

STATE OF MICHIGAN
COURT OF APPEALS

In re JONES, Minors.

UNPUBLISHED
May 17, 2016

Nos. 329201; 329202
Livingston Circuit Court
Family Division
LC No. 2014-014788-NA

Before: MURPHY, P.J., and CAVANAGH and RONAYNE KRAUSE, JJ.

PER CURIAM.

In these consolidated appeals, respondent mother and respondent father each appeal as of right the trial court's order terminating their parental rights to their minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm in both cases.

Petitioner removed respondents' children from the home because of allegations that respondents engaged in domestic violence, that the children acted aggressively when they felt unsafe, that respondents admitted that they needed assistance in caring for the children, and that respondent mother failed or refused to take medication for various mental disorders. Both respondents suffer from cognitive impairments, and the trial court appointed a guardian ad litem (GAL) for each respondent. The trial court obtained jurisdiction over the children after respondents admitted the allegations in the petition. Petitioner prepared a simplified treatment plan for each respondent, and provided various services, including intensive one-on-one coaching during parenting time.

The court terminated respondents' parental rights, relying on evidence that respondents had not benefitted from services, could not care for the children independently, and that at best respondents could participate in the care of their children only if they lived with other adults who made principal decisions regarding the children. The court found that termination of respondents' parental rights was in the children's best interests, noting that the children were entitled to permanence and stability, and that their foster placement offered the love and attention that the children required.

On appeal, respondent mother challenges the trial court's findings with respect to the statutory grounds for termination and the children's best interests. If a trial court finds that a single statutory ground for termination has been established by clear and convincing evidence and that it has been proved by a preponderance of the evidence that termination of parental rights is in the best interests of a child, the court is mandated to terminate a respondent's parental rights

to that child. MCL 712A.19b(3) and (5); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013); *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). “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); see also MCR 3.977(K). “A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made.” *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). In applying the clear error standard in parental termination cases, “regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.” *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The court terminated respondents’ parental rights under MCL 712A.19b(3)(c)(i), (g), and (j), which permit termination under the following circumstances:

(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.

* * *

(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.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child’s parent, that the child will be harmed if he or she is returned to the home of the parent.

We conclude that the trial court did not clearly err in finding that clear and convincing evidence existed to terminate respondent mother’s parental rights under each subsection cited by the court. The children were removed from the home due to concerns about domestic violence, lack of parenting skills, and respondent mother’s failure to take her medications as prescribed. Petitioner prepared a simplified treatment plan for respondent mother, which she indicated she understood, and she received other services as well. However, the evidence showed that the services did not result in an improvement in her parenting skills. Respondent mother demonstrated an inability to care for both children at the same time, and she was inconsistent in her efforts to discipline the children appropriately. Incidents of domestic violence continued, in spite of respondent father’s stated plan to leave the home for a short time when he felt angry. Respondent mother stated that she participated in services only because she was required to do

so, and that if the children were returned to her she would discontinue services. Even with the prospect of regaining custody of her children as motivation, respondent mother's participation in services such as counseling was sporadic. The lack of compliance with her treatment plan was evidence of her failure to provide proper care and custody for the children. See *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003).

In sum, the evidence showed that respondent mother suffered from a cognitive impairment and could not care for herself without assistance. She received supplemental social security income, but could not handle money, and she had a payee. Expert witnesses opined that respondent mother could not care for the children independently, and that she could parent the children only if she lived with other adults who made decisions for her. Respondent mother herself acknowledged that she needed assistance caring for the children. Her support from her family was inconsistent, and would disappear at times if she and her father and stepmother had a disagreement. Significantly, no evidence established that a time would come when respondent mother would not need considerable assistance caring both for herself and the children. In addition, her statement that she would discontinue services if she regained custody of the children constituted evidence that the children would be at risk of harm if returned to her custody. Accordingly, clear and convincing evidence existed to terminate respondent mother's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), and (j).

With respect to the trial court's best-interests determination, we place our focus on the child rather than the parent. *In re Moss*, 301 Mich App at 87. The trial court may consider such factors as "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." *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted).

The trial court found that the children were bonded with both parents, but correctly noted that the bond could not protect the children from dangerous parenting practices, and that in such circumstances, the needs of the children must prevail. See *In re Terry*, 240 Mich App 14, 28; 610 NW2d 563 (2000). The evidence showed that respondents would need to live with other adults who could provide constant assistance and supervision in order for them to even participate in the raising of their children, and that such a situation was not feasible because family members tended to withdraw their support when conflicts arose. However, the children's foster home offered the children permanence and stability. The foster mother indicated that she and her husband were willing to adopt the children. Moreover, the evidence showed that the children had made progress while in foster care, including becoming toilet trained, developing speech, and becoming less aggressive and violent. The court properly considered this evidence when making its determination regarding the children's best interests. The trial court's finding that termination of respondent mother's parental rights was in the children's best interests is supported by a preponderance of the evidence; there was no clear error.

Finally, respondent father argues that petitioner failed to make reasonable accommodations for him under the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq.*, and did not allow him the opportunity to establish that he could be a competent parent. We disagree.

A respondent in a termination proceeding cannot raise an alleged violation of the ADA as a defense to the termination of his or her parental rights. *In re Terry*, 240 Mich App at 24-25. However, the ADA requires a public agency such as petitioner “to make reasonable accommodations for those individuals with disabilities so that all persons may receive the benefits of public programs and services.” *Id.* at 25. Services provided by petitioner must comply with the ADA. *Id.* “[T]he state legislative requirement [in MCL 712A.18f(4)] that [petitioner] make reasonable efforts to reunite a family is consistent with the ADA’s directive that disabilities be reasonably accommodated.” *Id.* at 26. “In other words, if [petitioner] fails to take into account the parents’ limitations or disabilities and make any reasonable accommodations, then it cannot be found that reasonable efforts were made to reunite the family.” *Id.*

Respondent father’s argument that petitioner did nothing to accommodate his cognitive impairment other than prepare a simplified treatment plan is not supported by the record. Respondents were offered and received intensive in-home services from Community Mental Health (CMH) and Family Partner, along with parent-coaching services. Catholic Social Services also provided in-home meetings with respondents and respondents’ family members, transportation assistance, and one-on-one parenting assistance during parenting time. The foster care worker assigned to respondents’ case and who prepared the parent-agency treatment plan had previously worked for CMH and had experience in assisting cognitively-impaired adults. And she testified that the revised and simplified plan was within respondents’ level of understanding. Respondent father does not allege that his cognitive impairment made it measurably more difficult for him to take advantage of these services. However, testimony from various witnesses established that respondent father did not benefit from services. Notably, the evidence showed that at times respondent father would leave his children during parenting time and play basketball with teenagers at the facility. Moreover, respondent father’s entire plan to defuse his anger when he and respondent mother argued was to go somewhere and listen to music. Petitioner provided services; the fact that respondent father did not fully engage in or benefit from the services does not mandate a conclusion that the services were inadequate. In sum, petitioner made reasonable efforts at reunification in the context of respondents’ impairments, thereby satisfying the ADA’s reasonable-accommodations requirement.

Affirmed.

/s/ William B. Murphy
/s/ Mark J. Cavanagh
/s/ Amy Ronayne Krause