

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
November 29, 2011

In the Matter of H. A. GEERY, Minor.

No. 303564
Macomb Circuit Court
Family Division
LC No. 2009-000497-NA

Before: MURPHY, C.J., and BECKERING and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order that terminated her parental rights to the minor child under MCL 712A.19b(3)(c)(i) and (g). We affirm.

We review for clear error a trial court's determination that one or more statutory grounds for termination has been established. MCR 3.977(K); *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009). "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). A trial court properly terminates a respondent's parental rights if it finds that at least one of the statutory grounds for termination has been established by clear and convincing evidence and that clear and convincing evidence also supports the conclusion that termination is in the child's best interests. MCL 712A.19b(5); see *In re Jenks*, 281 Mich App 514, 516; 760 NW2d 297 (2008).

MCL 712A.19b(3) states in pertinent part:

(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.

* * *

(g) The parent, without regard to intent, 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.

The trial court did not clearly err in finding that petitioner proved by clear and convincing evidence the existence of the above statutory grounds for termination. The conditions that led to petitioner's intervention included respondent's chronic mental illness, substance abuse, and unsuitable housing. Respondent had more than 18 months to manage her bipolar disorder, address her substance abuse, and provide a stable home environment. There was substantial evidence that petitioner provided respondent with ample services to facilitate reunifying the family: a psychological evaluation, individual therapy, referrals for substance abuse assessment and follow-up treatment, parenting classes, supervised parenting time, transportation assistance, and random drug screening.

Respondent did not complete a substance abuse assessment until just before the termination hearing and, therefore, was not able to follow through on its recommendations. Despite several referrals, she never completed therapy for her substance abuse. There was no proof that respondent was able to maintain sobriety for any significant period because she did not consistently submit weekly random drug screens. The court properly concluded that respondent had not fully complied with her treatment plan. Beyond her problem with substance abuse, respondent failed to successfully complete and benefit from individual counseling and parenting classes, maintain stable and suitable housing, maintain a regular and adequate legal source of income, and regularly attend court-ordered parenting time. The minor child had spent all of her life in foster care, and respondent missed at least half of the weekly visits with her. The trial court also heard persuasive testimony from the caseworker that, despite support services provided for more than 18 months, respondent's circumstances remained unchanged. Clearly, respondent failed to address the issues that brought her child before the court. The court record, as a whole, supported a finding that respondent would be unlikely to manage her mental health issues, maintain sobriety, and achieve stability in the long term. The issues that brought the child into care continued to exist, and there was no reasonable likelihood that, after 18 months of services, respondent would be able to resolve those issues in the near future. MCL 712A.19b(3)(c)(i). Furthermore, there was no reasonable expectation that respondent would be able to provide care and custody within a reasonable time. MCL 712A.19b(3)(g).

Respondent argues that she demonstrated her determination and ability to care for the child because, at the time of the termination hearing, she had a place to live and a job as an in-home care provider for a friend's disabled partner. This argument does not square with the trial court record. There was no verification of respondent's current income and housing. Further, respondent admitted that her current housing and job were temporary. The court reasonably concluded that respondent's housing and financial circumstances were unstable and would not likely improve in the foreseeable future.

Respondent argues that she was unable to more fully comply with the parent agency agreement because petitioner did not provide adequate reunification services, including

transportation assistance, treatment referrals, and relative foster care placement. It is well established that petitioner must make reasonable efforts to rectify conditions, to reunify families, and to avoid termination of parental rights. See *In re Terry*, 240 Mich App 14, 25-26; 610 NW2d 563 (2000); MCL 712A.18f; MCL 712A.19(7).

The trial court record does not support respondent's claim that she was left to her own devices to obtain services for her drug addiction and bipolar disorder. It was undisputed that petitioner provided respondent with bus tokens, and respondent admitted that she did not ask her caseworker for additional bus tokens. The evidence showed that petitioner made numerous referrals for a substance abuse assessment. Moreover, respondent repeatedly stated at review hearings that she was in therapy and obtaining psychiatric medication assistance from her own doctor. However, no documentation was ever offered to support these assertions. Also, there was clear evidence that petitioner offered counseling and medication review services to address respondent's mental health issues. Respondent rejected these referrals because she desired to remain with a therapist with whom she dealt before the child was removed from her care. Petitioner was unable to conduct a home assessment because respondent never remained in one location long enough for an assessment to be completed. Petitioner and the court clearly stated their preference to place the child with a suitable relative. However, the record showed that the individuals were either unsuitable or nonresponsive to petitioner's reasonable inquiries. The trial court properly concluded, during six periodic review hearings and at the termination hearing, that petitioner made reasonable efforts to reunify respondent with her child. Any inadequate mental health and substance abuse treatment was the direct result of respondent's choices and actions and not because of any shortfall by petitioner. The law can and does impose obligations on petitioner to offer services to reunite families but cannot mandate desired outcomes that are determined, in large measure, by the participant's motivation and positive attitude—attributes that respondent clearly lacked throughout this case.

The court also properly concluded that termination of respondent's parental rights was in the child's best interests. MCL 712A.19b(5); accord MCR 3.977(H)(3). It was undisputed that respondent loved the child and desired to properly care for her. However, because of respondent's serious and unresolved physical and mental health issues, substance abuse, and unsuitable housing, respondent would not be able to provide a safe and stable environment for the child in the near future. The child had been in foster care for 18 months, since birth, and needed permanency, which respondent was unable to provide.

Respondent contends that the court erred in determining this child's best interests because her older child was dismissed from the termination proceeding. She contends that the dismissal implicitly showed that she was a suitable parent. However, the older child was in the physical custody of his father, who was not the father of this child. Although respondent retained joint legal custody of her older child, the trial court correctly disregarded this, focusing instead on respondent's mental health issues and this child's best interests.

Affirmed.

/s/ William B. Murphy
/s/ Jane M. Beckering
/s/ Amy Ronayne Krause