

STATE OF MICHIGAN
COURT OF APPEALS

In re A. FREESE, Minor.

UNPUBLISHED
March 11, 2021

No. 354431
Wexford Circuit Court
Family Division
LC No. 18-027983-NA

Before: REDFORD, P.J., and SAWYER and BOONSTRA, JJ.

PER CURIAM.

Respondent mother appeals as of right the trial court’s order terminating her parental rights to the minor child, AF. The trial court terminated respondent’s parental rights pursuant to MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood the child will be harmed if returned to the home). We affirm.

On May 3, 2018, petitioner, the Michigan Department of Health and Human Services (DHHS), petitioned the trial court to take temporary custody of AF and order her removal from respondent’s home.¹ At the preliminary hearing, respondent entered a plea of admission to the court’s exercise of jurisdiction on the basis of the fact that AF was born with tetrahydrocannabinol (THC) in her system and respondent had unstable housing. The trial court did not remove AF from respondent’s home, instead ordering DHHS to provide in-home services, but respondent lost her housing within a few weeks, resulting in DHHS again petitioning the court to remove AF and place her in foster care. The trial court so ordered and, on May 31, 2018, entered an initial dispositional order. That order required respondent to comply with a case service plan created by DHHS. Respondent’s case service plan required her to, among other things: (1) abstain from the use of illegal substances, (2) submit to random drug screens three times per week, (3) participate in and benefit from inpatient rehabilitation at Ten16 Recovery Network (Ten16), (4) acquire and maintain suitable housing, (5) obtain appropriate employment, (6) attend counseling and maintain

¹ AF’s father was also listed as a respondent party, and the trial court terminated his parental rights to AF in the same order that terminated respondent mother’s parental rights. AF’s father is not a party to this appeal, however.

emotional stability, (7) participate in parenting classes and attend all scheduled parenting visits with AF, and (8) maintain contact with DHHS.

Almost 26 months later, the trial court held the termination hearing. After some initial signs of progress, respondent essentially stopped communicating with DHHS in February 2019. Respondent's last drug screen was in January 2019, and between March 2019 and April 2020, respondent visited AF only twice, despite a visitation schedule of two visits per week. When respondent was submitting to drug screens, they were frequently positive for THC, amphetamines, and methamphetamine. Respondent did not submit proof to DHHS that she had stable housing, appropriate employment, or was living substance free. Thus, the trial court terminated respondent's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j), finding such to be in AF's best interests. Respondent now appeals.

Respondent argues there was no evidence to suggest respondent continued to have a problem with substance abuse or housing. Indeed, she argues there was an evidentiary gap as to these conditions in the 18 months before the termination hearing. We disagree.

"We review for clear error the trial court's decision whether grounds for termination have been proven by clear and convincing evidence." *In re Pederson*, 331 Mich App 445, ___; 951 NW2d 704, 719 (2020). "A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made with the reviewing court defer[ring] to the special ability of the trial court to judge the credibility of witnesses." *Id.* (quotation marks and citation omitted; alteration in original).

"To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been proved by clear and convincing evidence." *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). The trial court found MCL 712A.19b(3)(c)(i), (g), and (j) proved by clear and convincing evidence. A court may terminate parental rights under MCL 712A.19b(3) 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.

* * *

(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.

On May 4, 2018, respondent entered a plea of admission to AF coming within the jurisdiction of the trial court. Specifically, respondent admitted that she had unstable housing and that AF was born with THC in her system due to respondent's drug use while pregnant. While the trial court initially ordered in-home services, within a few weeks, respondent lost her housing and AF was removed and placed into foster care. The trial court entered an initial dispositional order on May 31, 2018. According to the testimony at the termination hearing, respondent initially made some progress toward alleviating the conditions that led to her adjudication. She voluntarily admitted to a substance abuse rehabilitation facility, Ten16, and successfully completed a month-long inpatient treatment program. When she discharged from Ten16, she participated in 10 group and three individual therapy sessions to address substance abuse and mental health. Respondent also participated in supervised visits with AF that included parenting education. However, respondent's attendance at visits deteriorated within a few months, and she frequently failed to appear for scheduled visits without explanation. Respondent also frequently refused to submit to drug screening, and when she did submit, her screens were frequently positive for THC, amphetamines, and methamphetamine. She stopped screening altogether in January 2019. In addition, respondent visited AF only twice between March 2019 and April 2020.

