

STATE OF MICHIGAN
COURT OF APPEALS

In re M. S. BROWNFIEL, Minor.

UNPUBLISHED
December 11, 2014

No. 321833
Sanilac Circuit Court
Family Division
LC No. 12-035628-NA

Before: RIORDAN, P.J., and BECKERING and BOONSTRA, JJ.

PER CURIAM.

Respondent mother appeals as of right the trial order terminating her parental rights to her minor daughter pursuant to MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood of harm). We affirm.

I. REASONABLE EFFORTS

A. STANDARD OF REVIEW

Respondent first contends that the Department of Human Services (DHS) failed make reasonable efforts to reunify her with her daughter. Generally, “[a]ppellate courts are obliged to defer to a trial court’s factual findings at termination proceedings if those findings do not constitute clear error.” *In re Rood*, 483 Mich 73, 90; 763 NW2d 587 (2009); MCR 3.977(K). We review unpreserved issues for plain error affecting substantial rights. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

B. ANALYSIS

“[W]ith limited exceptions, ‘reasonable efforts to reunify the child and family must be made in all cases[.]’ ” *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012), quoting MCL 712A.19a(2). “Generally, when a child is removed from the parents’ custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child’s removal by adopting a service plan.” *In re HRC*, 286 Mich App 444, 462; 781 NW2d 105 (2009). “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 respondents to participate in the services that are offered.” *In re Frey*, 297 Mich App at 248.

On appeal, respondent suggests that she was “set up to fail” because her schizophrenia rendered her incapable of completing her service plan, and petitioner failed to extend special accommodations. However, respondent was provided with a multitude of services. The foster-care worker testified that respondent’s options for services had been exhausted, and that she had neither complied with the terms and conditions of, nor benefited from, her treatment plan. An expert in psychiatry likewise testified that his Department of Community Mental Health offered respondent all available services, but that she was not yet stabilized. As this Court has recognized, respondent was not tasked with mere participation in the services offered. Rather, she had to participate *and* sufficiently benefit from the services in order to address the causes of concern. *In re Frey*, 297 Mich App at 248.

Further, respondent cites no authority for the proposition that petitioner has the duty, or the ability, to force a person with a mental condition into compliance with services. Respondent has not identified any specific techniques or accommodations that might have succeeded in this regard. See *In re Terry*, 240 Mich App 14, 27; 610 NW2d 563 (2000) (“The time for asserting the need for accommodation in services is when the court adopts a service plan”). Respondent is not entitled to relief.

II. STATUTORY GROUNDS

A. STANDARD OF REVIEW

Respondent next contends that the trial court erred in finding the statutory grounds for termination. We review for clear error a trial court’s finding that a statutory ground for termination was proven by clear and convincing evidence. *In re B & J*, 279 Mich App 12, 17; 756 NW2d 234 (2008). “A decision is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.” *Id.* at 17-18 (quotation marks and citation omitted).

B. ANALYSIS

The trial court terminated respondent’s parental rights pursuant to MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood of harm). Specifically, MCL 712A.19b(3)(g) provides for termination when: “The 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.”

Respondent suffered from mental illness that required several involuntary hospitalizations. A Children’s Protective Services (CPS) worker testified about several troubling incidents, all of which the minor child witnessed. These examples included respondent threatening to kill the minor child, using profanity directed at the minor child, and exhibiting disturbing bouts of paranoia. Respondent, however, contends that she made “steady progress” during these proceedings. The record refutes that claim.

Respondent consistently ignored service opportunities and showed only a belated interest in them once the termination petition was filed. She suffers from schizophrenia and will require medication for the rest of her life. An expert in psychiatry testified that respondent's cooperation with her medication regime was motivated, in part, by a desire to appease DHS rather than a genuine acceptance of her mental illness. He further opined that frequent hospitalizations were to be expected in respondent's future. While respondent highlights evidence that she was compliant with medication and had accepted it, the trial court is free to credit testimony that contradicts such evidence. See *In re HRC*, 286 Mich App at 460 ("It is not for this Court to displace the trial court's credibility determination."). Further, respondent's behavior during visitation with the minor was troubling. Respondent was emotionally distant and failed in the most basic parenting tasks such as providing parental comfort when the minor was upset.

Therefore, the evidence demonstrates respondent's failure to provide proper care or custody of the minor child. Moreover, MCL 712A.19b(3)(g) requires the trial court to consider whether respondent would be able to provide proper care and custody within a *reasonable time* considering the child's age. Any limited progress respondent may have made in these proceedings did not satisfy this requirement. The trial court did not err in finding sufficient evidence of MCL 712A.19b(3)(g).¹

III. BEST INTERESTS

A. STANDARD OF REVIEW

Lastly, respondent claims that termination was not in the child's best interest. We review for clear error a trial court's decision regarding a child's best interests. *In re Rood*, 483 Mich at 90-91. "A finding is clearly erroneous if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *Id.* (quotation marks, citations, and brackets omitted).

B. ANALYSIS

In determining the best interest of a child, the trial court may consider the child's bond to the parent, the parent's parenting ability, the advantages of a foster home over the parent's home, and the child's need for permanency, stability, and finality. *In re Olive/Metts*, 297 Mich App 35, 41-42; 832 NW2d 144 (2012). "[O]nce a statutory ground is established, a parent's interest in the care and custody of his or her child yields to the state's interest in the protection of the child." *In re Foster*, 285 Mich App 630, 635; 776 NW2d 415 (2009).

Here, the trial court cited several valid reasons for why termination was in the minor child's best interest. Not only has respondent showed little progress, there was no observable

¹ While the trial court cited additional statutory grounds for termination, "[i]t 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 Frey*, 297 Mich App at 244.

parent-child bond, and respondent periodically denied the child was hers. Instead of disputing these findings or attempting to present an argument based on law, respondent resorts to emotional entreaties. While respondent claims that she did “nothing wrong” and “is simply ill,” that ignores that the focus in a best interest inquiry is not the parent, but what is in the best interest of the child. See *In re Foster*, 285 Mich App at 635.

Respondent further argues that when the minor child becomes a teenager and discovers respondent’s mental illness, the child will be “distressed.” If respondent believed psychological damage will result to the child, she was free to present expert testimony on this issue. She did not. Moreover, respondent completely fails to explain how subjecting a toddler to the care and custody of a person suffering from ill-managed schizophrenia better serves that child’s interests. See *Matter of Toler*, 193 Mich App 474, 477; 484 NW2d 672 (1992) (“A party may not merely announce his position and leave it to us to discover and rationalize the basis for his claim.”). Respondent has not demonstrated that the trial court clearly erred in concluding that termination of her parental rights is in the child’s best interests.

IV. CONCLUSION

Petitioner provided reasonable services to respondent. Further, the trial court properly found the statutory ground for termination, MCL 712A.19b(3)(g), was proven by clear and convincing evidence and that termination was in the child’s best interest. We affirm.

/s/ Michael J. Riordan
/s/ Jane M. Beckering
/s/ Mark T. Boonstra