

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 18, 2012

In the Matter of RICHARDSON, Minors.

No. 309108
Ingham Circuit Court
Family Division
LC No. 10-001137-NA

Before: HOEKSTRA, P.J., and BORRELLO and BOONSTRA, JJ.

PER CURIAM.

Respondent-mother appeals by right from an order of the family division of the circuit court terminating her parental rights to her minor children, A.R. (DOB 12/13/04), V.R. (DOB 08/12/07), and K.R. (DOB 8/9/10) pursuant to MCL 7.12A.19b(3)(g) (failure to provide proper care and custody) and (j) (risk of harm if returned to the parent).¹ We affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

This case was initiated by an incident that occurred on June 16, 2010. Respondent explained that she had just finished work and was “stressed out” because she was pregnant with K.R. She found and took some Xanax, which was not prescribed to her, “and got in the shower and fainted.” The next thing she remembered was “[w]aking up in the hospital with tubes down [her] throat.” In respondent’s words, she “went crazy” at the hospital and tried to induce labor with a “hook” that she found.

A preliminary hearing was held on June 24, 2010, which resulted in the referee’s determination that it was contrary to the children’s welfare to remain in respondent’s home, due to her drug use and mental health issues. The children were placed with petitioner for care and supervision, and respondent’s parenting time was made contingent on clean drug screens. The trial court found statutory grounds to exercise jurisdiction over the two older children on July 22, 2010, and over the youngest shortly after he was born.

¹ The trial court found that A.R. and K.R. did not have a legal father. See MCR 3.903(7). The trial court terminated the parental rights of V.R.’s father, but he has not appealed that decision and so is not a party to this appeal.

A clinical therapist diagnosed respondent with a recurrent major depressive disorder, and opined that the “main issue” was “her ability to be safe with her children under stress and pressure.” The therapist developed a cognitive behavioral therapy treatment plan to assist respondent in learning stress management skills and seeking help when overwhelmed. This therapist met regularly with respondent and initially believed that respondent was making progress, but in the fall of 2010, respondent’s participation became “sporadic” and, in early January 2011, the relationship was discontinued because of problems with respondent’s insurance.² After a delay of a few months, respondent began meeting with a contractual therapist with St. Vincent Catholic Charities. The two met once a week from April 26 through May 31, but then only once between July 12 and August 16. A lapse in service followed, which respondent attributed to problems with petitioner’s authorization. Sessions were to resume in July, but respondent failed to appear for a number of them, and the contract therapist terminated the arrangement. Only as termination proceedings came to bear did respondent, on the advice of her attorney, resume the therapy, meeting the therapist twice in the two weeks preceding the October 7, 2011 hearing and once between January 30, 2012 and the final February 17, 2012 hearing.

The foster care caseworker reported that respondent was initially “very compliant with everything,” but in the spring of 2011 started to become uncooperative and dishonest. She began missing visits with the children, and failing to appear for drug screenings or testing positive when she did appear. As a result of the positive or missed drug screens, respondent’s parenting time was canceled. The foster care caseworker testified that the missed visitations “took a toll” on A.R. Respondent also missed V.R.’s and K.R.’s birthdays during this time period, along with a number of doctor and other appointments related to V.R. After V.R. reacted badly during a visit with respondent, the court required that the child’s therapist approve any further visitation. When V.R. arrived for a visit in May 2011, he panicked, refused to enter the building, and the visitation was canceled.

On April 8, 2011, respondent’s sister brought A.R. to a park, where respondent had an unsupervised visitation with that child in violation of the order requiring that all visits be supervised. Respondent testified that she was not aware that her sister was going to bring A.R. to the park.

Respondent failed to participate in drug testing from July 30, 2011 through September 13, 2011, and then tested positive for the active ingredient in marijuana in October, November, and December of that year. Respondent also tested positive for alcohol in December 2011 and February 2012, and for benzodiazepine in January and February 2012. Respondent denied taking illegal drugs, and attributed her positive screens for alcohol and benzodiazepine to taking over-the-counter cold medicine with codeine.