According to respondent's testimony and the testimony of her friend, Eugene Theodore Donovan, respondent had stable housing and was no longer abusing drugs. She had been living with Donovan for seven weeks and could continue to do so for as long as she wanted. Donovan's house was safe for AF. Further, respondent testified that she attended Narcotics Anonymous (NA) and Alcoholics Anonymous (AA) every week and had not abused substances since before she was pregnant with AF.² In regard to the drug screens that were positive for amphetamines and methamphetamine, respondent suggested they were either false positives or due to her use of Claritin D and Ritalin, the latter having been prescribed.

The trial court found that respondent continued to have unstable housing and a problem with substance abuse. Regarding substance abuse, the trial court noted that respondent tested positive for illegal substances when she was screening, eventually refused to submit to drug screening at all, and had not provided any documentation that she was attending NA or AA. Regarding housing, the trial court noted that respondent had moved many times during the pendency of the proceedings. The court also found that respondent failed to keep DHHS apprised of her contact information. Given all of this, the trial court found that MCL 712A.19b(3)(c)(i) was proved by clear and convincing evidence because respondent continued to have a substance abuse problem and did not have stable housing. The trial court also found that MCL 712A.19b(3)(g) was proved by clear and convincing evidence because respondent had been absent from AF's life for the 17 months before the termination hearing and, due to her substance abuse and unstable housing, was unable to provide proper care and custody for AF. Finally, the trial court found that

² Respondent did not explain how this assertion was consistent with her plea of admission to AF being born positive for THC.

MCL 712A.19b(3)(j) was proved by clear and convincing evidence because respondent had failed to comply with her case service plan and failed to alleviate the housing and substance abuse concerns. As such, the trial court found AF was likely to be harmed if returned to respondent's care.

The trial court's findings were not clearly erroneous. The evidence fully supported the court's findings and we are not "left with a definite and firm conviction that a mistake has been made." *Pederson*, 951 NW2d at 719 (quotation marks and citation omitted). Specifically, respondent's positive drug screens at the beginning of the case and failure to screen in the latter 18 months of the case supported the court's finding that respondent continued to have a substance abuse problem. Further, respondent's own testimony about her housing circumstances supported the trial court's finding that respondent did not have stable housing. While respondent and Donovan testified that respondent was living with Donovan, that had only been occurring for seven weeks and they had no lease agreement. Thus, it was not clearly erroneous for the court to find that the conditions that led to respondent's adjudication continued to exist after more than 182 days since the initial dispositional order. MCL 712A.19b(3)(c)(i). It was also not clearly erroneous for the trial court to find MCL 712A.19b(3)(g) proved as respondent's substance abuse and unstable housing prevented her from providing AF with proper care and custody, both at the time of removal and at the time of the termination hearing. Finally, the trial court did not clearly err by finding MCL 712A.19b(3)(j) proved by clear and convincing evidence as respondent's substance abuse and lack of stable housing made it reasonably likely that AF would be harmed if returned to respondent's home. Respondent's failure to comply with her case service plan also supported the trial court's findings that respondent would not be able to provide proper care and custody and that AF would likely be harmed if returned to respondent's home. *In re White*, 303 Mich App 701, 710-711; 846 NW2d 61 (2014).

We also note that respondent's argument that DHHS failed to prove that her substance abuse and housing issues persisted through the final 18 months of these proceedings is unpersuasive. While respondent is correct that DHHS bore the burden of proving at least one of the statutory grounds for termination of parental rights, MCR 3.977(A)(3) (placing the burden of proof as to statutory grounds for termination on the party seeking termination), she forgets that she also had a responsibility during these proceedings. Respondent admitted to neglecting AF, and the trial court ordered respondent to participate in and benefit from a case service plan. That service plan, among other things, required respondent to maintain contact with DHHS. Respondent's failure to maintain contact with DHHS—which, in turn, inhibited DHHS's ability to drug screen respondent or monitor respondent's housing situation—actually provided further support to DHHS's case, as respondent's failure to submit to drug screens or provide DHHS with her address suggests neither would have supported respondent's efforts to reunify with AF. And while respondent argues her testimony and Donovan's testimony filled the 18-month "gap" in the evidence left by DHHS, this Court "must defer to the special ability of the trial court to judge the credibility of witnesses." *In re LaFrance Minors*, 306 Mich App 713, 723; 858 NW2d 143 (2014). The trial court's finding that respondent continued to have substance abuse and housing problems, and the court's apparent disregard of respondent's and Donovan's testimony, was supported by the evidence and not clearly erroneous. *Id.* Because the trial court did not clearly err by finding MCL 712A.19b(3)(c)(i), (g), and (j) proved by clear and convincing evidence, and because

respondent does not challenge the trial court's best-interests determination, the trial court did not clearly err by terminating respondent's parental rights to AF.

Affirmed.

/s/ James Robert Redford
/s/ David H. Sawyer
/s/ Mark T. Boonstra