that clear and convincing evidence established grounds for termination under the statutes already mentioned. Among other things, the trial court found that respondent did not recognize the need for therapy, advice, and parenting education, which led to "an inability and inflexibility in understanding how to parent her three children." The trial court found that respondent had not benefited from services that had been offered to her, including parenting education and individual therapy, and that she was resistant to do so. The court also found that DHHS had established, beyond a preponderance of the evidence, that termination of respondent's parental rights to all three children was in the best interests of the children. The court entered corresponding orders. this appeal followed.

II. REASONABLE EFFORTS

Respondent's sole argument on appeal is that the trial court erred in terminating her parental rights because DHHS failed to make reasonable efforts toward reunification. Specifically, respondent argues that termination was improper because DHHS did not arrange for her to undergo a trauma assessment so that services could be tailored to her particular needs. We disagree.

This Court has stated that to preserve a reasonable-efforts issue, a parent must object to a service plan when it is adopted or shortly thereafter. The Michigan Supreme Court has expressed disapproval of this rule but has declined to overturn it. *In re Hicks*, 500 Mich 79, 88-89; 893 NW2d 637 (2017). Respondent did not object to the service plan or argue that the services offered were inadequate; therefore, this issue is unpreserved. We review unpreserved issues for plain error affecting substantial rights. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) the error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *In re VanDalen*, 293 Mich App 120, 135; 809 NW2d 412 (2011) (quotation marks and citation omitted). "Generally, an error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings." *In re Utrera*, 281 Mich App at 9.

"[T]he Department has an affirmative duty to make reasonable efforts to reunify a family before seeking termination of parental rights. As part of these reasonable efforts, the Department 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." *In re Hicks*, 500 Mich at 85-86 (citations omitted). "While the [DHHS] has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered." *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). Further, respondents must also "demonstrate that they sufficiently benefited from the services provided." See *id*. We have held that "a parent, whether disabled or not, must demonstrate that she can meet [the children's] basic needs before they will be returned to her care. If a parent cannot or will not meet her irreducible minimum parental responsibilities,

the needs of the child must prevail over the needs of the parent." *In re Terry*, 240 Mich App 14, 28; 610 NW2d 563 (2000) (quotation marks and citation omitted).

Respondent contends that DHHS did not make reasonable efforts at reunification because it did not provide her with a trauma assessment to determine how best to overcome her alleged resistance to counseling." In support of her argument, respondent quotes a paragraph from a psychological evaluation conducted after the second removal of the children in which the psychologist observed that respondent "engages in a great deal of repression and denial," "frequently avoids or denies unacceptable feelings, impulses, and problems," and exhibits "poor in-sight [sic]" and "defensiveness." The psychologist opined that these "avoidant coping mechanisms likely developed early in life in response to painful or traumatic events," and "make it difficult for change to occur." However, respondent omits the psychologist's further observation that respondent had removed some of the barriers to reunification by obtaining and maintaining housing and employment, that she was "capable of addressing issues and concerns so that her children can be returned to her," that she possessed the "necessary intellectual capacity," and that she "is believed capable of supervising her children appropriately over time," and has the "necessary cognitive capacity to do so." Noting his suspicion that respondent "was exposed to some level of neglect as a child," the psychologist asserted that respondent "needs guidance and support to develop more appropriate expectations of children and to recognize supervision and safety factors." Reiterating that respondent "is believed capable of making necessary changes," the psychologist recommended "[c]ontinued individual therapy services," "a protective parenting class," and development of "appropriate support systems in the community." The psychologist did not deem a trauma assessment necessary for respondent to benefit from services to the point that her children could be returned to her.

The record shows that the services DHHS provided comported with the psychologist's recommendations and was responsive to respondent's expressed worries. Dush testified that DHHS provided, and respondent participated in, individual counseling services, parenting classes, and Infant Mental Health classes. In addition, mindful of respondent's comments about becoming overwhelmed and stressed at having to juggle responsibilities, Dush testified that she adopted a staggered approach to providing services after the second removal. Initially, the only service provided was individual counseling. The idea was to help respondent manage her stress and get to a place where she would be maximally receptive to parenting classes and would benefit from them. This, Dush thought, would lead to increased and unsupervised parenting time. When respondent appeared distrustful of her therapist, suspecting the therapist of prejudicing the court against her so that the therapist could adopt TB, DHHS held a family team meeting to address and alleviate respondent's concerns.

Moreover, at a hearing soon after the children's second removal, the trial court asked respondent's attorney, "are there any other services that your – you believe your client would benefit from at this point." Respondent's attorney replied that as long as the counseling services offered addressed respondent's personal issues as well as parenting issues, such as "how to be attentive to the children" and "engaging her children in a nurturing manner," she would think "that's a fine service." Respondent's attorney made no mention of a trauma assessment, and raises no issues on appeal about the appropriateness of the services actually provided.

