STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of V. M. MELTON, Minor.

UNPUBLISHED
October 15, 2013

No. 314626
Wayne Circuit Court
Family Division
LC No. 10-495104-NA

Before: M. J. KELLY, P.J., and WILDER and FORT HOOD, JJ.

PER CURIAM.

Respondent appeals by right the trial court's order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(*i*). We conclude that the trial court clearly erred when it found that there was no reasonable likelihood that the conditions leading to adjudication will be rectified within a reasonable time given the evidence. Accordingly, we reverse and remand for further proceedings.

Respondent first argues—with the agreement and support of the child's lawyer—that the trial court clearly erred when it found that the Department had established by clear and convincing evidence that there was no reasonable likelihood that respondent would rectify the conditions of adjudication within a reasonable time considering the child's age. See MCL 712A.19b(3)(c)(*i*). Specifically, they contend that the Department cannot rely on respondent's inability to find housing and income during the relevant period because the Department failed to provide respondent with services reasonably directed toward reunification. This Court reviews for clear error both the trial court's findings that the Department established a ground for termination and that termination is the child's best interests. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

The Department has an obligation to provide "[r]easonable efforts to reunify the child and family" except under limited circumstances not relevant here. MCL 712A.19a(2); *In re Mason*, 486 Mich at 152. When the Department fails to make a reasonable effort to aid the parent, there may be insufficient evidence on the record for the trial court to find that there is "no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age" under MCL 712A.19b(3)(c)(*i*). *In re Newman*, 189 Mich App 61, 66-69; 472 NW2d 38 (1991); see also *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005) (characterizing a challenge premised on the failure to provide services as one involving the sufficiency of the evidence).

The conditions that led to the adjudication were respondent's homelessness and lack of income. The record shows that, after the child was removed, except for visitations arranged by the child's godparents, who were the child's caregivers, respondent went for months without support or services from the Department, despite orders and admonitions from the court. Nevertheless, respondent on her own initiative participated in a clinic, obtained food stamps and Section 8 housing, and started classes for massage therapy. She also consistently attended visitations with the minor child. Unfortunately, she began to abuse alcohol, committed a crime for which she was incarcerated for a few months, lost her Section 8 housing, and was again homeless. Then—once more on her own initiative—she entered and completed an inpatient treatment program where she also completed parenting classes. After completing the inpatient program, she remained alcohol free. Respondent did many things on her own to improve her situation and consistently visited her child; these efforts were strong evidence that—had the Department made "reasonable efforts" to reunify the family—respondent might have been able to rectify the conditions that led to adjudication.

At several hearings, the court lectured the Department's workers concerning their failure to provide services. While respondent's own actions contributed the continued existence of the conditions leading to adjudication, it is nevertheless clear that the Department's failure to provide services also played a significant role. Had respondent been timely provided with counseling and other services and given a little support and guidance, she might not have gotten involved with criminal activity, which disqualified her for Section 8 housing. The child was in a stable placement with his godparents, who wanted to plan for his long-term care. He was bonded to the godparents and to respondent, whose parenting skills were never questioned by any of the workers involved with her. The Department and its agencies did not comply with the court's orders for services in a reasonable and timely manner. The Department farmed her case out to another agency, which for months did nothing to help respondent. It then transferred the case back to the Department, which then further delayed providing any services. The Department cannot argue that respondent's parental rights should be terminated for failing to comply with the plan when it failed to provide her with the services that would have enabled compliance. See *In re Mason*, 486 Mich at 159 (noting that it is clear error to terminate a parent's parental rights for failing to follow a service plan after failing to provide the statutorily mandated services); *In re Newman*, 189 Mich App at 66-69. This is especially true given the evidence that respondent had the desire and ability to benefit from appropriate services had they been provided.

At the termination hearing, a worker from the Neighborhood Service Organization reported that her agency was helping respondent find housing and income and was providing her with mental health services, which respondent had been attending regularly. Her drug screens were negative, and she was visiting her child regularly. The child was in a stable home where he was bonded to the godparents who wanted to keep him and raise him. There was no need to rush to termination when respondent was showing progress after finally receiving some help through Neighborhood Service.

Here, the Department did not provide respondent with reasonable services directed toward reunification during the first year and a half of this case; despite this, respondent repeatedly demonstrated a desire and ability to improve her situation even though she also had lapses in judgment that undermined her efforts. The record showed that she was receiving services through Neighborhood Service and demonstrating compliance and progress. This is

strong evidence that, had she been provided with timely and relevant services, respondent might very well have been able to show that she could rectify the conditions within a reasonable time. Accordingly, on this record, we are left with the definite and firm conviction that the trial court erred when it found that "there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age." MCL 712A.19b(3)(c)(*i*); *Mason*, 486 Mich at 152.

Because the trial court clearly erred when it found that the Department had proved by clear and convincing evidence that the statutory grounds for termination had been established, we must reverse the trial court's order terminating respondent's parental rights and remand for further proceedings. As such, we decline to consider whether the trial court also clearly erred when it found that termination was in the child's best interests. On remand, the trial court shall order the Department to provide respondent with services that will give her a meaningful opportunity to comply with the case service plan. See *Mason*, 486 Mich at 169.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Kelly
/s/ Kurtis T. Wilder
/s/ Karen M. Fort Hood