STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
March 29, 2012

In the Matter of WHITE, Minors.

No. 305411
Macomb Circuit Court
Family Division
LC Nos. 2010-000057NA
2010-000058NA

Before: BORRELLO, P.J., and BECKERING and GLEICHER, JJ.

PER CURIAM.

Respondent-mother appeals as of right from the trial court's order terminating her parental rights to her two children under MCL 712A.19b(3)(c)(*i*),(g), and (j). We affirm.

Before terminating a respondent's parental rights, the trial court must make a finding that at least one of the statutory grounds under MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Jenks*, 281 Mich App 514, 516; 760 NW2d 297 (2008). Only one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights, even if the court erred in finding sufficient evidence under other statutory grounds. See *In re Huisman*, 230 Mich App 372, 384-385; 584 NW2d 349 (1998), overruled in part on other grounds *In re Trejo*, 462 Mich 341, 353 n 10; 612 NW2d 407 (2000). Upon finding a statutory ground for termination, the trial court must order termination of parental rights if it finds that termination is in the child's best interests. MCL 712A.19b(5). This Court reviews parental termination cases for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009); MCR 3.977(K). To warrant reversal, the trial court's decision must be more than maybe or probably wrong. *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009). Clear error exists "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 may consider evidence on the whole record in making its best-interest determination. *Trejo*, 462 Mich at 356.

The trial court terminated respondent-mother's parental rights under MCL 712A.19b(3)(c)(*i*), (g), and (j), which provide:

(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.

* * *

(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.

Based on our review of the record, we conclude that the trial court did not clearly err in finding that MCL 712A.19(b)(3)(c)(*i*) and (g) were established by clear and convincing evidence.[1] The condition that led to petitioner's intervention was respondent's inability to parent her children. Respondent was developmentally disabled and cognitively impaired. Respondent contacted Children's Protective Services in January 2010 because she was overwhelmed and feared that she would harm herself or her children. Respondent also reported that she was unable to keep her older child from hurting the younger sibling.

Petitioner provided respondent with family-reunification services to correct her parenting skills and coping deficits; she received psychological evaluations, parent-child bond evaluations,

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[1] There is some question whether sufficient evidence was presented to establish a statutory ground for termination under MCL 712A.19b(3)(j), but it is not necessary for us to address this issue because the trial court properly terminated respondent's parental rights on two other statutory grounds.

in-home parent classes, in-home parent coaching from an infant mental-health specialist, in-home community-living support services for home management, and supervised parenting time. Respondent showed some improvement in her parenting and coping skills, and visits were expanded to include up to ten hours of unsupervised visiting time. However, unsupervised visits were then returned to supervised visits because respondent was unable to maintain the quality of the visits and properly manage her children's challenging behaviors.

At the time of the termination hearing, the issues of respondent's inadequate parenting and coping skills that brought the children into care continued to exist. Despite 16 months of services, she continued to become frustrated and overwhelmed by the children when they were in her care for a limited time. There was no reasonable likelihood, given respondent's inherent cognitive impairment and the level of services already provided, that respondent would be able to resolve those issues within a reasonable time period considering the ages of the children. Respondent, without regard to intent, failed to provide the children with proper care or custody, and there was no reasonable expectation that respondent would be able to do so within a reasonable timeframe.

Respondent asserts that she fully complied with the parent-agency agreement and that there was no evidence that she was unable to independently and appropriately care for her children. Respondent mistakenly relies on *In re Newman*, 189 Mich App 61; 472 NW2d 38 (1991), to support her contention that the trial court misapplied the statute when considering her cognitive impairment. The pivotal issue in *Newman* was whether the mother, who had "limited intellectual capacity," was given a reasonable opportunity to demonstrate her ability to parent. See *Newman*, 189 Mich App at 65-68. In this case, unlike in *Newman*, respondent received many opportunities for more than 16 months to learn and apply appropriate parenting skills. See *id.* It is beyond dispute that respondent valiantly participated in her treatment plan, did all that was asked of her, and was highly motivated. However, it is well established that compliance with a treatment plan alone does not suffice; a parent must comply with and benefit from the treatment plan. *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005), superseded by statute on other grounds in MCL 712A.19b(5). The trial court properly considered the salient issue of whether respondent benefited from services and was able to properly care for her children. The trial court correctly concluded that respondent had not benefited and had failed to remedy the issues that brought her children before the court. The court record, as a whole, supported a finding that respondent would be unlikely to manage the day-to-day stressors inherent in independently caring for her two children.

Respondent contends that termination was premature given her cognitive delay and her strong motivation to acquire better parenting skills. Respondent also contends that services were not tailored to her unique way of synthesizing information. This argument does not square with the trial court record. The court reasonably concluded that respondent's parenting deficits that led to an unstable home environment would not likely improve with additional services.

The evidence showed that respondent received services long before the children were removed. Respondent testified that, before the initial petition, she was receiving parenting classes through Infant Mental Health in her home and at the program office. Respondent received parenting services when her older child was a baby, from 2006 through 2009, and after her younger child was born, from December 2008 until December 2009.[2] Despite these pre-petition services, respondent was overwhelmed and unable to manage her two children in January 2010. During the pendency of this case, respondent participated in intensive services that were tailored to her cognitive limitations. She received hands-on demonstrations and proctoring that were consistent with the evaluating psychologist's recommendations. During supervised visitation, respondent needed a great deal of coaching and prompting when something went wrong. She did not have an ability to independently act, and she needed a great deal of support. Despite extensive services, respondent frequently sought help from DHS, the foster parent, and the infant mental-health specialist during unsupervised visits that never exceeded ten hours. At times, respondent asked for visits to end early because she was unable to control the older child. Moreover, after more than 16 months of additional services following the children's removal, both a psychologist and the parent educator observed respondent with her children and found her clearly overwhelmed during a two-hour visit. Respondent presented as an immature, anxious mother who became increasingly frustrated, overwhelmed, and more physical in her interactions with the children as the visit progressed. There was very minimal physical affection throughout the visit. It was readily apparent during the observed visitation that respondent had acquired few parenting and coping skills to control the older child's behavior. Both children ran to the foster mother at the end of the visit and did not say goodbye to respondent. The psychologist opined that respondent was overwhelmed and harshly interacted with the children: she yelled, threatened, and was physically rough with them during a time-limited visit in a professional setting. Further, respondent twice considered voluntarily relinquishing her parental rights just before the termination hearing. She also reported to the psychologist that she was overwhelmed with the day-to-day activities even when the children were not in her care. There was ample evidence that, even with additional services, respondent was unlikely to be able to handle parenting of the children by herself. The trial court did not prematurely terminate respondent's parental rights.

The court also properly concluded that termination of respondent's parental rights was in the children's best interests. "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); accord MCR 3.977(H)(3). The evidence is unequivocal that respondent loved her children and desired to properly care for them. However, respondent did not improve her parenting skills to the extent necessary for her to care for the children independently. Respondent would not be able to provide a safe and stable environment

[2] It is noteworthy that respondent lived with other people until her younger child was about one year old. She apparently was living alone for the first time shortly before seeking intervention from Children's Protective Services in January 2010.

for the children in the near future. The children were young and needed permanency, which respondent was unable to provide. See *In re VanDalen*, 293 Mich App 120; ___NW2d___ (2011) (considering child's need for stability and permanency), slip op at 11.

Affirmed.

/s/ Stephen L. Borrello
/s/ Jane M. Beckering
/s/ Elizabeth L. Gleicher