

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
May 10, 2012

In the Matter of ROSE, Minors.

No. 306745
Emmet Circuit Court
Family Division
LC No. 09-005822-NA

Before: WHITBECK, P.J., and SAWYER and HOEKSTRA, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the children under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). We affirm.

The trial court did not clearly err in finding that statutory grounds for termination of respondent's parental rights had been established by clear and convincing evidence or in finding that termination of respondent's parental rights was in the best interests of the children. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010); *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009); MCL 712A.19b(5); MCR 3.977(K). Clear error exists "if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

Respondent had been the subject of approximately 17 Children's Protective Services referrals beginning in 2001. The conditions that led to petitioner's intervention in this case was respondent's neglect in not providing the children with a suitable home and proper hygiene and her failure to safeguard the children from extreme physical abuse by respondent's extended family, primarily the maternal grandfather. There was strong evidence that one of the boys was duct taped and immobilized overnight and soiled himself because he was unable to go to the toilet. Respondent resided in the home at the time of the physical abuse. She pleaded no contest to allegations that the home conditions and environment were unsanitary, the children had poor hygiene, the children were subjected to inappropriate physical discipline, and respondent felt that it was unsafe for the children to reside in that home. Petitioner provided respondent with family reunification services to establish a suitable and stable home and correct her parenting skills deficits, which included a parent/child bond that was weak or nonexistent because of longstanding abuse and neglect. Respondent was ordered to comply with and benefit from services recommended by petitioner that included a psychological evaluation, parenting classes, housing services, parent/child observation, and visitations as recommended by the therapist.

Despite almost two years of services, the issues of respondent's inadequate parenting and inability to maintain a safe and stable home environment continued to exist at the time of the termination hearing. Respondent failed to fully internalize the services and put into place the skills necessary to remedy the conditions that led to the children's removal. Respondent was unable to independently maintain a suitable and stable home environment and showed poor judgment in choosing to associate with people who likely posed a risk to the children's well being. Initially, she had difficulty separating herself from her family and her parents' home. When she had problems with her first attempt at independent housing she returned to the grandparents' home, which resulted in the second removal of the youngest child. She also returned to the grandparents' home after she had problems with her second attempt at independent housing. Respondent did not make any meaningful and lasting progress in two years. The psychologist who evaluated respondent and the three older children testified that respondent was a very passive person and would be prone to accept mistreatment of herself and her children. He had concerns that respondent had a weak attachment with her children, would not be a protective parent, and had a very high risk for neglectful behavior toward her children.

Given this evidence, the trial court properly concluded that there was no reasonable likelihood that respondent would be able to resolve the issues that led to the children's removal within a reasonable time considering the children's ages. Without regard to respondent's intent, it was unlikely she would be able to consistently provide proper care of the children, and there was a reasonable likelihood the children would be harmed if returned to respondent's care.

Respondent argues that the court did not properly consider that she complied with and benefited from her treatment plan. Respondent notes that she missed only one or two visits with the children over a 22-month period, faithfully attended multiple weekly therapy sessions and parenting classes, submitted to psychological evaluations and a substance abuse evaluation, and did anything that was asked of her. There is no dispute that respondent was motivated and cooperative in participating with services under her case treatment plan. However, there was clear evidence that respondent was unable to sustain momentum and had experienced substantial reversals in her progress. In August 2010, she made sufficient progress in removing reunification barriers, and the youngest child was returned to her care and she was granted unsupervised visitation with the three older children. Sadly, respondent demonstrated her poor judgment by continuing to associate with the grandparents and left the youngest child in their care, prompting reinstatement of supervised visitation and a second removal of the youngest child. In early 2011, respondent showed progress in her treatment plan and was again granted unsupervised visitation. By April 2011, during a time when she was making inappropriate decisions regarding the individuals with whom she was involved, respondent was fired from her job because she did not show up for work and lost her housing. Additionally, there was credible evidence that respondent continued relationships that posed a significant risk of future harm to the children. The proofs showed that, although respondent consistently attended counseling, she did not fully internalize the benefits of therapy and failed to implement more assertive and protective parenting. Thus, the trial court did not clearly err in finding that respondent failed to comply with and benefit from her case service plan.