² Respondent testified that she informed her caseworker about her insurance issue in January; however the caseworker testified that respondent did not inform her about the issue, and she found out when she contacted the therapist for an update in early February.

V.R.'s therapist testified that the child "showed rejection of his mother over time," and opined that this was because of respondent "being inconsistent in coming" to visitation, adding that the missed visitations caused the child to enter a "downward spiral," eventually leading to a panic attack at the last visitation. The therapist opined that terminating respondent's parental rights was in V.R.'s best interests.

A.R.'s therapist testified that that child was aggressive and had age inappropriate, "parentified" behaviors, such as becoming "very upset that the foster parent wouldn't allow her to change K.R.'s diaper." The therapist further testified that the bond between A.R. and respondent "has been weakened due to no visitations." A.R.'s therapist also opined that termination of respondent's parental rights was in that child's best interests, and that the decision should be made as soon as possible.

The foster care caseworker agreed that termination was in the best interest of the children, because they "need permanency," the "reasons that the children came into care have not been eliminated," and "it appears to be difficult for [respondent] to put the children's needs before her needs."

Visitation with A.R. and K.R. was stopped after the children had negative reactions to a visit on January 23, 2012.

At the final termination hearing, the trial court found that respondent did not consistently or effectively participate in services, could not show that she benefitted from the services in which she did participate, minimized her level of responsibility for her children being in care, and consistently put her own needs before those of her children. The trial court found that respondent resisted participating in services and was dishonest with the foster care workers. The court expressed concern about respondent's ability to ensure the safety of her children when she was under stress, noting that her anger and stress-related mental health issues "still go unaddressed today," that V.R. developed a stress disorder while in her care, that A.R. exhibited "parentified" behaviors and was "just now learning how to be a child and to enjoy being a child," and that K.R. did not know his mother. Regarding substance abuse, the court found that respondent missed numerous drug screenings and "continued to test positive during the duration of this trial." It found that drug and alcohol abuse was a serious issue that respondent had not addressed adequately. The court felt that domestic violence "remains an issue," because respondent had not effectively dealt with her anger and stress and had made poor choices in past relationships.³

On February 17, 2012, the trial court found that grounds for termination had been proven under MCL 7.12A.19b(3)(g) and (j), and that it was in the children's best interests to terminate respondent's parental rights. This appeal followed.

II. REUNIFICATION EFFORTS

³ Respondent admitted that, in 2011, she was in a relationship with a man who was violent toward her.

Respondent argues that the trial court erred in terminating her parental rights, because petitioner did not fulfill its duty to make efforts to reunite her with her children. Respondent did not protest below that the decision on termination was premature because she had not been offered adequate services, and thus this issue comes to this Court unpreserved. Unpreserved claims of error are reviewed for plain error affecting substantial rights. *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000).

“Reasonable efforts to reunify the child and family must be made in all cases,” except those involving aggravated circumstances not present in this case. MCL 712A.19a(2); see also *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

In this case, respondent was offered numerous services, including individual therapeutic services, family therapy services, substance abuse assessment, psychological evaluation, psychiatric evaluation, parenting time, drug screens, and a parenting class. Respondent complains that she found, and in some instances paid for, her own therapist and parenting classes, but cites no authority for the proposition that MCL 712A.19a(2) demands publicly provided assistance in place of a parent’s personal initiative, let alone that personal resourcefulness in obtaining services in place of public guidance and support in the matter itself somehow compromises petitioner’s authority to petition for termination of parental rights, or the trial court’s authority to act on such a petition.

Respondent complains that while her substance-abuse problem was identified, services for that consisted of drug testing and conditioning visitation on testing clean. However, there is no reason to doubt that, had respondent fully participated in therapy, those sessions could have helped address respondent’s substance-abuse problem. Instead, respondent did not show up for a number of her appointments with her most recent therapist, who therefore terminated the arrangement. The record thus reflects that respondent failed to take advantage of, or benefit from, the services that were offered.

