

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of FULLER/MASON, Minors.

UNPUBLISHED
August 19, 2014

No. 320445
Montcalm Circuit Court
Family Division
LC No. 2007-000306-NA

Before: M. J. KELLY, P.J., and SAWYER and HOEKSTRA, JJ.

PER CURIAM.

Respondent-mother appeals by right the trial court's order terminating her parental rights to the minor children, DF and MM, under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j).¹ Because we conclude there were no errors warranting relief, we affirm.

In April 2009, the trial court removed DF and MM from respondent and subsequently took jurisdiction on the basis of respondent's admission that she struck DF in the face. In December 2009, the trial court returned MM to respondent and terminated jurisdiction as to MM only.

There is record evidence that respondent married a man who had a criminal history in the fall of 2012. In December 2012, the trial court again removed MM and took jurisdiction over him after respondent admitted that she had been evicted from her subsidized housing and had violated her safety plan with the Department of Human Services by allowing her husband to have contact with MM. After a termination hearing, the trial court ordered the termination of respondent's parental rights to DF and MM in February 2014.

"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). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *Id.*

¹ The trial court also terminated the parental rights of MM's unknown father. DF's father previously released his parental rights.

A trial court may terminate a parent's parental rights under MCL 712A.19b(3)(g) when the parent, without regard to intent, fails to provide proper care or custody and there is no reasonable expectation that the parent will be able to do so within a reasonable time considering the age of the child. By the time of the termination hearing, respondent had been without appropriate housing for approximately 15 months. Respondent had been diagnosed with mental health issues—for which she received supplemental security income—and was prone to flights of anger and emotional outbursts. Respondent did not comply with service referrals, such as counseling, to address her emotional stability. Similarly, respondent did not comply with service referrals to address her issues regarding domestic violence. Testimony at the termination hearing supported that although respondent had completed various services to improve her parenting skills, she failed to demonstrate sustained progress in this area. Respondent frequently showed up late—if at all—to parenting times with her children, and would fall asleep and otherwise not interact with her children. Given the duration of the case and respondent's failure to comply with services or demonstrate sustained progress, we are not left with "a definite and firm conviction" that the trial court's findings were erroneous. *In re Hudson*, 294 Mich App at 264.

Having concluded that the trial court did not clearly err by finding a statutory ground for termination under MCL 712A.19b(3)(g), we need not address the trial court's additional grounds for termination. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009). Nevertheless, there is record support for the trial court's findings that the Department established grounds for termination under MCL 712A.19b(3)(c)(i), (c)(ii), and (j).

Further, we conclude that the trial court did not clearly err when it found that termination of respondent's parental rights was in the children's best interests. *In re Hudson*, 294 Mich App at 264. By the termination hearing, DF had been removed from respondent for almost five years and MM had been removed for approximately 14 months. Respondent had demonstrated minimal interest or ability to rectify her barriers to reunification. Nothing in the record supported that respondent was able to provide either child with proper care or protection or that she would be able to do so in the near future. The children's court-appointed special advocate, as well as the children's respective therapists, testified that termination of respondent's parental rights was in the children's best interests. Accordingly, the trial court's best interest determination does not leave us "with a definite and firm conviction that a mistake has been made." *Id.* See *In re Trejo Minors*, 462 Mich 341, 364; 612 NW2d 407 (2000) ("The court did not clearly err by refusing to further delay permanency for the children, given the uncertain potential for success and extended duration of respondent's reunification plan.").

Respondent next argues for the first time on appeal that the Sixth Amendment right to confrontation, see *Crawford v Washington*, 541 US 36; 124 S Ct 1354; 158 L Ed 2d 177 (2004), applied to her termination hearing and barred the hearsay testimony by DF's therapist. "[B]ecause a parent's right to custody of his or her child is an important liberty interest protected by the United States Constitution, this Court will [] review unpreserved errors in termination proceedings for plain error." *Bailey v Schaaf (On Remand)*, 304 Mich App 324, 345 n 3; ___ NW2d ___ (2014). Therefore, respondent must show that a clear or obvious error occurred and that the error affected the outcome of the lower court proceedings. *In re Utrera*, 281 Mich App 1, 8-9; 761 NW2d 253 (2008).

“The Confrontation Clause of the Sixth Amendment bars the admission of ‘testimonial’ statements of a witness who did not appear at trial, unless the witness was unavailable to testify and the defendant had a prior opportunity to cross-examine the witness.” *People v Walker (On Remand)*, 273 Mich App 56, 60-61; 728 NW2d 902 (2006), citing *Crawford*, 541 US at 59, 68. As our Supreme Court has held, child protective proceedings are not criminal cases and, therefore, the Sixth Amendment right to confrontation does not apply. *In re Brock*, 442 Mich 101, 107-108; 499 NW2d 752 (1993). Moreover, the Michigan Rules of Evidence, including the rule barring hearsay testimony, did not apply to respondent’s termination hearing. *In re AMAC*, 269 Mich App 533, 537; 711 NW2d 426 (2006). Accordingly, we cannot conclude that the trial court plainly erred when it refused to sua sponte bar the hearsay testimony on the grounds that it violated respondent’s right to confront the witnesses against her.

There were no errors warranting relief.

Affirmed.

/s/ Michael J. Kelly
/s/ David H. Sawyer
/s/ Joel P. Hoekstra