

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 15, 2011

In the Matter of R. K. TREVINO, Minor.

No. 303170
Barry Circuit Court
Family Division
LC No. 09-007971-NA

In the Matter of R. K. TREVINO, Minor.

No. 303175
Barry Circuit Court
Family Division
LC No. 09-007971-NA

Before: MARKEY, P.J., and FITZGERALD and BORRELLO, JJ.

PER CURIAM.

In these consolidated appeals, respondents B. Mansfield and C. Trevino each appeal as of right from the trial court's order terminating their parental rights to the minor child. The trial court terminated the parental rights of both respondents under MCL 712A.19b(3)(c)(i), (g), and (j), and found that termination of respondent Mansfield's parental rights was also warranted under §§ 19b(3)(b)(i) and (n)(i). For the reasons set forth in this opinion, we affirm.

I. DOCKET NO 303170 (RESPONDENT MANSFIELD)

Respondent Mansfield first argues that reversal is required because petitioner failed to comply with its statutory duty to make reasonable efforts to reunify him with his child. The question whether petitioner complied with its statutory duty to provide services is a mixed question of law and fact. The trial court's findings of fact are reviewed for clear error. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000). Questions of law are reviewed de novo. *In re Beck*, 488 Mich 6, 11; 793 NW2d 562 (2010).

In general, when a child is removed from the custody of his parents, the Department of Human Services (DHS) is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a case-service plan. MCL 712A.18f(1) - (5); *In re Fried*, 266 Mich App 535, 542-543; 70 NW2d (2005). See also MCL 712A.19a(2) (providing that reunification services are required except in specified circumstances not applicable here). The

reasonableness of the services offered may affect the sufficiency of the evidence offered to establish a statutory ground for termination. *In re Fried*, 266 Mich App at 541. To successfully claim a lack of reasonable efforts, a respondent must establish that he or she would have fared better if the agency had offered other services. *Id.* at 543.

Respondent Mansfield contends that petitioner failed to make reasonable efforts toward reunification because of its policy against reunifying children with a sex-offender parent. However, the record does not indicate that petitioner failed to provide reunification services pursuant to such a policy. Instead, the evidence showed that a case-service plan was not provided initially because respondent Mansfield refused to cooperate with petitioner or participate in services while criminal charges were pending in connection with his alleged sexual abuse of the minor child's sibling. In April 2010, after the criminal case concluded with respondent Mansfield's entry of a no contest plea to one count of fourth-degree criminal sexual conduct (CSC), MCL 750.520e, respondent Mansfield was provided with a case-service plan. In September 2010, the trial court ordered petitioner to pay for respondent Mansfield's services.

Despite the opportunity to participate in services, respondent Mansfield continued to deny any sexual abuse, notwithstanding his no contest plea, which prevented him from completing the "Vanderbeck criteria" model for sexual abuse prevention. Contrary to what respondent Mansfield asserts, petitioner did not prevent him from participating in counseling with Dr. Vanderbeck. Rather, it was Dr. Vanderbeck who cancelled the appointments because he concluded that therapy could not progress without respondent Mansfield's acceptance of responsibility for his conduct.

Respondent Mansfield contends that his circumstances are analogous to those in *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010), in which our Supreme Court reversed an order terminating a father's parental rights where the father was not given the opportunity to participate in hearings over a 16-month period. This case is clearly distinguishable from *In re Mason*. Here, petitioner did not exclude respondent Mansfield from participating in services during the crucial period between the child's adjudication and the termination hearing. The initial delay in not providing a case-service plan until April 2010 was attributable to respondent Mansfield's strategy of "sitting out the case" until his criminal case was resolved. Respondent Mansfield thereafter failed to engage in services after the case-service plan was issued, even after the trial court ordered petitioner to pay for his services. In sum, the record indicates that respondent Mansfield was afforded an opportunity to participate in reunification services, and he has not shown that he would have fared better if petitioner had offered other services. *In re Fried*, 266 Mich App at 541.

Mansfield next argues that the trial court erred in finding that the evidence supported the statutory grounds for termination. In an action to terminate parental rights, the petitioner must prove by clear and convincing evidence that at least one statutory ground for termination exists. MCR 3.977(A)(3) and (H)(3); *In re Trejo*, 462 Mich at 356. We review the trial court's decision for clear error. MCR 3.977(K); *In re Trejo*, 462 Mich at 356. A finding is clearly erroneous when the reviewing court is left with the firm and definite conviction that a mistake was made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

The trial court found that respondent Mansfield sexually molested the minor child's half sister, that there was a history of domestic violence between respondent Mansfield and respondent Trevino, and that respondent Mansfield had abandoned his other children from a prior relationship. Respondent Mansfield's primary argument on appeal is that the CSC complainant was not a credible witness. However, the trial court had the opportunity to hear and observe the witness's testimony, including the extensive questioning and cross-examination about her delinquent behavior and possible motives to lie, and still found her testimony credible. We defer to the trial court's special opportunity to observe the witnesses and determine their credibility. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Our review of the record leads us to conclude that the trial court's determination that the witness was credible was not clearly erroneous.

