

Court of Appeals, State of Michigan

ORDER

In re Hearn/Mathis Minors

Docket Nos. 317006; 317009

LC No. 11-049405 NA

David H. Sawyer
Presiding Judge

Stephen L. Borrello

Jane M. Beckering
Judges

The Court orders that the February 20, 2014, unpublished per curiam opinion in these consolidated cases is hereby AMENDED to correct a clerical error in the caption. The opinion should indicate that the appeal is from the Allegan Circuit Court, not the Branch Circuit Court.

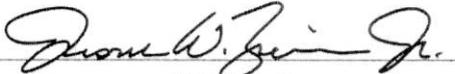
In all other respects, the February 20, 2014, opinion remains unchanged.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

FEB 24 2014

Date


Chief Clerk

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of HEARN/MATHIS, Minors.

UNPUBLISHED
February 20, 2014

No. 317006
Branch Circuit Court
Family Division
LC No. 11-049405-NA

In the Matter of HEARN, Minors.

No. 317009
Branch Circuit Court
Family Division
LC No. 11-049405-NA

Before: SAWYER, P.J., and BORRELLO and BECKERING, JJ.

PER CURIAM.

This Court consolidated these matters for purposes of this appeal.¹ In docket no. 317006, respondent-mother appeals as of right the order terminating her parental rights to the minor children AM, KH, and AH. Respondent-mother's parental rights to AM, KH, and AH were terminated under MCL 712A.19b(3)(g) (failure to provide proper care and custody) and (j) (child will be harmed if returned to parent). The trial court also found that termination of respondent-mother's parental rights to AM and KH was proper under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist), and that termination of respondent-mother's parental rights to AM was proper pursuant to MCL 712A.19b(3)(e) (child is under a guardianship and the parent failed to comply with the court-structured plan). For the reasons set forth in this opinion, we affirm.

In docket no. 317009, respondent-father appeals as of right the order terminating his parental rights to the minor children KH and AH. Respondent-father's parental rights to KH and AH were terminated under MCL 712A.19b(3)(g) and (j). The trial court also found that

¹ *In re Hearn/Mathis Minors, In re Hearn Minors*, unpublished order of the Court of Appeals, entered July 26, 2013 (Docket Nos. 317006; 317009).

termination of respondent-father's parental rights to KH was proper pursuant to MCL 712A.19b(3)(c)(i).² For the reasons set forth in this opinion, we affirm.

This case arose in August of 2011 when a petition for guardianship was filed on behalf of AM. In September of 2011, the probate court entered a "court-structured plan," requiring respondent mother to undertake certain actions.³ On November 29, 2011, both respondents were arrested. Respondent mother was arrested for outstanding warrants for uttering and publishing and a probation violation. Respondent father was arrested because he too had outstanding warrants for uttering and publishing and a probation violation. During a search incident leading to their arrest, police found crack pipes, marijuana, a plastic bag containing white powder and morphine pills in their motor vehicle. Respondent mother admitted that she used "drugs" and that respondent father used "crack." Following their arrests, petitioner filed a petition on December 7, 2011, regarding AM and KH. The trial court held a preliminary hearing and found the allegations alleged in the petition to be true.

Eighteen months elapsed from the time of the initial petition until termination occurred. During that time, respondents were jailed, continued to use illegal drugs, denied they had substance abuse issues, failed to regularly visit with AM and KH and failed to adhere to most of the directives given to them by petitioner. During this time frame respondent mother gave birth to AH who tested positive for cocaine at birth. Respondent mother denied cocaine usage while she was pregnant, insisting instead that she had transferred cocaine to her newborn from engaging in sex with respondent father, whom she claimed was using cocaine.

During the roughly eighteen months between the initial filing of a petition and termination of parental rights, respondent father failed to admit to any substance abuse problem. When he did not like what he was being asked to do by petitioner's staff, he either refused to do it, or attempted to harass and hinder petitioner's efforts to assist him with the services he required. Furthermore, the record reflects that he intentionally avoided taking several drug tests, was combative with petitioner's staff, and refused most of the services provided to him. Respondent father was also disruptive during court proceedings, using profane language to describe petitioner's staff and anyone who seemingly disagreed with him.

After a lengthy oral opinion, the trial court terminated respondents' parental rights for the reasons set forth above. This appeal then ensued.

² Despite respondents' arguments to the contrary, the record does not support that the trial court terminated their parental rights pursuant to MCL 712A.19b(3)(c)(ii).

³ Part of the plan called for respondent mother to acquire and maintain a stable environment, which included maintaining a permanent residence for six months and obtaining a motor vehicle. Respondent was also ordered to pay child support, attend parenting classes, counseling, maintain "quality" contact with AM through visits and telephone calls, and be involved in AM's medical care and "educational experience."

