

STATE OF MICHIGAN
COURT OF APPEALS

In re HERNANDEZ-GARCIA, Minor.

UNPUBLISHED
December 9, 2014

No. 321733
Kent Circuit Court
Family Division
LC No. 11-050973-NA

Before: JANSEN, P.J., and TALBOT and SERVITTO, JJ.

PER CURIAM.

M. Garcia-Bautista, the mother of the minor child, appeals as of right the trial court order terminating her parental rights.¹ We affirm.

Garcia-Bautista argues that the trial court erred in finding statutory grounds for the termination of her parental rights.² We disagree. “To terminate parental rights, a trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been proved by clear and convincing evidence.”³ After the trial court has established a statutory ground for termination by clear and convincing evidence, the trial court shall order termination of parental rights if it finds by a preponderance of the evidence “that termination of parental rights is in the child’s best interests[.]”⁴ A trial court’s factual findings, including a finding that a ground for termination has been established and a finding that termination was in a child’s best interests, are reviewed for clear error.⁵ “A finding of fact is clearly erroneous 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.”⁶

¹ MCL 712A.19b(3)(c)(i) and (g).

² *Id.*

³ *In re Brown/Kindle/Muhammad Minors*, 305 Mich App 623, 635; 853 NW2d 459 (2014) (citation and quotations omitted).

⁴ MCL 712A.19b(5); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013).

⁵ *Brown/Kindle/Muhammad*, 305 Mich App at 635, 637.

⁶ *In re Laster*, 303 Mich App 485, 491; 845 NW2d 540 (2013) (citation and quotations omitted).

Regarding MCL 712A.19b(3)(c)(i), the termination hearing began on February 13, 2014, well over 182 days after the first dispositional order. At the time of adjudication, the trial court found statutory grounds for jurisdiction under MCL 712A.2(b) based on its findings that Garcia-Bautista failed to provide the minor child with necessary care and that Garcia-Bautista's home was an unfit environment. The trial court's grounds for jurisdiction were supported by Garcia-Bautista's admission during the adjudication trial that her parental rights to two of the minor child's siblings were terminated because she failed to complete all aspects of her treatment plan in the prior case and because she did not take responsibility for the physical abuse she inflicted on her children. Garcia-Bautista asserted that she was not to blame for her parental rights being terminated in regard to the minor child's siblings, and admitted that she accused the minor child's father of sexual assault, but allowed him to continue to have contact with the sibling of the minor child who was allegedly assaulted. In its termination opinion, the trial court found that the conditions that led to the adjudication continued to exist and that there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering the minor child's age because Garcia-Bautista continued to fail to take responsibility for why the minor child was placed in foster care and for the fact the minor child may have been affected by the physical abuse inflicted on his siblings.

We have reviewed the record, and conclude that the trial court's finding regarding Garcia-Bautista's continued failure to take responsibility for her actions was supported by the evidence. Generally, a parent's past failures to provide proper care and custody allow the inference that the parent will not be able to provide proper care and custody within a reasonable time.⁷ The factual elements of MCL 712A.19b(3)(c)(i) were met in this case and the trial court did not clearly err in finding by clear and convincing evidence that the conditions that led to the adjudication continued to exist and that there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering the minor child's age.⁸

In regard to MCL 712A.19b(3)(g), the trial court found that Garcia-Bautista failed to provide proper care and custody for the minor child and that there was no reasonable expectation that she would be able to provide proper care and custody within a reasonable time considering the child's age because Garcia-Bautista was not physically or emotionally capable of acknowledging the minor child's emotions or making the minor child feel safe. This finding was supported by the evidence before the trial court. A trial court may rely on Garcia-Bautista's history of failing to provide care and custody in finding that there was no reasonable expectation that she would be able to provide proper care and custody within a reasonable time.⁹ The factual elements of MCL 712A.19b(3)(g) were met in this case and the trial court did not clearly err in finding by clear and convincing evidence that Garcia-Bautista failed to provide proper care and

⁷ See *In re Archer*, 277 Mich App 71, 75-76; 744 NW2d 1 (2007).

⁸ *Laster*, 303 Mich App at 491.

⁹ See *Archer*, 277 Mich App at 75-76.

custody for the minor child and that there was no reasonable expectation that she would be able to provide proper care and custody within a reasonable time considering the child's age.¹⁰

Garcia-Bautista argues that the trial court erred in reaching its findings regarding the statutory grounds for termination because it failed to consider the fact that her struggles to deal with the minor child during parenting times were caused in large part by the minor child, and not just by Garcia-Bautista. In support of that argument, Garcia-Bautista suggests that because the minor child lived in a foster home with one of his siblings, it was possible that the sibling poisoned the minor child toward her. There is no evidence in the record, however, that a sibling poisoned the minor child toward Garcia-Bautista.

Garcia-Bautista also claims that the minor child was manipulative during parenting times. Garcia-Bautista notes that the minor child told a therapist at one point that "he did not want the [parenting] visits to go well because he was afraid that that would mean he would return to live with his mother and he did not want that to happen." However, there was expert testimony before the trial court that indicated that it would be very difficult for a child the minor child's age and with the minor child's intelligence level to be truly manipulative. Also, the minor child was diagnosed with Post-Traumatic Stress Disorder, and the evidence showed that the minor child's behavior during Garcia-Bautista's parenting times was consistent with that diagnosis.

Garcia-Bautista further asserts that the family therapy provided to her was inappropriately cancelled in this case, resulting in Garcia-Bautista doing the best that she could to obtain the return of the minor child in the absence of that therapy. Generally, the Department "must make reasonable efforts to rectify conditions, to reunify families, and to avoid termination of parental rights."¹¹ However, where a parent's rights to a child's sibling have been involuntarily terminated, the parent does not have a right to reunification efforts.¹² Here, Garcia-Bautista admitted that her parental rights to the minor child's siblings were terminated because she failed to complete all aspects of her treatment plan in that case and she did not take responsibility for the physical abuse she inflicted on the siblings. Accordingly, she was not entitled to any reunification efforts in this case.¹³

Nevertheless, Garcia-Bautista was offered extensive services, including family therapy. "While the [Department] has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of [parents] to participate in the services that are offered."¹⁴ Moreover, parents must sufficiently benefit from the services provided to them.¹⁵ Here, Garcia-Bautista was provided with family therapy, but

¹⁰ *Laster*, 303 Mich App at 491.

¹¹ *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008).

¹² *In re Smith*, 291 Mich App 621, 623-624; 805 NW2d 234 (2011).

¹³ *Id.*; MCL 712A.19a(2)(c).

¹⁴ *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012).

¹⁵ *Id.*

she did not satisfactorily participate in the service and did not benefit from the service, resulting in the service's cancellation because the counseling sessions were harming the minor child. Therefore, in sum, Garcia-Bautista's arguments do not reveal clear error in the trial court's findings regarding the statutory grounds for termination.¹⁶

Additionally, although not raised by Garcia-Bautista on appeal, we have reviewed the record and find that the trial court did not clearly err in finding by a preponderance of the evidence that termination of her parental rights was in the minor child's best interests.¹⁷

Affirmed.

/s/ Kathleen Jansen
/s/ Michael J. Talbot
/s/ Deborah A. Servitto

¹⁶ *Laster*, 303 Mich App at 491.

¹⁷ *Id.*