

STATE OF MICHIGAN
COURT OF APPEALS

In re A. D. CONLAY, Minor.

UNPUBLISHED
December 8, 2015

Nos. 328136; 328217
Isabella Circuit Court
Family Division
LC No. 2013-000072-NA

Before: SHAPIRO, P.J., and O'CONNELL and WILDER, JJ.

PER CURIAM.

In these consolidated appeals, respondent-father and respondent-mother each appeal as of right the trial court's order terminating their parental rights to their minor son. In Docket No. 328136, the trial court terminated the father's parental rights under MCL 712A.19b(3)(g) (failure to provide proper care and custody) and (j) (risk of harm). In Docket No. 328217, the trial court terminated the mother's parental rights under MCL 712A.19b(3)(c)(i) (failure to rectify the conditions leading to adjudication), (g), and (j). We affirm.

I. FACTUAL BACKGROUND

Shortly after his birth, the child suffered from severe acid reflux and vomiting that left him susceptible to weight loss, dehydration, and pneumonia. Mother admitted that she drank alcohol while she was pregnant and that the child was born with special needs. She also admitted that she was homeless and had a history of mental health issues. At a later adjudication, father admitted that he was unemployed, had no contact with the child, and that his wife had children removed from her care. The trial court took jurisdiction over the child and placed him in foster care.

While in foster care, the child's conditions improved with the assistance of dedicated services, but he still suffered from physical, speech, and cognitive developmental delays. Through the course of the proceedings it was discovered that the child suffered from Prader-Willi syndrome, a rare genetic condition that causes physical and cognitive deficits. The child required weekly appointments with numerous medical providers, including physical therapy, speech therapy, play therapy, and a strict diet. Dr. Patrick Ryan testified that the child's condition would require lifetime, high-level care.

During the pendency of the case, mother attended parenting classes but she did not attend or complete mental health or other services. The Department of Health and Human Services (DHHS) discontinued parenting visits after she exhibited inappropriate behavior. Her visits also

upset the child and caused him to experience more vomiting. At the termination hearing, mother stated that she no longer intended to participate in services. She refused to acknowledge that the child had a genetic condition. Dr. Ryan testified that mother would not be able to parent the child absent serious treatment, medication, and psychological therapy. He had “grave concerns” about her ability to parent a child with Prader-Willi syndrome. Mother testified that she would not participate in further services.

Initially, father was incarcerated and had no contact with the child. According to his psychological report, he had anger management issues and antisocial tendencies. Dr. Ryan opined that even with a good therapist, it would take father “quite some time” to be able to parent a child with special needs. Father testified that he did not participate in services because he did not think that DHHS had his best interests in mind. He testified that he had seen the child on one occasion in the community and he did not believe that the child was as “bad off” as witnesses testified.

The trial court found that both parents denied that the child had special needs and that, because of their denial, he would be at a high risk of harm if returned to either parent. Regarding mother, the trial court found that she did not participate in services, had shown she could not care for the child, consistently missed her appointments, and did not believe she required services. It found that due to mother’s untreated mental condition, she was a high risk of physically abusing any child, much less a child with special needs. Regarding father, the trial court found that he had not participated in parenting services. It also found that it would take father too long to progress enough in services to care for the child. The trial court determined that clear and convincing evidence supported terminating both parents’ parental rights.

II. STANDARDS OF REVIEW

This Court reviews for clear error the trial court’s findings of fact and ultimate determination that DHHS has proven a statutory ground for termination by clear and convincing evidence. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). A finding is clearly erroneous if, after giving due regard to the trial court’s special opportunity to observe the witnesses, we are definitely and firmly convinced that the trial court made a mistake. *Mason*, 486 Mich at 152; *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). We also review for clear error whether a trial court engaged in reasonable efforts to reunify a child with his or her parent. *Mason*, 486 Mich at 166.

III. REASONABLE EFFORTS

Mother contends that the trial court did not engage in reasonable efforts to reunify her with the child. According to mother, DHHS should have provided her with more services and an opportunity to bond with the child. We disagree.

Parents have a significant constitutional liberty interest in the care and custody of their children. *Miller*, 433 Mich at 346; *MLB v SLJ*, 519 US 102, 119; 117 S Ct 555; 136 L Ed 2d 473 (1996). The trial court must make reasonable efforts to reunify a child with his or her family unless aggravating circumstances are present. MCL 712A.19a(2). But the time for a parent to challenge a service plan is when the trial court initially adopts it. *In re Terry*, 240 Mich App 14,

27; 610 NW2d 563 (2000). Additionally, “there exists a commensurate responsibility on the part of [parents] to participate in the services that are offered.” *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012).

