

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* L. F. TROTTER, Minor.

UNPUBLISHED  
February 18, 2016

No. 328457  
Clinton Circuit Court  
Family Division  
LC No. 13-024800-NA

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

PER CURIAM.

Respondent appeals by right the trial court's order terminating her parental rights to her daughter. The trial court found that the petitioner had established grounds for termination under MCL 712A.19b(3)(c)(i), MCL 712A.19b(3)(g), and MCL 712A.19b(3)(j), and that termination was in the child's best interests. Because the trial court did not clearly err in its findings, we affirm.

The child came to the attention of the Department of Health and Human Services after allegations of improper supervision in October 2013. At that time, there was a concern that the child had ingested medication. The child's tests showed that she had not ingested the medication, but the Department investigated the circumstances giving rise to the concern.

Respondent told the Department's investigators that the child had gotten into the medication because respondent was tired and had been arguing with her boyfriend, but later stated that her younger sister had taken the medication and then blamed the child. Later, in an attempt to show an investigator that the child could not have gotten into the medication, respondent put jelly beans in a prescription pill bottle and gave it to the child. When told that this was inappropriate because it would teach her that there were good things in pill bottles, respondent did not see the harm. She later acknowledged that putting candy in a pill bottle was not a good idea.

The Department's investigators determined that respondent had been receiving various services from Community Mental Health since the child's birth. The child was also living with respondent and her live-in boyfriend, who had already had his parental rights to six of his own children terminated. Respondent and her boyfriend both acknowledged that they argued frequently. A therapist who had been providing services to respondent and the child recalled overhearing one "very heated" argument about "very adult material" right in front of the child. Respondent acknowledged that the child would repeat inappropriate words heard during the arguments, but respondent did not believe that the arguments had a negative impact on the child.

The trial court initially allowed the child to remain in respondent's care on the condition that no other adults were present in the home. However, the trial court signed a removal order after it learned of respondent's demonstration with the jelly beans in the pill bottle. After a bench trial in December 2013, the trial court found sufficient evidence to assume jurisdiction on the basis of the concerns of domestic violence, relational issues, and inappropriate supervision.

By the initial dispositional hearing, respondent and her boyfriend were no longer together. The child was in a foster home and was demonstrating problematic behavior such as having meltdowns and throwing tantrums. Following this hearing, respondent attended supervised visitations. Reports on the visits were mixed, with some observers reporting that respondent would miss the child's "cues" and at times show a lack of "connectiveness". The child continued to display negative behavior and had to be moved to a new foster home. While respondent attended services, initial reports were that she failed to actually benefit from the services. The Department moved to suspend parenting time in August 2014 after increasing concerns about the child's behavior and concerns that there might be a link between the parenting time sessions and her acting out. The trial court granted the motion.

The child showed some signs of improvement after parenting time ceased, but later began to regress when her foster mother returned to work. A trauma assessment was scheduled and respondent was again granted supervised parenting time. Once parenting time resumed most reports suggested that it went fairly well, that respondent was appropriate, and that the child behaved well during parenting time. However, the trauma assessment revealed that the child had post-traumatic stress disorder and a high level of anxiety. Additionally, she continued to throw tantrums and exhibit extreme behavior in her foster home. There was a concern that she was repressing her emotions during visits with respondent because she did not feel safe around her and that she then reacted around her foster family where she felt safe. It was believed that respondent was a "trigger" and she caused the child to re-experience trauma. Despite reports that respondent was making further progress with services and continuing to fully cooperate, and given that respondent could not yet care for the child, the Department recommended termination. The trial court authorized the petition and again suspended respondent's parenting time.

At the termination trial, Dr. Andrew Barclay testified that he had examined respondent in October 2013 and discovered that her emotional age was nine and a half years old. There was testimony by therapists that the child's behavior had begun to improve again after parenting time was suspended. The child's therapist again testified that she believed respondent was a "trigger" and that respondent did not know how to appropriately read the child's "cues." Further, it was brought out that respondent continued to be reluctant to admit her role in the child's removal and to acknowledge the child's post-traumatic stress. However, respondent's therapist testified that respondent had been making steady progress and was recognizing the role that her boyfriend had played in the child's removal and that the child had shown signs of trauma. However, she indicated that respondent would need the support of someone who was available around the clock in order to appropriately parent the child.

The court noted that the conditions that led to the initial adjudication centered around respondent's need to deal with past trauma, safety concerning the people who were in respondent's home, lack of supervision, and respondent's lack of insight. The trial court concluded that those concerns continued and found that the Department had established grounds

for termination under MCL 712A.19b(3)(c)(i), MCL 712A.19b(3)(g), and MCL 712A.19b(3)(j). The trial court acknowledged that respondent had been compliant with the service plan, but noted testimony about respondent missing the child's "cues", the inability of counselors to recommend unsupervised parenting time, and respondent's reluctance to acknowledge the child's problems. The trial court found that because respondent's own therapist had testified that she would need support around the clock and, because there was no one who could fulfill this role in respondent's life, it was not possible to return the child to respondent's care. The trial court further found that termination of respondent's parental rights was in the child's best interest because the child needed stability, permanency, and consistency in her life.