“In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met.” *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). “We review the trial court’s determination for clear error.” *Id.* “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).

We first find that the trial court did not clearly err in finding that petitioner established, by clear and convincing evidence, a statutory ground for termination of both respondents’ parental rights under MCL 712A.19b(3)(g). Termination is proper under MCL 712A.19b(3)(g) when “[t]he 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.” This Court has previously found that termination was proper under MCL 712A.19b(3)(g) where there was “insufficient evidence to conclude that” the parent would remain “sober in the future,” *In re CR*, 250 Mich App 185, 195-196; 646 NW2d 506 (2002), and where the parent failed to comply with the parent-agency agreement, *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003).

The minor children were removed from respondents’ care because respondents could not provide proper care, and the record supports that respondents remained unwilling and unable to do so throughout the proceeding. Respondents both had a history of abusing cocaine. During the 18-month proceeding, they were each discharged from substance abuse counseling on more than one occasion. They consistently tested positive for illegal substances or failed to submit to substance screenings. Respondent-mother tested positive for illegal substances twice while she was pregnant with AH. AH was born 11 months into the proceeding with cocaine in her system. At the time of termination, respondent-mother was pregnant with her fourth child, and she tested positive for cocaine six days before termination. Respondent-father only submitted to 13 screenings during the 18-month proceeding, eight of which were positive for cocaine. He tested positive for cocaine on February 27, 2013; and, at the time of the June 2013 termination, he had not submitted to a substance screening for close to three months. Despite the fact that there was concern that respondents triggered one another’s substance use, they planned to continue their relationship. See, *In re CR*, 250 Mich App at 195-196.

Furthermore, as a result of respondents’ failure to comply with the service agreement, their parenting time was suspended in December 2012. Because respondents were unwilling or unable to comply with the service agreement for a full 30 days, parenting time was never reinstated. *In re JK*, 468 Mich at 214. At the time of termination, respondents had not seen the children for six months. Respondent-father claimed, but never verified that he had an income and neither respondent demonstrated an ability to maintain stable housing during the proceeding. Respondents also failed to pay any amount toward reimbursement for their children’s care. Respondent-mother was incarcerated at the time of termination and respondent-father was facing two criminal charges. Thus, the record supports that respondents were unable to provide for the children’s basic needs. The record clearly supports that respondents could not provide proper care and custody at the time of termination. See MCL 712A.19b(3)(g).

While respondents argue that they would have been able to provide proper care and custody if given additional time, the record clearly establishes that there was “no reasonable

expectation that the parent[s] [would] be able to provide proper care and custody within a reasonable time considering” the ages of the children. See MCL 712A.19b(3)(g). Respondents demonstrated a complete inability and unwillingness to maintain sobriety and stable housing throughout the proceeding. Neither respondent seemed concerned over the well-being of their minor children.

AM was seven years old at the time of termination and respondent-mother had not cared for him for a majority of his life. At the time of termination, six-year-old KH had been in care for 18 months and six-month-old AH had been in care for all but one day. The trial court’s finding that termination of respondents’ respective parental rights was proper pursuant to MCL 712A.19b(3)(g) does not leave us with a definite and firm conviction that a mistake has been made. *In re HRC*, 286 Mich App at 459. Because we have concluded that at least one ground for termination existed, we need not consider the additional grounds upon which the trial court based its decision. *Id.* at 461.

In reaching our conclusion, we reject respondents’ argument that termination of their parental rights to the minor children was attributable to deficient efforts by petitioner. Whether a parent received reasonable reunification services involves the trial court’s factual findings, which we review for clear error. *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005). “When a child is removed from a parent’s custody, the agency charged with the care of the child is required to report to the trial court the efforts made to rectify the conditions that led to the removal of the child.” *In re Plump*, 294 Mich App 270, 272; 817 NW2d 119 (2011). “While the DHS has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of [the parent] to participate in the services that are offered.” *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012).

