

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
June 25, 2013

In the Matter of A.R. WALKER, Minor.

No. 313782
Mecosta Circuit Court
Family Division
LC No. 11-005713-NA

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

PER CURIAM.

Respondent mother (respondent) appeals by right the trial court order that terminated her parental rights to the minor child. We affirm.¹

On May 13, 2011, the Michigan Department of Human Services (DHS) petitioned the trial court to take jurisdiction over the child. On June 17, 2011, the court obtained jurisdiction over the child when respondent pleaded to allegations of observed drug trafficking taking place at the child's residence and that the residence was "in deplorable condition."² On June 22, 2012, DHS petitioned the trial court to terminate respondent's parental rights to the child under MCL 712A.19b(3)(c)(i) (conditions that led to the adjudication continue to exist and no reasonable likelihood that conditions will be rectified within a reasonable time), MCL 712A.19b(3)(c)(ii) (other conditions exist that parent failed to rectify after recommendations and no reasonable likelihood they will be rectified), and MCL 712A.19b(3)(g) (failure to provide proper care and custody). The trial court terminated respondent's rights under MCL 712A.19b(3)(c)(i) and MCL 712A.19b(3)(g).

¹ The parental rights of the child's father were also terminated. He filed a delayed application for leave to appeal that this Court dismissed for lack of jurisdiction. *In re A R Walker Minor*, unpublished order of the Court of Appeals, issued March 20, 2013 (Docket No. 315104).

² It was alleged that

[t]here was clothing, garbage, liquor bottles, beer cans and other hazardous items found throughout the home. There were no appropriate sleep arrangements for any child present. There was a baby crib with broken glass in it. There was a pack-an-play that was heaped full of clothing and other toys. There were no other observable places for the children to sleep.

Respondent first argues that her trial counsel proved ineffective by allowing her to enter a plea granting the court jurisdiction over the child. This claim of error constitutes an impermissible collateral attack on the trial court's adjudication that the child was within the court's jurisdiction. *In re SLH*, 277 Mich App 662, 669; 747 NW2d 547 (2008).³

Respondent next takes issue with the trial court's findings at several intermediate dispositional review hearings, held between the court's adjudication to take jurisdiction over the child and the termination hearing. Respondent's claim of error is not appealable by right and thus we are without jurisdiction to address the issue. MCR 3.993(A). To the extent the trial court's factual findings at these review hearings formed a basis for the subsequent termination of parental rights, the findings are merged into the termination order and addressed below.

Respondent also argues that the trial court clearly erred in finding that statutory grounds for termination under MCL 712A.19b(3) had been established by clear and convincing evidence and that termination was in the child's best interests. "This Court reviews for clear error the trial court's ruling that a statutory ground for termination has been established and its ruling that termination is in the children's best interests." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). "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." *Id.*

A trial court may terminate a respondent's parental rights if it finds that (1) a statutory ground under MCL 712A.19b(3) has been established by clear and convincing evidence and (2) that termination is in the children's best interests. MCR 3.977(F); *In re CR*, 250 Mich App 185, 194-195; 646 NW2d 506 (2001). The trial court terminated respondent's rights under MCL 712A.19b(3)(c)(i) and MCL 712A.19b(3)(g), which provide:

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.

³ Moreover, after the court advised respondent-appellant of her rights and the effect of a plea, including that she was giving up her right to have the allegations established by a preponderance of the evidence, respondent-appellant told the court that she intended to plead. Respondent-appellant cannot claim error for counsel's alleged failures given that she specifically told the court that she intended to plead to the allegations in the petition.

* * *

(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.

Only one statutory ground need be established to support the termination of a respondent's parental rights. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

The trial court did not clearly err in finding that statutory grounds for termination under MCL 712A.19b(3)(c)(i) had been proven by clear and convincing evidence. Respondent's argument that the only condition that led to the adjudication was her lack of appropriate housing is not in accord with the record. The court noted that the conditions that led to the adjudication were respondent's living conditions and drug trafficking, and respondent pleaded to allegations establishing both. The record showed that these conditions continued to exist at the time of termination. Drug trafficking includes the constituent circumstances of illegal drugs being in the presence of the child, and the exposure of the child to criminality. Despite repeated referrals, respondent failed to significantly engage in, benefit from, or complete any type of drug treatment. Many of respondent's drug tests were positive for marijuana. Respondent was also arrested several times and pleaded guilty to three separate criminal offenses during these proceedings. Further, respondent failed to obtain or maintain adequate housing for herself or the child, and remained homeless at the time of termination. A DHS foster-care specialist testified that she attempted to help respondent find suitable housing on several occasions, but that, to her knowledge, respondent did not follow through with any of the housing services. She also failed to complete counseling or find suitable employment that would allow her to properly provide for the child. Nearly 16 months elapsed between the initial petition and the termination hearing, yet respondent failed to demonstrate any engagement or benefit from any services. See *In re Frey*, 297 Mich App 242, 246; 824 NW2d 569 (2012) (termination upheld where "respondents failed to comply with or benefit sufficiently from their participation in services"). Because respondent failed to address, in any meaningful manner, her substance abuse, criminality, and lack of proper housing and employment, the trial court did not clearly err in finding that statutory grounds for termination under MCL 712A.19b(3)(c)(i) had been established by clear and convincing evidence.

The trial court also did not clearly err in finding that statutory grounds for termination under MCL 712A.19b(3)(g) had been proven by clear and convincing evidence. In so finding, the trial court stated:

And the Court would cite with respect to [respondent], the conditions of her homelessness which has not changed. Substance abuse which has not changed. Parenting skills which have not changed with which she's received no benefit from programming. Unemployment and economic issues which show no significant progress towards self-sufficiency and emotion – her emotional stability which shows no progress.

Respondent failed to complete any of the required services, including failing to obtain and maintain appropriate housing for the child, completing substance abuse treatment, and benefiting from parenting classes and therapy. Respondent had numerous positive drug tests, and she pleaded guilty to three separate criminal offenses during these proceedings. Respondent was provided with ample opportunity to change her behavior and engage with the offered services, but despite some initial progress, she failed to do so. Thus, the trial court did not clearly err in finding that statutory grounds for termination under MCL 712A.19b(3)(g) had been established by clear and convincing evidence. See *In re Trejo*, 462 Mich 341, 360-363; 612 NW2d 407 (2000) (termination upheld where respondent failed to obtain proper housing for three consecutive months and failed to complete the required counseling); *In re LE*, 278 Mich App 1, 27-28; 747 NW2d 883 (2008) (termination upheld where respondent maintained “some employment,” but failed to provide suitable housing and comply with drug testing).

Finally, the trial court did not clearly err in finding that termination of respondent’s parental rights was in the child’s best interests. Respondent’s love and bond with the child are, unfortunately, not enough to find that termination was not in the child’s best interests. The record shows that respondent routinely placed her drug addiction above the child’s welfare by attending visitation while high. Respondent failed to attend or complete repeated attempts at drug rehabilitation. She also engaged in a pattern of repeated criminal behavior during these proceedings. The child was removed from a home with deplorable living conditions, including no adequate place for the child to sleep, and respondent had not found suitable housing since the assumption of jurisdiction. She was also unable to maintain employment and housing that would allow her to properly provide for the child. Respondent failed to complete counseling and parenting classes. The record showed that the child was happy, healthy, and developing properly while in foster care. Thus, the trial court did not clearly err in finding that termination of respondent’s parental rights was in the child’s best interests. See *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (“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.”) (citations omitted).

Affirmed.

/s/ Stephen L. Borrello
/s/ David H. Sawyer
/s/ Deborah A. Servitto