STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
July 7, 2011

In the Matter of B. SCHAU, Minor.

No. 300740
Kalamazoo Circuit Court
Family Division
LC No. 2004-000216-NA

In the Matter of WASHINGTON/JONES/SCHAU, Minors.

No. 300791
Kalamazoo Circuit Court
Family Division
LC No. 2004-000216-NA

Before: SHAPIRO, P.J., and O'CONNELL and OWENS, JJ.

PER CURIAM.

In Docket No. 300740, respondent M. Schau appeals as of right from the trial court's order terminating his parental rights to BS pursuant to MCL 712A.19b(3)(c)(*i*) and (j). In Docket No. 300791, respondent J. Washington appeals as of right from the same order, which terminated her parental rights to her four children pursuant to MCL 712A.19b(3)(c)(*i*), (g), and (j). The appeals have been consolidated and we affirm in both appeals.

Both respondents challenge the trial court's findings regarding the existence of a statutory ground for termination and the children's best interests. "In a termination of parental rights proceeding, a trial court must find by clear and convincing evidence that one or more grounds for termination exist and that termination is in the child's best interests." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). An appellate court reviews the trial court's findings of fact for clear error. MCR 3.977(K); *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003). A finding is clearly erroneous if, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake was made. *Id.* at 209-210. Due deference is given to the trial court's special opportunity to judge the weight of evidence and the credibility of witnesses who appear before it. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Although respondent Washington argues that the trial court erred in finding that §§ 19b(3)(c)(*i*) and (g) were each established by clear and convincing evidence, the trial court also terminated her parental rights under § 19b(3)(j), and she has not challenged that decision on

appeal. Because only one statutory ground for termination is necessary for a court to terminate parental rights, *In re HRC*, 286 Mich App at 461, respondent Washington's failure to address the termination of her parental rights under § 19b(3)(j) could alone preclude appellate relief. See *City of Riverview v Sibley Limestone*, 270 Mich App 627, 638; 716 NW2d 615 (2006), and *In re JS & SM*, 231 Mich App 92, 98-99; 585 NW2d 326 (1998). Nonetheless, the trial court did not clearly err in finding that §§ 19b(3)(c)(*i*) and (g) were also both established by clear and convincing evidence.

With respect to § 19b(3)(c)(*i*), the record does not support respondent Washington's contention that the conditions that led to the adjudication were limited to her cocaine and marijuana use. Although the trial court's jurisdiction over the children was based in part on respondent Washington's 2007 plea of admission to allegations of illegal drug use, respondent Washington's admissions also called into question her emotional stability and ability to handle parenting responsibilities. Respondent Washington admitted that she was not protecting her children from domestic violence situations. Further, the recommendations following a psychological evaluation in August 2008 included both total abstinence from illegal drugs and resolution of respondent Washington's mood disorder. A court may apprise itself of all relevant circumstances when evaluating the conditions that led to the adjudication. *In re Jackson*, 199 Mich App 22, 26; 501 NW2d 182 (1993).

The evidence indicated that respondent Washington was prescribed medication for a bipolar disorder, but continued to use illegal drugs. At the time of the trial court's March 2010 decision regarding the statutory grounds for termination, respondent Washington was continuing to either test positive for illegal drugs or fail to submit to scheduled drug screens. Earlier, she informed the caseworker that she would not show up for a scheduled drug screen if she knew that the results would be positive. The trial court did not clearly err in finding that the conditions that led to the adjudication continued to exist. Further, considering the lack of progress in addressing respondent Washington's drug use, the trial court did not clearly err in finding that the conditions were not reasonably likely to be rectified within a reasonable time considering the children's ages. Therefore, the court did not err in finding that § 19b(3)(c)(*i*) was established by clear and convincing evidence.

The same evidence also supports the trial court's determination that § 19b(3)(g) was established by clear and convincing evidence. Respondent Washington's failure to benefit from services establishes that the children would be at continuing risk in her care. *In re Gazella*, 264 Mich App 668, 677; 692 NW2d 708 (2005). Indeed, the testimony made clear that Washington was not following through with available services. The foster care worker testified that, after the June 10 hearing, respondent Washington asked about parenting classes. The worker looked into parenting classes and located a nine-week program at the YMCA that respondent Washington could attend. The worker mailed, emailed, and telephoned the information to respondent Washington to make certain she received it. After the referral, respondent Washington attended only one class in the nine-week program. Respondent Washington also expressed interest in domestic violence classes, but, as with the parenting classes, never followed through.

We also disagree with respondent Washington's argument that the trial court erred in finding that termination of her parental rights was in the children's best interests. Contrary to what respondent Washington argues, the record does not indicate that she was punished for not

participating in a family drug court program. The trial court's order entered after its March 2010 decision regarding the statutory grounds for termination directed that she participate in the drug court program only if she was eligible to do so; otherwise, she was to participate in another suitable program. Further, it is clear from the record that the trial court ordered the additional drug treatment for the benefit of the children. The fact that the trial court decided to proceed with an evaluation of the children's best interests after being informed that respondent Washington was rejected by the drug court program does not establish that its purpose was punitive, particularly where respondent did not seek alternative treatment.