The record establishes that respondents were referred to a multitude of services during the proceeding, a majority of which they failed to complete. Respondents argue on appeal that the counseling that petitioner provided them with was deficient in several respects. In docket no. 317006, respondent-mother argues that she failed to benefit from counseling because the therapy was not tailored to her limited cognitive abilities. Similarly, in docket no. 317009, respondent-father argues that he failed to benefit from counseling because the therapist was unaware of his brain injury as a result of petitioner failing to provide her with a copy of his psychological evaluation. Respondents also argue that petitioner failed to provide them with counseling for a period of time during the proceeding. The record establishes that respondents were referred to counselor Candace Ziemba in February 2012. Ziemba discharged respondents for noncompliance in June 2012, and they began counseling in August 2012 with counselors who they sought out themselves. Respondents were again discharged from counseling for noncompliance in September 2012 and did not request assistance from petitioner with finding a new counselor. Petitioner referred respondents to Ziemba for a second time in January 2013 after they expressed that they were willing to address their substance abuse. Ziemba discharged respondent-father in March 2013 because he was aggressive and refused to submit to substance screenings. Thus, the record clearly establishes that the trial court correctly concluded that respondents’ failure to benefit from counseling was directly attributable to their complete lack of commitment and failure to participate in the services that petitioner offered them. See *In re Frey*, 297 Mich App at 248.

Respondents next argue that they should have been provided with “couples counseling.” However, the record supports that they would not have benefitted from couples counseling because respondent-father was abusive toward respondent-mother and did not allow her to speak during a joint-session that they had at the beginning of the proceeding. Furthermore, given that respondents showed a complete lack of commitment to attending individual counseling throughout a majority of the proceeding, the record does not support that they would have attended couples counseling if it had been provided to them. This argument is speculation and as such, does not merit reversal of the trial court’s findings.

Finally, respondents argue that petitioner was deficient by failing to refer them to a psychiatrist. Respondent-mother further argues in docket no. 317006 that petitioner should have provided her with inpatient treatment or “intensive” outpatient treatment to treat her substance abuse. The record supports, however, that petitioner did not provide referrals to these services because they did not have funding to pay for them. Moreover, respondents could have sought out these services on their own, but they failed to do so. When respondent mother was afforded therapy she either failed to fully participate by deliberately missing sessions or because she was incarcerated. Accordingly, the trial court’s finding that reasonable efforts were made to preserve and reunify the family does not leave us with a definite and firm conviction that a mistake has been made. *In re HRC*, 286 Mich App at 459.

Respondents also argue that termination of their parental rights was not in the minor children’s best interests. “Once a statutory ground for termination has been proven, the trial court must find that termination is in the child’s best interests before it can terminate parental rights.” *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012); MCL 712A.19b(5). We review a trial court’s finding that termination is in the child’s best interests for clear error. *In re HRC*, 286 Mich App at 459.

In *In re VanDalen*, 293 Mich App at 141, when reviewing best interests, this Court looked at evidence that the children were not safe with the parents, were thriving in foster care, and that the foster care home could provide stability and permanency. A trial court may also consider whether the parent has a healthy bond with the children when determining best interests. *In re CR*, 250 Mich App at 196-197. In *In re Jones*, 286 Mich App 126, 129-130; 777 NW2d 728 (2009), termination was found to be in the five-month-old child’s best interests where he was removed from the mother’s custody “shortly after birth,” and the mother failed to establish a relationship with the child during the proceeding.

Here, AH was removed from respondents’ care when she was one day old. At the time of termination, six-month-old AH had not seen respondents for six months because they failed to comply with the service agreement long enough to reestablish parenting time. *Id.* AM referred to his guardians, with whom he had lived since he was three months old, as “mom” and “dad.” AM did not view respondent-mother as a parental figure, and he did not express that he missed her after her parenting time was suspended. *In re CR*, 250 Mich App at 196-197. While KH was bonded with respondents, the record establishes that this bond was not healthy for KH, who exhibited “emotional distress” when respondents failed to consistently attend parenting time and made promises that they did not keep during the first 12 months of the proceeding. *Id.*

Although respondents argue on appeal that they should have been provided additional time to demonstrate sobriety, courts focus on the children when determining whether termination was in the best interests of the children. This includes considering their need for stability and permanency. *In re VanDalen*, 293 Mich App at 141. The children were doing well in their placements, and at the time of termination, AH and AM were living in the only home they had known. The record establishes that KH had adjusted well in the home of her maternal grandmother and was very bonded to her. *Id.* Although the record evidence supports that KH was bonded with respondents and would experience grief as a result of the termination of their parental rights, termination was necessary for her to gain the stability and permanence that she needed and that respondents could not provide. *In re LE*, 278 Mich App 1, 29-30; 747 NW2d 883 (2008).

Finally, although termination resulted in AH being separated from her siblings, termination of respondents' parental rights was required to ensure the safety of each of the children given that respondents had not rectified their substance abuse at the time of termination. *In re Olive/Metts*, 297 Mich App at 42. Based on our review of the record, the trial court correctly ruled that terminating respondents' respective parental rights was in the children's best interest and, thus, it did not clearly err. *In re HRC*, 286 Mich App at 459.

Affirmed.

/s/ David H. Sawyer
/s/ Stephen L. Borrello
/s/ Jane M. Beckering