For these reasons, respondent has failed to show that the trial court committed plain error in proceeding with termination of her parental rights in light of the services she was offered.

III. STATUTORY BASES FOR TERMINATION

Respondent argues that the trial court clearly erred in concluding that termination was appropriate under two statutory criteria. We disagree. An appellate court “review[s] for clear error . . . the court’s decision that a ground for termination has been proven by clear and convincing evidence.” *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

Again, the trial court terminated respondent’s parental rights pursuant to MCL 7.12A.19b(3)(g) and (j). Those statutory provisions read as follows:

(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:

* * *

(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.

“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).

Respondent protests that she has benefitted from therapy and is continuing therapy in hopes of greater progress, but her lack of progress in that regard was much in evidence. “Failure to substantially comply with a court-ordered case service plan is evidence that return of the child to the parent may cause a substantial risk of harm to the child's life, physical health, or mental well being.” *In re Trejo*, 462 Mich at 346 n 3 (internal quotation marks and citation omitted).

Respondent complains that her visitation with the children was conditioned on her having three consecutive negative drug screens, but cites no authority for the proposition that this is an unreasonable condition to impose on a parent with known substance-abuse problems. Nor does respondent take issue with the trial court's finding that her substance-abuse problem continued throughout trial. A parent's persistent failure to gain control over a substance-abuse problem is ground for termination of parental rights. See *In re Conley*, 216 Mich App 41, 44; 549 NW2d 353 (1996) (regarding alcohol addiction).

Concerning respondent's mental-health issues, she asserts that she is taking medication and seeing therapists, but does not assert that those issues have been successfully addressed. In addition, respondent ignores her lack of progress in this area during the pendency of the proceedings.

Respondent attributes the various interruptions or delays in her participation in services to petitioner, but fails to point to any evidence that she was earnestly seeking assistance while petitioner was uncooperative. Respondent states that the trial court “erred in not providing six months to allow [her] to complete all her services,” but “the Legislature did not intend that children be left indefinitely in foster care, but rather that parental rights be terminated if the conditions leading to the proceedings could not be rectified within a reasonable time.” *In re Dahms*, 187 Mich App 644, 647; 468 NW2d 315 (1991). Again, respondent ignores her lack of progress during the pendency of the proceedings.

For these reasons, respondent fails to show that the trial court clearly erred in concluding that termination of her parental rights was appropriate under MCL 7.12A.19b(3)(g) and (j).

IV. BEST INTERESTS

Finally, respondent argues that the trial court erred in concluding that termination was in the children's best interests. An appellate court "review[s] for clear error . . . the court's decision regarding the child's best interest." *In re Trejo*, 462 Mich at 356-357. "In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App 35, 41-42; ___ NW2d ___ (2012) (citations omitted).

The trial court found that respondent's failure to participate in, or benefit from, services, means that she retains the parenting deficiencies that brought the children under the court's jurisdiction in the first place, and thus that the children would be put back into harm's way if returned to her. The trial court also found that respondent minimized her level of responsibility for her children being taken into care, and consistently put her own needs before those of her children. The trial court found that respondent resisted participating in services and was dishonest with the foster care workers.

Moreover, the evidence was abundant that each of the children felt serious anxiety during and after time with respondent, and that the older children had developed various behaviors indicating that they did not feel safe and cared-for in respondent's care. The trial court expressed concern about respondent's ability to ensure the safety of her children when she was under stress, noting that her anger and stress-related mental health issues "still go unaddressed today."

The trial court further found that respondent had missed numerous drug screens, continued to test positive during the duration of the trial, and had not taken steps to adequately address her drug and alcohol abuse. Respondent offers creative and innocent explanations for these findings, but this Court's task is to review the trial court's findings for clear error, not to reinterpret the evidence *do novo*. See *In re Trejo*, 462 Mich at 356-357.

In light of the children's adverse reactions to respondent, and respondent's persistent failure to get her mental-health and substance-abuse problems under control, the trial court did not clearly err in concluding that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Stephen L. Borrello
/s/ Mark T. Boonstra