

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
June 25, 2013

In the Matter of POINDEXTER, Minors.

No. 313222
Berrien Circuit Court
Family Division
LC No. 2010-000056-NA

Before: BORRELLO, P.J., and SAWYER and SERVITTO, JJ.

PER CURIAM.

Respondent father appeals as of right the trial court order terminating his parental rights to the minor children under MCL 712A.19b(3)(g). We affirm.

Initially, we recognize that the trial court properly found a statutory ground for terminating respondent father's parental rights under MCL 712A.19b(3)(g) by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). Respondent father does not challenge this finding on appeal.

Rather, respondent father argues that petitioner failed to make reasonable efforts to reunify him with his children because his treatment plan was not tailored to him and because petitioner did nothing to help respondent father obtain custody of his children. The trial court's finding that reasonable efforts were made to reunify the family is reviewed under the clearly erroneous standard. MCR 3.977(K). The "petitioner must make reasonable efforts to rectify conditions, to reunify families, and to avoid termination of parental rights," *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008), except where aggravated circumstances exist [they do not exist in this case], MCL 712A.19a(2). "Before the trial court enters an order of disposition, it is required to state whether reasonable efforts have been made to prevent the child's removal from the home or to rectify the conditions that caused the child to be removed from the home." *In re Plump*, 294 Mich App 270, 272; 817 NW2d 119 (2011). The failure to make reasonable efforts to avoid the termination of parental rights may prevent the establishment of statutory grounds for termination. *In re Newman*, 189 Mich App 61, 67-68; 472 NW2d 38 (1991). However, "[w]hile the Department of Human Services has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered." *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). Moreover, parents must sufficiently benefit from the services provided to them. *Id.*, citing *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005).

Here, respondent father's treatment plan required him to complete a parenting class, obtain employment, and participate in scheduled parenting visits. This plan reflected that respondent father struggled with unemployment [though he was employed at the time of termination], failed to regularly attend parenting times, and desired to parent his children. Respondent father's treatment plan was tailored to his needs.

In addition to the treatment plan, petitioner provided respondent father with a home study, opportunities to participate in parenting classes and a psychological assessment, and parenting times. However, respondent father failed to fully benefit from the home study and failed to successfully attend the parenting classes or the psychological assessment. In regard to parenting times, respondent father did not visit his children from the end of July 2011 to the end of March 2012. Respondent father then had two visits with his children in May 2012, before participating in only 4 out of 11 scheduled parenting visits from June 2012 until the time of the termination hearing. We conclude that the record shows that petitioner provided respondent father with services, but that respondent father consistently failed to participate in or benefit from those services. The trial court did not clearly err in finding that reasonable efforts were made to reunify the family. MCR 3.977(K); *Frey*, 297 Mich App at 248.

Respondent father also argues that termination of his parental rights was not in his children's best interests because it was difficult to gauge the children's best interests where he was never the focus of petitioner's services. Respondent father claims that he could have cared for his children because he was "an every-other-weekend type of father" with housing and a job. A trial court's finding regarding the children's best interests is reviewed under the clearly erroneous standard. MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). After a trial court has established a statutory ground for termination by clear and convincing evidence, the trial court should order termination of parental rights if termination is in the best interests of the child. MCL 712A.19b(5); *In re Beck*, 488 Mich 6, 11; 793 NW2d 562 (2010).

Here, while the mother of the minor children received a significant amount of attention from petitioner, the trial court did not clearly err in finding that reasonable efforts were made to reunify the family, which included respondent father. And, the services provided to respondent father were tailored to his needs. Further, as discussed below, the trial court was able to properly gauge respondent father's children's best interests.

Initially, respondent father's assertion that he was "an every-other-weekend type of father" is incorrect because respondent father did not visit with his children from the end of July 2011 to the end of March 2012, and he only visited his children six times from the time of May 2012 until the time of the termination hearing. Also, while respondent father had a job, respondent father was informed during a home study that his apartment was an unfit home because the bedroom his children would stay in needed repairs. There was no indication within the record that those repairs were made. Thus, the record does not support that respondent father could provide appropriate housing.

More importantly, there was testimony that the minor children needed permanency. Here, respondent father failed to successfully attend a parenting class, he failed to participate in a psychological assessment, he failed to fully benefit from a home study, and he only visited with

his children 6 times in the 16 months before the termination hearing. The trial court found that respondent father could not provide his children with permanence because of his poor history of participating in services and parenting visits. And, a trial court may consider a child's need for permanence in determining the child's best interests. *McIntyre*, 192 Mich App at 52. The trial court did not clearly err in finding that termination of respondent father's parental rights was in his children's best interests. MCR 3.977(K); *Trejo Minors*, 462 Mich at 356-357.

Affirmed.

/s/ Stephen L. Borrello

/s/ David H. Sawyer

/s/ Deborah A. Servitto