In addition, considering the record as whole, we are not persuaded that the trial court clearly erred in its assessment of the children's best interests. While the court remarked that respondent Washington was a "wonderful mother," that remark was qualified by the court's observation and concerns regarding respondent Washington's continued use of illegal drugs. Given respondent Washington's failure to show that she could refrain from using illegal drugs and place her children's needs first, the trial court did not clearly err in finding that termination of her parental rights was in the children's best interests.

In Docket No. 300740, respondent Schau argues that the trial court erred in finding that §§ 19b(3)(c)(*i*) and (j) were both clearly established. Respondent Schau asserts that he should have been given more time to benefit from services and that he should have been permitted to obtain a recommended medical examination before proceeding to termination.

Respondent Schau's circumstances differed from respondent Washington because he was not the subject of the original adjudication in 2007 with respect to his child. Therefore, legally admissible evidence was required to establish statutory grounds for terminating his parental rights. MCR 3.977(F)(1)(b); *In re CR*, 250 Mich App 185, 205; 646 NW2d 506 (2002). Further, because respondent Schau was not the subject of the adjudication, we conclude § 19b(3)(c)(*i*) was not applicable to him. See MCR 3.977(F)(1)(b)(*ii*).[1] Nonetheless, the trial court did not clearly err in finding that § 19b(3)(j) was established by clear and convincing evidence. The evidence supports the trial court's determination that there was a reasonable likelihood that respondent Schau's relationship with respondent Washington would provide her with unsupervised access to respondent Schau's child and, in light of her active drug addiction, it was reasonably likely that the child would be harmed if returned to respondent Schau.

Contrary to what respondent Schau argues, his testimony at the August 2010 hearing that "I have noticed when [BS] leaves he don't want to leave. That's what he's upset about, I've seen. I think [respondent Washington] said the same things during the visits," supports the trial court's finding that respondent Schau alluded to respondent Washington's presence during respondent Schau's parenting time. Further, the trial court could reasonably infer from the evidence, including respondent Schau's testimony regarding his ongoing relationship with

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[1] Although respondent Schau failed to raise this specific issue, we have elected to consider it in the interests of justice. See *LME v ARS*, 261 Mich App 273, 287; 680 NW2d 902 (2004); see also *In re Williams*, 286 Mich App 253, 272-273; 779 NW2d 286 (2009).

respondent Washington in the face of his drug case manager's testimony that he needed to refrain from relationships with individuals who use drugs, that respondent Schau did not have the capacity to protect his child from respondent Washington.

We also reject respondent Schau's argument that the trial court erred in finding that petitioner complied with its statutory obligation to make reasonable efforts to reunite him with his child. See MCL 712A.18f. The reasonableness of services offered to a respondent may affect the sufficiency of evidence to establish the statutory grounds for termination. *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005). Here, the fact that changes were made to the case-service plan during the proceedings or that the caseworker came up with new ideas for addressing the issues in the case does not establish that petitioner's efforts at reunification were unreasonable. In addition, although a petitioner's failure to take into account a parent's limitations and disabilities and make reasonable accommodations for those limitations could render its efforts unreasonable, *In re Terry*, 240 Mich App 14, 26; 610 NW2d 563 (2000), respondent Schau has failed to establish any area in which more assistance was necessary to enable him to work on what was expected of him under the case-service plan. The fact that a psychological evaluation conducted shortly before the August 2010 hearing contained a recommendation for a medical examination to determine any effects from past head injuries or alcohol use did not preclude the trial court from finding that reasonable efforts at reunification were made, or that § 19b(3)(j) was established. Further, the trial court's failure to specifically address the recommended medical examination in its decision does not warrant relief. The trial court was not required to comment on every item of evidence. Rather, "[b]rief, definite, and pertinent findings and conclusions on contested matters are sufficient." MCR 3.977(I)(1).

Respondent Schau also challenges the trial court's assessment of his child's best interests. Considering that the child had essentially spent his entire life as a temporary court ward and the trial court's justifiable concerns regarding the risk of harm to the child because of the continuing relationship between respondent Washington and respondent Schau, the trial court did not clearly err in finding that termination of respondent Schau's parental rights was in the child's best interests. MCL 712A.19b(5).

Lastly, we consider respondent Schau's claim that he was denied the effective assistance of counsel by applying by analogy principles of ineffective assistance of counsel developed in criminal cases. *In re CR*, 250 Mich App at 197-198. Because this issue was not raised below, our review is limited to mistakes apparent from the record. *People v Horn*, 279 Mich App 31, 38; 755 NW2d 212 (2008). Respondent Schau bears the burden of showing both deficient performance and resulting prejudice. *In re CR*, 250 Mich App at 198; see also *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001).

Here, it is not apparent from the record that counsel performed deficiently by failing to conduct redirect examination of respondent Schau, or object to the trial court's findings, with respect to the issue of respondent Schau's parenting time with his child. In any event, considering that counsel for the children elicited respondent Schau's denial that respondent Washington was present during his parenting time, and respondent Schau's pro se argument to the trial court regarding its finding that he had contradicted himself, respondent Schau has failed to show any resulting prejudice. Therefore, his ineffective assistance of counsel claim cannot succeed.

Affirmed.

/s/ Douglas B. Shapiro
/s/ Peter D. O'Connell
/s/ Donald S. Owens