

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of D. J. LONGHWAY, Minor.

UNPUBLISHED
October 15, 2013

No. 314560
Wayne Circuit Court
Family Division
LC No. 99-377296-NA

Before: BECKERING, P.J., and O'CONNELL and SHAPIRO, JJ.

PER CURIAM.

Respondent-mother appeals by right the trial court order that terminated her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood that child will be harmed if returned to parent). Because the trial court did not clearly err by ruling that the Department of Human Services (DHS) made reasonable efforts to reunite respondent with the child, we affirm.

Respondent's parental rights were terminated under MCL 712A.19b(3)(c)(i), (g), and (j). Respondent apparently concedes that there was clear and convincing evidence to terminate her parental rights under each of the statutory grounds. She also does not contest the court's finding that termination was in the best interests of the child. However, she argues that the DHS did not make reasonable efforts to help rectify the conditions that brought this matter to the court, and that she was not afforded sufficient time to engage in the parent-agency agreement and complete all the requirements. See *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). Because respondent did not make a formal objection to the trial court's finding that reasonable efforts were made, her argument is unpreserved, and she must demonstrate plain error affecting substantial rights.¹ *In re Utrera*, 281 Mich App 1, 8-9; 761 NW2d 253 (2008).

"In general, 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." *Fried*, 266 Mich App at 542; MCL 712A.18f(1). The reasonableness of services offered to a respondent may affect the sufficiency of the evidence to establish the statutory

¹ We review for clear error a trial court's ultimate decision to terminate parental rights. *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011).

grounds for termination. *Id.* at 541. “[A] parent’s failure to comply with the parent-agency agreement is evidence of a parent’s failure to provide proper care and custody.” *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003).

The record shows that respondent was provided with all the services that were ordered by the court. The trial court acknowledged that respondent made some progress. She completed parenting classes, managed to cease taking many of the medications she was prescribed when the case began, was under the treatment of a psychiatrist, obtained income and sufficient housing, participated in individual therapy, and was consistent in visitation with the child. However, the court found that positive drug screens and missed screens, which were considered to be positive, were troubling, especially considering that respondent refused to acknowledge that she had an alcohol abuse problem or accept any responsibility for the family’s disharmony and the removal of the child. In particular, respondent tested positive for alcohol during the termination hearing.

The court referred to respondent’s representations to the psychiatrist, her therapist, and in court, that tried to “put things so that you come off in . . . your best light, in spite of . . . the facts here.” The court referred to a hospitalization where respondent tried to have the child brought to the hospital for a visit by alleging that she was dying from liver failure. However, the admitting and discharge papers from the hospital did not contain any evidence of a liver problem or life-threatening condition.

In addition to the examples cited by the trial court, the evidence showed that respondent had forged a letter from her doctor listing her prescription drugs. When that was discovered, she obtained an actual letter from her doctor listing the medications. Her excuse was that she was so eager to see the child that she did not have time to get an original. Respondent acknowledged that it was a “lapse in judgment” that resulted in the loss of her unsupervised visitation. Despite the loss of her unsupervised visitation, respondent continued to miss screens and continued to consume alcohol, as evidenced by additional positive screens, including the one during the termination hearing. Respondent’s excuse that she drank out of stress demonstrated that the child would be at risk of harm again whenever things got stressful in the home. Further, respondent attempted to bring in the urine of another person to a screening, leading to the conclusion that she could not produce a negative screen. The forged letter and the attempt to use another person’s urine for a drug screen impacted significantly on respondent’s credibility concerning her explanations for other incidents. Ultimately, respondent simply did not comply with the drug screening requirement.

Respondent’s primary argument concerning services was that family therapy was discontinued after four or five sessions and was never re-referred or implemented. The minor child was placed an hour and a half away from respondent in the home of the child’s sister. When respondent was given unsupervised overnight visitation, it was possible for the family therapist to come to her home for the counseling. However, because of problems that occurred during the child’s visits, and missed and positive drug screens, respondent lost the privilege of unsupervised overnight visitation, and the family therapy was discontinued. Her supervised visitations with the child occurred at a McDonald’s restaurant approximately half way between her home and the child’s home. It was not possible for family therapy to be provided in that setting and there was no way to arrange for respondent and the minor child to be together in a

setting where the family therapy could occur. Respondent's failure to comply with drug screening directly resulted in the discontinuation of family therapy.

Respondent also did not comply with the weekly \$25 payments for the child's support. Yet, she contended that she had sufficient income to provide proper care for the child. Further, she contended that she stopped sending the money so that she could provide the child with clothing. However, this was never substantiated with documentation of the purchases, and her decision to stop the \$25 weekly payments was in violation of the court's order. Respondent never accepted responsibility for the fact that the child was in care. Respondent's therapist testified that respondent had made some progress. However, the therapist also revealed that respondent never admitted that she had a substance abuse problem, even though acknowledgment of the problem is the first step of recovery. In fact, the therapist stated that when he discussed the positive screens with respondent, she denied using alcohol.

Despite therapy and parenting classes, respondent continued to inappropriately question and agitate the child to the extent that he removed himself from a visitation and hung up on a phone conversation. "[I]t is not enough to merely go through the motions; a 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), superseded in part on other grounds by statute as stated in *In re Hansen*, 285 Mich App 158, 163; 774 NW2d 698 (2009), vacated on other grounds 486 Mich 1037 (2010). "For example, attending parenting classes, but learning nothing from them and, therefore, not changing one's harmful parenting behaviors, is of no benefit to the parent or child." *Gazella*, 264 Mich App at 676. Although respondent completed parenting classes and participated in therapy, the evidence demonstrates that she did not benefit from these services.

Respondent requested additional time to comply with her treatment plan. However, the court had already given her more than 25 months to stop abusing alcohol and comply with the plan. Respondent had also been evicted from three residences during the course of this case. By the end of the termination hearing, respondent had obtained sufficient income to afford to pay her rent, utilities, and food without the help of her partner. However, she had been in suitable affordable housing for only three months. At this point, the child had been removed from respondent's care for over two years. Continuation of these proceedings would deprive the child of permanency and stability. Respondent was given ample time to address the issues set forth in her treatment plan, and given her extended history with the DHS and her failure to successfully complete the plan, we find the trial court did not clearly err by denying respondent's request for more time and terminating her parental rights to the child.

Affirmed.

/s/ Jane M. Beckering
/s/ Peter D. O'Connell
/s/ Douglas B. Shapiro