

STATE OF MICHIGAN
COURT OF APPEALS

FOR PUBLICATION
July 3, 2012
9:00 a.m.

In the Matter of P. L. FREY, Minor.

No. 307152
Wayne Circuit Court
Family Division
LC No. 09-491303-NA

In the Matter of P. L. FREY, Minor.

No. 307154
Wayne Circuit Court
Family Division
LC No. 09-491303-NA

Before: MURRAY, P.J., and WHITBECK and RIORDAN, JJ.

PER CURIAM.

In these consolidated appeals, respondents contest the trial court order terminating their parental rights to the minor child under MCL 712A.19b(3)(c)(i) (conditions leading to adjudication continue to exist), (c)(ii) (conditions leading to jurisdiction have not been rectified), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood of harm if returned to parental home). We affirm.

Respondents contend that the trial court's findings were clearly erroneous and that the Department of Human Services (DHS) failed to sustain its burden of proving the statutory grounds for termination. Termination of parental rights is appropriate where DHS proves one or more grounds for termination by clear and convincing evidence. *In re Trejo Minors*, 462 Mich 341, 355; 612 NW2d 407 (2000); *In re B & J*, 279 Mich App 12, 17; 756 NW2d 234 (2008). It is only necessary for the DHS to establish by clear and convincing evidence the existence of one statutory ground to support the order for termination of parental rights. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000). We review the lower court's findings under a clearly erroneous standard. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010); *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999).

The primary condition leading to the adjudication in this matter was respondents' failure to resolve issues pertaining to respondent father's alcohol abuse and respondent mother's

substance abuse. Further, during the pendency of the proceedings issues evolved pertaining to respondents' inability to provide adequate housing and financial support for the minor child in addition to recent incidents of criminality. We conclude that the trial court did not clearly err in its determination that evidence existed to substantiate the statutory grounds cited for termination.

The child was removed in December 2009, after respondents and the minor child were involved in an automobile accident. At the time of the accident, respondent father was determined to have a blood alcohol level of .24 grams per 100 milliliters. While the exact cause of the accident is unknown, evidence indicated that respondent father was driving at a rate of 100 miles an hour and that respondent mother and the minor child were in the vehicle at the time of the accident. This accident resulted in respondent father's fifth criminal drunk driving conviction since 2007. Respondent mother admitted to having taken a narcotic immediately before the accident and being aware that respondent father was inebriated when she voluntarily entered the vehicle with the minor child.

Respondents made admissions and pleaded no contest to parts of the petition leading to the child being made a temporary court ward in January 2010 with placement in the care of her maternal grandmother. A disposition hearing was held in February 2010. At that time, respondents were ordered to participate in a parent agency agreement (PAA) that required their involvement in individual therapy, parenting classes, visitation with the minor child, substance abuse assessments, and drug screens. Participation in substance abuse treatment also was mandated if the respondents' drug screens were positive. Respondents also were required to maintain contact with the caseworker, obtain suitable housing and income, and undergo psychological evaluations.

Our review of the record supports the trial court's determination that respondents failed to comply or benefit sufficiently from their participation in services in accordance with the court-ordered treatment plans. After completing a 30-day inpatient substance abuse program, respondent mother experienced a relapse in her drug use. Respondent father was incarcerated from December 2009 to July 2010, for the offense that necessitated placement of the child into foster care. Thereafter, he and respondent mother each missed numerous drug screens, which was a significant issue to the trial court due to their substance abuse histories. Respondents were in partial compliance with their respective treatment plans as they did visit the child regularly and were reported as being behaviorally appropriate during these interactions. Further, respondents attended counseling and parenting classes, and at one point the trial court pronounced them "95 or 98 percent compliant," except for their failure to regularly participate in the required drug screens.

At that time, the concern expressed by the trial court and DHS with regard to respondents' failure to comply with the mandated drug screens was premised on verifiable incidents in respondents' history and proved to be prescient. In May 2011, respondent mother tested positive for cocaine. In July 2011, respondents were arrested for their involvement in a home invasion. Respondent mother admitted that her participation in the home invasion was based on her intention to steal prescription drugs. She was placed on probation and required to complete a 90 to 120-day inpatient substance abuse program. Respondent father was reincarcerated in May 2011. At the time of the final hearing, neither parent was physically available to care for the child. During the pendency of these proceedings, respondent mother

was arrested three times on charges of retail fraud and home invasion. Respondent father was incarcerated for approximately one-half of the time this case remained open. In light of their histories, the trial court was legitimately concerned with the ability of respondents to remain clean, sober, and out of prison for sufficient blocks of time in order to be available to provide adequate care for their minor child.

Respondents further allege that DHS failed to provide them adequate services due to their problems in securing transportation to assist them in complying with drug screens and testing. Respondents contend they lacked access to transportation, resulting in their inability to comply with court-ordered drug screens. Respondents do not dispute that the caseworker offered them bus tickets but allege they lived several miles from a bus stop. While it is true that, with limited exceptions, “reasonable efforts to reunify the child and family must be made in all cases,” MCL 712A.19a(2), respondents failed to object or indicate that the services provided to them were somehow inadequate, thereby failing to preserve this issue. “The time for asserting the need for accommodation in services is when the court adopts a service plan” *In re Terry*, 240 Mich App 14, 27; 610 NW2d 563 (2000).

Although respondents now contend that DHS failed to accommodate their need for transportation services to ensure their compliance with mandated drug screenings, such allegations appear specious. Respondents alternatively asserted that they could not attend drug screenings based on lack of funds to fuel or insure their vehicle, distance from a bus stop to obtain a ride to a drug screening facility, expired license plates for their vehicle and a lack of bus tickets, as well as respondent mother merely asserting she was “unable to make it” to the screenings. Evidence was submitted that the caseworker offered respondents access to bus tickets to facilitate their performance of drug screens but that respondents refused the tickets due to their physical distance from a bus stop. Yet when actually faced with termination of their parental rights, respondents indicated that they would walk to secure the screens and would accept the bus tickets. While DHS has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered. In this instance, services were proffered, but respondents failed to either participate or demonstrate that they sufficiently benefited from the services provided. *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005), superseded in part on other grounds *In re Hansen*, 285 Mich App 158, 163; 774 NW2d 698 (2009), vacated on other grounds 486 Mich 1037 (2010). While respondents were offered various services and did participate and complete certain mandated requirements of their respective treatment plans, they failed to demonstrate sufficient compliance or benefit from the services specifically targeted to address the primary basis for the adjudication in this matter—their historical problems with alcohol and substance abuse. Consequently, the trial court did not clearly err in finding insufficient compliance and benefit by respondents from the services provided by DHS necessitating the termination of their parental rights.

We also find the trial court did not clearly err in determining that termination of respondents’ parental rights was in the best interests of the child. MCL 712A.19b(5); MCR 3.977(H)(3), (K); *Trejo*, 462 Mich at 356-357; *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009). The child was in foster care or placement with relatives for 22 months. While respondents did make some progress in addressing their issues, the evidence showed that it was unlikely that the child could be returned to her parents’ home within the foreseeable future, if at

all. The child required a permanent, safe and stable home, which neither respondent was capable of providing. Hence, the trial court did not clearly err in its determination that termination of parental rights was in the child's best interests.

Affirmed.

/s/ Christopher M. Murray

/s/ William C. Whitbeck

/s/ Michael J. Riordan