

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
February 26, 2013

In the Matter of J. A. MACK, Minor.

No. 311966
Wayne Circuit Court
Family Division
LC No. 10-496751-NA

Before: RIORDAN, P.J., and HOEKSTRA and O'CONNELL, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). Because we conclude that the trial court did not clearly err by finding at least one statutory ground for termination was proved by clear and convincing evidence or by finding that termination was in the child's best interests, we affirm.

To terminate parental rights, the trial court must find that the petitioner has proven at least one of the statutory grounds for termination by clear and convincing evidence. MCL 712A.19b(3); MCR 3.977(H)(3)(a); *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999). We review for clear error a trial court's decision terminating parental rights. MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Sours Minors*, 459 Mich at 633. A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). We give regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

In this case, respondent's parental rights were terminated pursuant to MCL 712A.19b(3)(c)(i), (g), and (j), which provide 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.

* * *

(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.

On appeal, respondent argues that there was not clear and convincing evidence to prove any of the statutory grounds for termination. Specifically, she argues that the evidence presented demonstrated that she was complying with her case service plan and was progressing. Further, respondent argues that the Department of Human Services (DHS) failed to make reasonable efforts to provide services.

The trial court did not clearly err by finding that §§ 19b(3)(c)(i) and (g) were both established by clear and convincing evidence. *In re Trejo Minors*, 462 Mich at 355-357; MCR 3.977(H)(3)(a) and (K). The minor child entered foster care because respondent had neglected basic childcare responsibilities such as toilet-training and sending the child to school. The initial dispositional order was entered in November 2010, 15 months before the supplemental petition was filed in February 2012. In the interim, respondent was referred to services to assist her in taking a more active role in child-rearing. She was referred to parenting classes and to the Clinic for Child Study (CCS) for an assessment of family dynamics. Respondent's problems with parenting were due in part to depression as well as self-esteem and dependency issues, and a psychiatric evaluation was recommended. Respondent was diagnosed with depression and medication was prescribed, but she refused to take it. Respondent was also referred to therapy.

Even assuming that respondent had participated in or completed more of the services than she was given credit for, participation in and completion of services is meaningless in and of itself. The "parent must benefit from the services offered so that he or she can improve parenting skills to the point where the children would no longer be at risk in the parent's custody." *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005). The evidence was clear that respondent had not benefited from services to the extent that her ability to parent had been improved sufficiently to enable the court to return the child to her care. Respondent questioned her ability to parent independently and had asked that the foster mother keep the child. Even when allowed unsupervised day visits, respondent asked that the foster mother also attend

because, as of November 2011, a year after the initial dispositional order was entered, respondent was not comfortable taking care of the child by herself and even when they were together, they did not appear to be bonded. The court then terminated unsupervised visitation and respondent stopped attending visits altogether for several months. On the basis of this evidence, we conclude that the trial court did not clearly err by finding that respondent's lack of progress and failure to benefit from the offered services justified termination under §§ 19b(3)(c)(i) and (g). Therefore, it is unnecessary to determine whether termination was also warranted under § 19b(3)(j). Any error in relying on that additional statutory ground would be harmless. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

The issue regarding the adequacy of services has not been preserved because respondent never asserted a need for any additional accommodation or claimed that the services provided were inadequate. *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). Therefore, review of this issue "is limited to determining whether a plain error occurred that affected substantial rights." *In re Egbert R Smith Trust*, 274 Mich App 283, 285; 731 NW2d 810 (2007). Many of respondent's complaints relate to the adequacy of the documentation of petitioner's efforts to provide her with rehabilitative services, not to the adequacy of the services themselves. The record establishes that respondent was given referrals for a CCS evaluation and a psychiatric evaluation to determine her needs. She was also referred to individual and group therapy and parenting classes. Respondent does not claim that such efforts were not reasonable. Instead, she claims that petitioner could have done more to assist her. However, considering respondent's lack of progress and failure to take advantage of many of the services offered, she has not shown that she would have fared better if offered additional services. *In re Fried*, 266 Mich App 535, 543; 702 NW2d 192 (2005). Respondent has not established a plain error related to the adequacy of the reunification services.

Respondent also argues that the trial court clearly erred by finding that termination of her parental rights was in the child's best interests. MCL 712A.19(b)(5); MCR 3.977(K).

We review the trial court's best-interest determination for clear error. MCR 3.977(K). "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.19(b)(5). A trial court may consider evidence on the whole record in making its best-interest determination. *In re Trejo Minors*, 462 Mich at 353.

Here, respondent severely neglected the child as established by her admissions at the plea proceeding. The child was not completely out of diapers at age six and had never been to school. However, the child made great progress in her foster home. She was toilet-trained and went to school where she did very well academically. It did not appear that respondent and the child had a close bond. The child addressed respondent by her first name. When seen at CCS in January 2011, there were no displays of affection between respondent and the child, and the foster mother reported that respondent did not play with the child during visits. According to the child's therapist, the child appeared to be anxious when she was at therapy with respondent and was fearful that she would have to go with her. Respondent was reluctant to be alone with the child because she lacked confidence in her parenting ability and more than once expressed a desire for the child to remain with the foster mother. Thus, we conclude that the evidence

supports the trial court's determination that termination of respondent's parental rights was in the child's best interests.

Affirmed.

/s/ Michael J. Riordan

/s/ Joel P. Hoekstra

/s/ Peter D. O'Connell