Respondent asserts that the trial court erred in terminating her parental rights because the only fact that the trial court relied on was respondent's relationship with a convicted drug felon, who was respondent's roommate for a short time, and a convicted sex offender, who was

allegedly respondent's sexual partner. She contends that there was no evidence that either of these men ever exposed the children to any danger and, without relying upon her separate adult relationships, the court had very little evidence by which to terminate her rights. However, this argument misstates the record. Respondent's inability to live independently was a key issue throughout the case. She did not have a job or suitable housing for several months before the termination hearing. The trial court heard compelling testimony from two therapists regarding respondent's inability to establish a safe, nurturing, and adequate environment for the children and the children's need for significant change in their home environment. Additionally, the trial court reasonably concluded, based on the evidence, that respondent had a dependent personality and was unable to reliably and safely differentiate between risky and safe male relationships. At the time when unsupervised visits began, respondent failed to inform her caseworker that a recent drug conviction parolee had been living in her home for several weeks. She also did not inform the caseworker that she was dating a registered sex offender, even though reunification attempts were being made. Most telling, when confronted about that relationship, respondent denied it under oath, necessitating the testimony of numerous rebuttal witnesses who confirmed the relationship. The trial court reasonably concluded that, because of respondent's relapses of poor judgment, compounded by her giving false testimony, she was not to be trusted to accurately report her circumstances and to place her children's needs for stability and emotional health above her needs for adult relationships.

Next, respondent argues that the trial court erred in admitting certain hearsay evidence during the termination hearing. Because respondent did not object during the termination hearing to the admissibility of the evidence, this issue is unpreserved. *People v Breeding*, 284 Mich App 471, 486-487; 772 NW2d 810 (2009). This Court reviews unpreserved evidentiary issues for "plain error affecting [a party's] substantial rights." *Wolford v Duncan*, 279 Mich App 631, 637; 760 NW2d 253 (2008).

At the termination hearing, the foster care worker provided lengthy testimony, a portion of which involved relaying the opinion of Dr. Beyer, the children's initial therapist, which was part of Dr. Beyer's written reports. The testimony challenged on appeal concerned the therapist's opinion regarding the children's mental health status at the initial stages of the proceeding, including their level of attachment to respondent and the psychological impact of their emotional neglect and physical abuse. Respondent contends that the testimony regarding Dr. Beyer's opinions and reports was inadmissible hearsay because the original plea did not mention respondent's or the children's mental health. This argument is groundless. At adjudication, the court accepted respondent's plea to allegations that the children were subject to inappropriate discipline and that it was unsafe for the children to reside in the home from which they had been removed. Due to the affects of this unsafe home and inappropriate discipline, the children exhibited many behavioral problems, which led to psychological evaluations of the three older children as well as individual counseling. During counseling, the trauma that the children had suffered was revealed as well as the extent of the resulting emotional injury and their lack of attachment with respondent. Therefore, the rules of evidence, other than those with respect to privileges, did not apply at the termination hearing, and all relevant and material

evidence, including information contained in Dr. Beyer's written reports, could be received and relied upon to the extent of its probative value. MCR 3.977(H)(2).¹ Moreover, the admission of this evidence did not affect respondent's substantial rights nor was it inconsistent with substantial justice, because three other witnesses testified regarding the emotional needs and mental health of the children, and their testimony has not been challenged by respondent.

Finally, respondent claims that she received ineffective assistance of counsel at the termination hearing. Respondent's claim rests solely on the alleged hearsay testimony regarding the reports of Dr. Beyer, to which respondent contends her counsel should have made an objection. However, this testimony was not inadmissible hearsay, and thus respondent's trial counsel did not have a valid objection.

Affirmed.

/s/ William C. Whitbeck

/s/ David H. Sawyer

/s/ Joel P. Hoekstra

¹ This case is unlike *In re DMK*, 289 Mich App 246, 258; 796 NW2d 129 (2010), upon which respondent relies, where the trial court considered hearsay evidence that the respondent had sexually abused the child, which was not raised as a basis for termination in the original petition. Here, Dr. Beyer's reports essentially focused on the repercussions of respondent's neglect, which led to the children's removal.