STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
July 16, 2013

In the Matter of A. TACEY, Minor.

No. 312952
Bay Circuit Court
Family Division
LC No. 10-010524-NA

Before: SAWYER, P.J., and METER and DONOFRIO, JJ.

PER CURIAM.

Respondent mother appeals as of right from the order of the family division of the circuit court terminating her parental rights to the child under MCL 712A.19b(3)(c)(*i*) (conditions of adjudication continue to exist) and (g) (failure to provide care and custody). We affirm.

Respondent raised her own family, then adopted three children as a single parent, of which A.T. was the middle child, whom respondent adopted as a toddler but who was in his early teens throughout the instant proceedings. The trial court reported that the eldest of the adopted children had returned to her birth family, and that the youngest remained in respondent's custody and was doing well. The problems underlying this case stem from the subject child's special needs and respondent's problems addressing them.

The child has been diagnosed with attention deficit disorder, oppositional defiant disorder, reactive attachment disorder, and fetal alcohol syndrome. According to the evidence, his behavioral problems included lying, stealing, overeating, throwing objects at others, temper tantrums, lashing out at family members, and sexual acting out. The child spent much of his time at home isolated from other family members. Some witnesses attributed this to respondent's way of coping with his behaviors, but respondent herself testified that the child craved a great deal of solitude.

For years before removal from respondent's home, the child was a regular recipient of local mental health services. Respondent long insisted that the child needed full-time residential therapeutic placement, but no expert agreed. Respondent several times brought the child to hospital emergency rooms as part of an attempt to initiate such placement. The child was finally placed at Whaley Children's Center, but within two months of his admission respondent abruptly removed him.

A behavior aide was assigned to the home from December 2010 until the petition was filed in July 2011. The behavior aide testified that "the dog had more freedom" than did the child, who resorted to talking to his toy figurines because he was alone so much. The behavior aide, and others providing services to the family, opined that respondent would listen to suggestions, but was very much set in her ways.

The neglect case resulted when respondent sought another emergency hospitalization of the child and refused to take him home upon his discharge, stating that she could no longer cope with his behaviors. In responding to the petition, respondent admitted "being unwilling to take [A.T.] back into her home because she believes that [A.T.] needs further mental health treatment on a 24/7 basis which she is unable to provide at this time." Respondent stipulated to the court's taking jurisdiction of the child in the hopes that he would be found suitable for long-term residential placement, thus relieving her of the responsibility to provide daily care for him.

Petitioner placed the child in foster care, where he did well for several months until the combination of his behaviors and the foster parents' duties to other special-needs children ended that placement. Respondent continued to decline to take him back. After a long search for another foster home came up empty, the child was transferred to Whaley Children's Center, despite the lack of expert opinion that he required such residential placement.

For the 15 months that this case progressed, petitioner and Whaley staff were never able to secure a commitment from respondent to resume custody of the child. At the termination hearing, the child's lawyer-guardian ad litem offered the following comments:

> [T]he thing that I guess I'm disappointed by . . . maybe [respondent] just needed the break, is that we've seen no real active efforts at this stage, while he's been in care, to really say, . . . I'm gonna go down there. I want this. . . . I want to be different. I want to know how to parent him. I want to do something—because . . . what was happening wasn't working for anyone. . . . I know that there's been no real active efforts on behalf of [respondent], over this last year, to try to get to change herself. You know, we can put [A.T.] into care, and probably [respondent's] exhausted. I mean, . . . 11 years is exhausting. And . . . she hasn't given up. I know that . . . .
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> I . . . believe in my heart that she very much loves [A.T.]. I think she wants him to be safe and secure. I've never doubted that. But I don't think that he's going to ever be able to come home to her simply because . . . it's too difficult.
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> So the big question . . . for the Court is whether he is then freed up for someone else to adopt or if [respondent] stays on the case and monitors it from afar.

The trial court took the matter under advisement, then entered its order of termination on October 8, 2012, the court's attendant findings including that the child was still adoptable. On appeal, respondent challenges the court's conclusions that termination was appropriate under two statutory criteria, and that termination was in the child's best interests.

An appellate court "review[s] for clear error both the court's decision that a ground for termination has been proven by clear and convincing evidence and . . . the court's decision regarding the child's best interest." *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). See also MCR 5.974(I). A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A reviewing court defers to the special ability of the "trial court to judge the credibility of witnesses. *Id.*

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

"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).

Again, respondent stipulated to the court's taking jurisdiction over the child in July 2011, after taking the child to emergency hospitalization and flatly refusing to take him back into her home while insisting that he required long-term residential care—an opinion not shared by any of the experts involved. From then through the termination hearing, respondent maintained that posture. At the hearing, she stated that she had never said that she would never take the child back, but clarified that she spoke of not being able to take him at the time. But even then, with her parental rights at risk, she did not express a present willingness to take the child back. She states in her brief on appeal that she "repeated her desire to remain as [A.T.'s] mother, despite wanting his behaviors to be better maintained before he could live with her," thus conceding that her posture was and remained that she had no present intention of taking the child back into her home.

And if she had been failing to meet the challenges of addressing the child's many special needs, the testimony indicated that this was not apt to change, because respondent was much set in her ways. A therapist, a case manager, and a foster-care worker all testified that the child could not get the care he needed with respondent.

For these reasons, we conclude that the trial court had a reasonable evidentiary basis for concluding that respondent's persistent refusal to resume facing the challenges of dealing with the child's special needs in her home constituted a continuation of the conditions of the adjudication, and a failure to provide care and custody, and also that there was no reasonable likelihood this would change in reasonable time.

Concerning the child's best interests, respondent suggests that this Court discount the trial court's determination that the child was still adoptable, given his behavioral and cognitive problems, and argues that "[h]aving him languish in foster care or pre-adoptive placements until he ages out of the system is not permanency." But respondent's pessimism regarding whether others might follow her example and adopt a child with special needs does not expose the trial court's optimism in the matter as clearly erroneous. As the child's lawyer-guardian ad litem said, the court's choice was between freeing the child up for someone else to adopt and preserving the status quo, whereby respondent left the care of the child to others and herself monitored the situation from a distance. The trial court did not clearly err in concluding that it was in the child's best interests to make him available for adoption by someone else.

Affirmed.

/s/ David H. Sawyer
/s/ Patrick M. Meter
/s/ Pat M. Donofrio