Respondent first argues that termination was not appropriate because the Department failed to provide her with adequate services appropriate to her emotional age. The Department must show that reasonable efforts were made to "rectify the conditions that led to its involvement in the case." *In re Terry*, 240 Mich App 14, 26; 610 NW2d 563 (2000). If a case service plan "fails to take into account the parents' limitations or disabilities and make any reasonable accommodations, then it cannot be found that reasonable efforts were made to reunite the family." *Id.* at 26. However, "[t]he time for asserting the need for accommodation in services is when the court adopts a service plan, not at the time of a dispositional hearing to terminate parental rights." *Id.* at 27. At no point in the record is there any indication that respondent requested that different services be provided or that accommodations be made to better take into account her disability. Barclay assessed respondent's mental level in October 2013. Respondent had over a year to request an accommodation in services after learning the results of the assessment, but did not do so. Accordingly, we must reject respondent's claim that her services were not sufficiently tailored to her needs.

Respondent next argues that the trial court clearly erred when it found that the Department had established grounds for termination. This Court reviews for clear error the trial court's findings that the Department established a statutory ground for termination and that termination was in the child's best interests. See *In re Gonzales/Martinez Minors*, 310 Mich App 426, 434; 871 NW2d 868 (2015). A decision is clearly erroneous if "the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). The Department bears the burden of proving the existence of at least one of the statutory grounds for termination by clear and convincing evidence. *Id.* at 210. "[R]egard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). To reverse the trial court, this Court must conclude that its decision was "more than just maybe or probably wrong." *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999) (quotation marks and citations omitted).

Under MCL 712A.19b(3)(c)(i), a trial court may terminate a parent's parental rights when the conditions that led to the initial adjudication continue to exist for 182 days after the initial dispositional order and "there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age." The problems that led to the initial adjudication centered on respondent's relationship with her boyfriend, the lack of appropriate supervision, and respondent's lack of insight into the problems that led to the child's removal. Although respondent was no longer living with the boyfriend, there was testimony that respondent was still not in a position to have unsupervised parenting time and that she still had

not acknowledged that the child had post-traumatic stress disorder. Given the child's age and the length of time she had been in foster care, coupled with the testimony of respondent's counselor that she would not be able to parent without full-time support, we cannot conclude that the trial court's finding that the Department established this ground was clearly erroneous.

The trial court also found that the Department established grounds for termination under MCL 712A.19b(3)(g). Termination is appropriate under that statute 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." *Id.* While we acknowledge that a "parent's *compliance* with the parent-agency agreement is evidence of her ability to provide proper care and custody," *In re JK*, 468 Mich at 214, compliance is not necessarily determinative. There was testimony that respondent had not benefitted from services to the point where she would be able to properly supervise the child. Reasonable people might disagree with the trial court's finding, but that is not a sufficient basis for reversal, *In re Sours Minors*, 459 Mich at 633; we must defer to the trial court's superior ability to assess credibility and, on this record, we cannot state that it clearly erred when it found that respondent had failed to provide proper care, was presently unable to provide care and custody, and would be unable to provide proper care and custody within a reasonable time, *In re Miller*, 433 Mich at 337.

Finally, the trial court found a statutory basis for termination under MCL 712A.19b(3)(j), which states that termination is appropriate 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." This statutory factor includes both physical and emotional harm. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011). There was testimony that the child acted out emotionally on days that she knew she was going to visit respondent and that, while visits with respondent may have gone well, she acted out after the visits as well. Several witnesses opined that respondent was a "trigger" that caused the child to re-experience past trauma. Respondent argues that no one could definitively state that it was respondent's presence and not her absence that caused the trauma. However, the trial court was able to observe the witnesses and assess the weight and credibility to be afforded their testimony. *Id.* And the trial court chose to credit the testimony of the therapists. Additionally, there was testimony that respondent did not believe or acknowledge that the child had mental health problems. There was evidentiary support for the trial court's finding that placing a child who suffers from post-traumatic stress disorder with respondent, who may be a trigger and does not fully acknowledge the child's disorder, would cause further emotional harm. The trial court's decision that there would be a reasonable likelihood of harm if the child were returned to respondent's care was not clearly erroneous.

Once "the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). The trial court must find by a preponderance of the evidence that termination is in the child's best interests. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). The child's bond to the parent, the parent's parenting ability, and the child's need for permanency, stability, and finality are all factors for the court to consider in deciding whether termination is in the best interests of the children. *Id.*

Respondent argues that termination of parental rights was not in the child's best interests. However, multiple witnesses who had the opportunity to examine and work with the child testified at the termination trial that she was in need of consistency and stability, which respondent was unable to provide. Testimony regarding respondent's parenting ability was mixed at best. The case presented the trial court with a very difficult decision because respondent had complied with the service plan, was making progress, and generally did well during parenting times. However, there was evidence that respondent would be unable to properly care for the child without significant help from others, and she did not have the help. The trial court concluded that given the child's mental health issues, she needed to have a permanent and stable environment. Under the circumstances, the trial court's finding that it would be in the child's best interests to terminate respondent's parental rights was not clearly erroneous.

The trial court did not err when it terminated respondent's parental rights.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ Patrick M. Meter  
/s/ Michael J. Kelly