In this case, mother did not challenge the service plan and then outright refused to participate in the services that DHHS provided. These services included mental health services to address mother’s mental health condition and parenting services so that she could safely parent the child. There is no evidence to support that mother would have participated in additional or different services. We conclude that the trial court did not clearly err when it found that DHHS engaged in reasonable efforts to reunify mother with the child.

IV. MOTHER’S STATUTORY GROUNDS

Mother contends that the trial court clearly erred when it found that the evidence supported terminating her parental rights under MCL 712A.19b(3)(c)(i), (g), and (j). We disagree.

The trial court may terminate a parent’s parental rights under MCL 712A.19b(3)(c) if there is evidence that the conditions that brought the child within the court’s jurisdiction are not likely to change within a reasonable time:

The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age. . . .

MCL 712A.19b(3)(g) provides that the trial court may terminate a parent’s rights if

[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.

And MCL 712A.19b(3)(j) provides that the trial court may terminate parental rights if

[t]here is a reasonable likelihood, based on the conduct or capacity of the child’s parent, that the child will be harmed if he or she is returned to the home of the parent.

A parent’s failure to comply with his or her service plan is evidence that the parent will not be able to provide a child with proper care and custody and that the child may be harmed if returned to the parent’s home. *In re White*, 303 Mich App 701, 710-711; 846 NW2d 61 (2014).

The trial court obtained jurisdiction over the child based on mother’s admissions that she consumed alcohol while pregnant, the child had special needs, and she lacked stable housing.

During the pendency of the case, mother made very little progress toward resolving any of these conditions. She attended parenting classes, but the service providers testified that she was on her phone during classes and did not benefit from them. She did not complete or refused to attend a number of other programs because she did not trust DHHS or because she thought she did not need the service. She admitted that she was not taking medication or attending counseling for her mental health disorder. We are not definitely and firmly convinced that the trial court made a mistake when it found that mother had not rectified the conditions that brought the child into care and was not likely to do so within a reasonable time.

Further, despite mother's initial admission that the child had special needs, at the termination hearing she denied that the child required extensive treatment for his physical and emotional safety. When a child has special needs, a parent's failure to "undertake the special efforts that those special needs demand[]" may support termination of the parent's rights. *In re LaFrance Minors*, 306 Mich App 713, 728; 858 NW2d 143 (2014). In this case, the child progressed in foster care with the support of the foster parents and services, but his underlying genetic medical condition continued to exist. Mother's outright denial of the child's serious medical condition supported the trial court's findings that she was not likely to be able to provide the child with proper care and custody and that it was likely that the child would be harmed if returned to her care.

We conclude that the trial court did not clearly err when it found that these statutory grounds supported terminating mother's parental rights.

V. FATHER'S STATUTORY GROUNDS

Father contends that the trial court clearly erred when it found that MCL 712A.19b(3)(g) and (j) supported terminating his parental rights. We disagree.

Dr. Ryan testified that it would take at least two years before father could safely parent the child. At that point, the child had been in foster care for two years. Father refused to participate in most services. Father participated in drug screening, but he refused to participate in other programs because he did not believe that DHHS had his best interests in mind. He participated in parenting classes that did not meet the parenting class requirements. Despite referrals to many other assistance programs, including a domestic violence program, father refused to participate. He lived with and relied on his mother, who had a history of child neglect. Further, father's history of frequent incarcerations supported the trial court's finding that he could not provide the child with proper care and custody, since the child's special needs required a highly predictable routine.

And as with mother, father refused to acknowledge the seriousness of the child's medical condition and significant special needs. The child's foster parents, caseworkers, and healthcare professionals testified extensively about the child's physical limitations, developmental delays, dietary requirements, and need for a highly consistent and structured routine. But father believed the witnesses were exaggerating the child's condition and that there was not much wrong with the child. To return the child to father's care under such circumstances would be to subject the child to a serious risk of medical neglect.

We conclude that the trial court did not clearly err when it found that father could not care for the child and would not be able to do so within a reasonable time given the child's age. The trial court also did not clearly err when it found that the child would be at a risk of harm if returned to father's home.

We affirm.

/s/ Douglas B. Shapiro

/s/ Peter D. O'Connell

/s/ Kurtis T. Wilder