The evidence showed that respondent Mansfield failed to address his propensity for sexual abuse, or his accompanying propensities to control and manipulate others. He also failed to appreciate how his child had been traumatized and damaged by the dysfunctional atmosphere in the home, including respondent Mansfield's hostility toward the child's half-sister. Respondent Mansfield's failure to address his abusive conduct serves as proof that there is a reasonable likelihood that the child would suffer from injury or abuse if placed in respondent Mansfield's home. Therefore, termination was proper under § 19b(3)(b)(i).

The same evidence also supports the trial court's determination that termination was warranted under §§ 19b(c)(i), (g), and (j). The child was adjudicated a court ward because of respondent Mansfield's abuse of the child's sister. Respondent Mansfield failed to engage in services to rectify his abusive conduct. He admitted that he intended to "sit out" the case in the belief that his child would simply be returned to his care after a year. Despite pleading no contest to fourth-degree CSC, he refused to admit responsibility for any abuse, and Dr. Fabiano and other experts testified that admission of responsibility is an essential prerequisite to benefitting from sex-offender counseling. Respondent Mansfield also thwarted petitioner's reunification efforts by falsely representing facts about his life in a psychological evaluation and sex-offender recidivism assessment. Thus, the conditions that led to the adjudication continued to exist and were not likely to be resolved within a reasonable time. Respondent Mansfield's conduct also demonstrates that he failed to provide proper care and custody for his child, and that there was no reasonable expectation that he would be able to do so within a reasonable time. The child was traumatized by the environment created by respondent Mansfield's abuse and hostility toward the child's sibling, and his abusive control of respondent Trevino. The same evidence also establishes that the child was reasonably likely to be harmed if returned to respondent Mansfield's home. Thus, termination was proper under §§ 19b(c)(i), (g), and (j).

Finally, considering the evidence of respondent Mansfield no-contest plea to fourth-degree CSC and the traumatizing effect that respondent Mansfield's abuse had on his child, the trial court did not clearly err in finding that termination was also warranted under § 19b(3)(n)(i).

Respondent Mansfield lastly argues that the trial court erred in finding that termination of his parental rights was in the child's best interests. MCL 712A.19b(5). We review the trial court's best interests decision for clear error. *In re JK*, 468 Mich at 209. Petitioner presented clear evidence that the child was emotionally traumatized by the abusive environment created by respondent Mansfield. The child became anxious and tearful when he talked about the domestic

violence between respondent Mansfield and respondent Trevino. Dr. Fabiano testified that a child who has been exposed to an abusive home environment will suffer from long-lasting psychological problems, and faces a greater likelihood of becoming an abuser in adulthood. Because respondent Mansfield had not successfully addressed his abusive conduct, the trial court did not clearly err in finding that termination of his parental rights was in the child's best interests.

II. DOCKET NO 303175 (RESPONDENT TREVINO)

Respondent Trevino does not challenge the sufficiency of the evidence in support of the statutory grounds for termination, or the trial court's finding that termination of her parental rights was in the child's best interests. Rather, she contends that petitioner arbitrarily and unjustifiably evaluated her progress by rigidly applying the "Vanderbeck criteria," thereby causing it to conclude that her refusal to believe that respondent Mansfield engaged in sexual abuse meant that she herself was incapable of reform and that recidivism was inevitable, regardless of whether she had legitimate reasons for doubting the allegations of sexual abuse.

After reviewing the record, we cannot conclude that the trial court unfairly considered the Vanderbeck criteria against respondent Trevino. Despite respondent Trevino's insistence that her reasons for doubting the allegations of sexual abuse against respondent Mansfield are reasonable, the trial court found as a matter of fact that the allegations were truthful, and that finding is not clearly erroneous. Moreover, the trial court was not required to give credence to respondent Trevino's self-serving explanation that she came to disbelieve her daughter because of alleged factual discrepancies in her statements and preliminary examination testimony. The trial court could reasonably infer that respondent Trevino's change of belief was motivated by her unwillingness to part from respondent Mansfield, rather than a good-faith belief in his innocence. This inference is reasonable considering that Trevino first telephoned the police to inform them of the abuse allegations, and then later, tried to recant stating that she feared Mansfield would leave her and take one of the minor children with him. Regardless, respondent Trevino's continued belief in respondent Mansfield's innocence, whether reasonable or not, will continue to expose the child to a risk of harm that the trial court found in fact exists. Accordingly, neither the trial court's finding that the statutory grounds for termination were established, nor its finding that termination of respondent Trevino's parental rights was in the child's best interests, was invalidated by any improper consideration of, or reliance on, the Vanderbeck criteria.

Affirmed.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Stephen L. Borrello