

Court of Appeals, State of Michigan

ORDER

In re A M Koberna-Pauley Minor

Docket No. 323722

LC No. 14-819094-NA

Kathleen Jansen
Presiding Judge

David H. Sawyer

Karen M. Fort Hood
Judges

The Court orders that the opinion issued in this case is hereby AMENDED to correct a clerical error. The opinion is corrected to read June 16, 2015 as the date of the opinion.

In all other respects, the opinion remains unchanged.



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

JUN 29 2015

Date

Chief Clerk

STATE OF MICHIGAN
COURT OF APPEALS

In re A. M. KOBERNA-PAULEY, Minor.

UNPUBLISHED
June 16, 2016

No. 323722
Oakland Circuit Court
Family Division
LC No. 14-819094-NA

Before: JANSEN, P.J., and SAWYER and FORT HOOD, JJ.

PER CURIAM.

Respondent appeals by right the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(g), (i), (j), and (l). We affirm.

Before terminating a respondent's parental rights, the trial court must find clear and convincing evidence to support the statutory grounds for termination. We review the trial court's findings for clear error. MCR 3.977(K); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999); *In re Gazella*, 264 Mich App 668, 672; 692 NW2d 708 (2005).

Respondent's parental rights to another child had been terminated in the state of Arizona in 2013. Respondent argues that there was not clear and convincing evidence to support termination of her rights to A.M. because (1) the Michigan court relied on the prior termination in Arizona but, based on the psychological report taken in that state, respondent had been denied services after only two months, and therefore there was not sufficient evidence of her ability to parent for the Michigan court to rely on the prior termination, and (2) reasonable efforts were not made toward reunification in Michigan because the court did not order services and the department never provided services to respondent. We disagree.

First, based upon our review of the record, we find that respondent did receive services in Arizona. According to the Arizona trial court's opinion, dated October 25, 2013, and the testimony of the worker from the Arizona Department of Child Safety, respondent was provided with a case service plan, which required a psychological evaluation, parenting classes, and healthy relationship classes. Respondent was also provided with anger management services, but she never started them because she felt that too many services at once would be overwhelming. The psychological evaluation in Arizona determined that, because of her developmental disabilities, respondent would probably not benefit from services and would probably not be suitable as a parent. The worker stated that, following the psychological evaluation, services were no longer offered to respondent because it was believed that respondent would not benefit from them.

Next, as authorized by MCL 712A.19b(4), petitioner sought termination of respondent's rights to A.M. in the initial petition. When, as in this case, petitioner's goal is termination, petitioner is not required to provide reunification services. *In re Moss*, 301 Mich App 76, 91; 836 NW2d 182 (2013). Services need not be provided when reunification is not intended. *In re LE*, 278 Mich App 1, 21; 747 NW2d 883 (2008); see also MCL 712A.19b(4) and MCR 3.977(E). Under the facts of this case, respondent was not entitled to reunification efforts and the trial court did not err in terminating respondent's parental rights without providing services.

Nevertheless, in order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). Respondent's parental rights were terminated under MCL 712A.19b(3)(g), (i), (j), and (l). The record contains documentary evidence that respondent's parental rights to her older daughter were terminated in Arizona in 2013, based upon serious and chronic neglect. Evidence of this prior termination provides clear and convincing evidence to support termination of her rights to A.M. under MCL 712A.19b(3)(i) and (l). Under the doctrine of anticipatory neglect or abuse, how a parent treats one child is probative of how he or she may treat other children. *In re Hudson*, 294 Mich App 261, 266; 817 NW2d 115 (2011); *In re LaFlure*, 48 Mich App 377, 392; 210 NW2d 482 (1973). A trial court need not wait until a child is harmed or neglected, but may assert jurisdiction solely on the basis of anticipatory neglect. *In re Dittrick Infant*, 80 Mich App 219, 222; 263 NW2d 37 (1997).

It is clear from the record that respondent continued to struggle with the same issues that resulted in the previous termination of her parental rights: housing, emotional stability, parenting skills, and intellectual capacity. Her poor parenting and neglect of her oldest daughter was indicative of the lack of care and protection she would provide to this child. The evidence revealed that respondent continued to make choices that demonstrated a lack of maturity and ability to care for a child. Regardless of respondent's claim that the trial court should not have relied upon the termination case in Arizona because respondent had not been given sufficient opportunity to demonstrate that she could benefit from services, we find that the documentation provides clear and convincing evidence to support termination under MCL 712A.19b(3)(i) and (l).

This child was removed from respondent within a few days of her birth. Therefore, respondent did not have an opportunity to provide proper care or custody to her. However, respondent was provided with visitation and it was clear to the workers who observed her that, because of her developmental disabilities, respondent did not have the intellectual capacity to learn and retain the information necessary to properly parent her child. Further, she did not have a suitable home and lacked the stability to provide a proper home to the child. Respondent had recently moved in with and planned to marry a man she had known for only three weeks, demonstrating extremely poor judgment, especially relevant because she made this decision at the very moment she should have been preparing to show the court that she could provide this child with proper care or custody. In addition, there was a history of domestic violence with the father of respondent's children, and respondent had never addressed her anger or relationship issues. Finally, there was evidence from the termination case in Arizona and from the psychologist's report in this case that respondent would not benefit from services because of her intellectual disabilities. The evidence showed that respondent demonstrated love and affection

toward A.M. and had the desire to parent her. However, respondent's intent and desire are not the determining factors to consider when looking at her ability to provide proper care or custody. Based on the evidence in the record, we find that there was clear and convincing evidence to support the conclusion that, without regard to intent, there was no reasonable expectation that respondent would be able to provide proper care and custody within a reasonable time, considering the child's age. MCL 712A.19b(3)(g).

Finally, we find there was clear and convincing evidence to support termination under MCL 712A.19b(3)(j). The department and agency workers, the psychologist, and the guardian ad litem all recommended termination of respondent's parental rights. The testimony and reports from the workers who observed respondent during parenting time and worked with her, and the testimony, test results, and report from the psychologist who evaluated her, all showed that, although she had the desire, respondent did not have the capacity to parent her child. Respondent made this even clearer by her testimony. All the evidence showed that respondent was not able to benefit from services because she did not have the capacity to learn and retain the necessary information. Therefore, there was clear and convincing evidence that, based on respondent's conduct and capacity, there was a reasonable likelihood that the child would be harmed if she was returned to respondent's care. Accordingly, the trial court did not clearly err in finding clear and convincing evidence to support the statutory grounds for termination.

The trial court also did not clearly err in finding by a preponderance of the evidence that termination of respondent's parental rights was in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-367; 612 NW2d 407 (2000); *In re Moss*, 301 Mich App at 91. It was clear from respondent's history, life style, instability, anger issues, testimony, and her developmental disabilities that respondent was not able to provide proper care and custody for A.M., and that the child would be at risk of harm if placed with respondent. It was also clear that, for the same reasons, there was no reasonable expectation that additional time or services would change the outcome. This case was not one in which there should have been additional efforts made by the court or the department to provide more services. It was clear that respondent did not have the capacity to learn or retain information from services.

The child needed permanency and stability. At such a young age, and in good health and without developmental disabilities, she was extremely adoptable. Keeping her in limbo for any additional time was not justifiable given respondent's circumstances. Accordingly, we hold that the trial court did not clearly err in finding, by a preponderance of the evidence that termination of respondent's parental rights was in the child's best interests.

Affirmed.

/s/ Kathleen Jansen
/s/ David H. Sawyer
/s/ Karen M. Fort Hood