Lastly, the trial court took judicial notice of the social and legal files in this case and knew its somewhat complicated, multi-county history. The court observed the witness at numerous hearings over the course of nearly three years and witnessed her testimony at the termination hearing. Given the record before us, and affording "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), we conclude that DHHS did not fail to make reasonable efforts at reunification simply because it did not provide respondent with an assessment that no one recommended or requested. Accordingly, we detect no error in the trial court's finding that DHHS made reasonable efforts to reunify respondent with the children.

III. STATUTORY GROUNDS

We also conclude that the trial court did not err in finding that clear and convincing established the statutory grounds for termination of respondent's parental rights. Although respondent challenges each of the trial court's grounds for termination, she does so on the basis that DHHS did not provide reasonable efforts at reunification. See *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005) (noting that a challenge to the reasonableness of services "ultimately relates to the issue of sufficiency"). Having concluded that the trial court did not err in finding that DHHS did make reasonable efforts at reunification, it is unnecessary for us to address whether the trial court erred in finding clear and convincing evidence of the statutory grounds to termination respondent's parental rights. Nevertheless, we will briefly do so.

We review a trial court's factual findings following a termination hearing for clear error. *In re Gonzales/Martinez*, 310 Mich App 426, 430-431; 871 NW2d 868 (2015). "A finding is clearly erroneous if the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *Id*. (quotation marks and citation omitted). We review "de novo whether the court properly selected, interpreted, and applied a statute." *Id*. (quotation marks and citation omitted).

"In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *VanDalen*, 293 Mich App at 139. If this Court concludes that the trial court did not clearly err by finding one statutory ground for termination, this Court does not need to address any additional grounds. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009).

The trial court found that clear and convincing evidence supported termination pursuant to MCL 712A.19b(3)(c)(*i*) and (*ii*), (g), and (j). MCL 712A.19b(3)(c)(*i*) allows for termination under the following conditions:

> (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.

Termination of parental rights is proper under MCL 712A.19b(3)(c)(*i*) when "the totality of the evidence amply supports that [the respondent] had not accomplished any meaningful change in the conditions" that led to the adjudication, *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009), and would not be able to rectify those conditions within a reasonable time, MCL 712A.19b(3)(c)(*i*). The determination of what is a reasonable time properly includes both how long it will take for the parent to improve conditions and how long the child can wait for the improvement. *In re Dahms*, 187 Mich App 644, 648; 468 NW2d 315 (1991).

The conditions that led to adjudication in the case at bar included respondent's inability to provide adequate care and a stable home for the children. The trial court ordered respondent to complete a treatment plan designed to address those barriers, which included participating in and benefiting from individual counseling, obtaining positive coping and parenting skills, and implementing the skills during visitations with the children. The court also ordered respondent to obtain and maintain suitable housing and employment.

Respondent had participated in individual therapy at least since the children's initial removals in September 2016 and January 2017,[4] and she was provided approximately 15 months of parent education services. The record indicates that respondent made some progress and the children were returned to her for approximately six months in 2018; however, as described above, the children were subsequently removed from her care because she was unable to adequately supervise them. Even after this removal, although respondent found better full-time employment that provided sufficient income and maintained suitable housing, the record amply supports the trial court's conclusion that respondent did not accomplish any meaningful change regarding her ability to provide adequate care for her children.

The record also supports the trial court's finding that there was no reasonable likelihood that respondent would rectify the barriers to reunification in the foreseeable future. "[T]he Legislature did not intend that children be left indefinitely in foster care[.]" *In re Dahms*, 187 Mich App at 647. From the time the children were removed in late 2016 until the termination hearing in 2020, the children had lived with respondent for approximately six months. Despite being provided ample services, respondent made minimal progress in rectifying the concerns about child safety and supervision that led to adjudication. Thus, the record supports the trial court's finding that the conditions that led to adjudication continued to exist and that there was no reasonable likelihood that respondent would rectify the barriers to reunification within a reasonable time. Accordingly, we conclude that the trial court did not clearly err by finding that a ground for termination existed under MCL 712A.19b(3)(c)(*i*). Because only one statutory ground

[4] WB had previously been removed in 2015, in Oakland County. Respondent admitted at the February 2017 adjudication that she had previously been provided with services, but had not successfully completed them. That counseling was part of these services would make sense of respondent's testimony at her 2020 termination hearing that she had had counseling for five years.

for termination need be established, we need not address the other statutory grounds for termination identified by the trial court.[5] *In re HRC*, 286 Mich App at 461.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ David H. Sawyer
/s/ Jane M. Beckering

[5] Respondent takes no issue with the trial court's best interests finding, and neither party briefs the issue, so we need not address it.