

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 13, 2012

In the Matter of MARCH, Minor.

Nos. 309360; 309362
Calhoun Circuit Court
Family Division
LC No. 2008-002369-NA

Before: TALBOT, P.J., and MARKEY and RIORDAN, JJ.

PER CURIAM.

In these consolidated appeals, respondent mother and respondent father appeal as of right the trial court order terminating their parental rights to the minor child pursuant to MCL 712A.19b(3)(g), (j), (l), and (m). We affirm.

I. FACTUAL BACKGROUND

When the minor child was born, she tested positive for marijuana. Additional concerns arose concerning the minor child's lack of weight gain and nutrition, and respondent mother admitted that she was not waking the minor child up in the night to feed her. There were additional allegations that the child's hygiene was being severely neglected and that respondent father had multiple convictions for domestic violence.

Consequently, the minor child was removed from the home. Only a limited service plan was adopted because petitioner's goal was termination, and both respondents had their rights to other children terminated and had received services during those proceedings. While both respondents were afforded parenting time, neither attended all of the scheduled times. Respondent father also submitted to a drug test, and tested positive for marijuana and cocaine. Ultimately, the trial court concluded that there was clear and convincing evidence supporting the statutory grounds for termination. The trial court entered an order terminating both respondents' parental rights to the minor child, citing MCL 712A.19b(3)(g), (j), (l), and (m). Both respondents now appeal.

II. STANDARD OF REVIEW

"We review for clear error a trial court's factual findings as well as its ultimate determination that a statutory ground for termination of parental rights has been proved by clear and convincing evidence." *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). A trial court's finding that termination is in the child's best interest also is reviewed for clear error. *In*

re Fried, 266 Mich App 535, 541; 702 NW2d 192 (2005). “A finding is clearly erroneous [if] although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.” *In re Mason*, 486 Mich at 152 (internal quotations and citation omitted). Lastly, a court’s interpretation and application of statutes and court rules is reviewed de novo. *Id.*

III. ANALYSIS

Respondent mother and father posit that the court erred in terminating their parental rights when petitioner failed to provide adequate reunification services.¹ “Generally, when a child is removed from the parents’ custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child’s removal by adopting a service plan.” *In re HRC*, 286 Mich App 444, 462; 781 NW2d 105 (2009). “Petitioner, however, is not required to provide reunification services when termination of parental rights is the agency’s goal.” *Id.* at 463. The agency’s goal in the instant case was termination. Thus, petitioner was not obligated to provide reunification services and respondents have failed to establish any due process violation. Moreover, the agency did provide services, albeit limited ones, including case management, psychological evaluations, and supervised parenting time. Both respondents failed to fully comply with the services, in particular missing parenting time.²

Respondents also contend that the trial court erred in terminating their parental rights because none of the statutory grounds were established by clear and convincing evidence. We disagree. In particular, the court properly relied on MCL 712A.19b(3)(g) and (j) in terminating both respondents’ parental rights.³ Pursuant to MCL 712A.19b(3)(g), clear and convincing evidence must be presented that “[t]he 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 evidence at the termination hearing established that respondents failed to provide proper care and

¹ Respondent mother also alludes to the trial court’s failure to explicitly state that it was taking jurisdiction over the child. However, not only was this issue not properly presented in the issue presented section, but the trial court found that “all the pertinent allegations of the petition have been filed and that they are true,” and as the allegations in the petition comply with the jurisdictional requirements of MCL 712A.2(b), we find no error requiring reversal.

² Considering that petitioner was under no obligation to provide such services, we find respondent mother’s arguments concerning her lack of transportation unavailing.

³ Respondents argue that many of the other grounds for termination were unsupported by the evidence. However, any error in terminating their parental rights under other subsections “was harmless because the family court needed clear and convincing evidence of only one statutory ground to support its termination order.” *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000). We also note that the trial court did not err in finding that termination was in the minor child’s best interest, as the minor child was placed with siblings and in a stable environment.

custody for the minor child because the child tested positive for drugs when she was born, her weight and malnourishment were concerning, and the child's doctor testified that he did not believe the child's medical needs would be met in respondent's care. Additionally, respondent mother candidly admitted that she failed to benefit from previous services and that respondent father was still taking drugs. In light of these facts, the trial court did not err in finding that there was not a reasonable expectation the respondents would be able to provide proper care and custody within a reasonable time considering the child's age. MCL 712A.19b(3)(g).

Alternatively, there also was clear and convincing evidence of MCL 712A.19b(3)(j), that "[t]here 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." The initial circumstances precipitating these termination proceedings were that the minor child was not receiving proper nutrition and was being neglected. The evidence produced at the termination hearing indicated that while respondent mother had received previous services in other termination proceedings and limited services in these proceeding, she had not improved from these services. Compounded with respondent father's drug use and failure to fully comply with the limited service plan, it was not clearly erroneous for the trial court to find sufficient evidence that the minor child would be harmed if returned to the care of respondents. MCL 712A.19b(3)(j).

IV. CONCLUSION

The trial court properly found that there was clear and convincing evidence to terminate respondents' parental rights to the minor child, and that petitioner satisfied its burden concerning reunification services. We affirm.

/s/ Michael J. Talbot
/s/ Jane E. Markey
/s/ Michael J. Riordan