

STATE OF MICHIGAN
COURT OF APPEALS

In re B. S. MICHELSEN, Minor.

UNPUBLISHED
June 14, 2016

No. 331193
Kalamazoo Circuit Court
Family Division
LC No. 2004-000394-NA

Before: JANSEN, P.J., and O'CONNELL and RIORDAN, JJ.

PER CURIAM.

Respondent-mother, R. Holkeboer, appeals as of right the trial court's order terminating her parental rights to her minor child under MCL 712A.19b(3)(c)(i) (the conditions that led to the adjudication continue to exist), (c)(ii) (failure to rectify other conditions that would cause the child to come within the court's jurisdiction), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood of harm to the child if returned to the parent's home). We affirm.

I. FACTUAL BACKGROUND

Holkeboer was previously involved in services through the Department of Health and Human Services (the Department). Holkeboer's older children, not including the child involved in this appeal, were eventually returned to her care in 2006. The child in this appeal was born in 2011. In 2014, Children's Protective Services (CPS) investigated a complaint that Holkeboer was passed out while caring for the child. During the subsequent investigation, Holkeboer tested positive for amphetamines.

Holkeboer eventually admitted that she had broken her sobriety and had been regularly using methamphetamine for about six months. Throughout the pendency of this case, Holkeboer continued to test positive for amphetamines when she participated in testing. The children's foster care worker, Kristy Duda, testified that she had arranged substance abuse services for Holkeboer. Holkeboer participated in a substance abuse evaluation in May 2014 and received a treatment plan in June 2014. However, according to Duda, Holkeboer refused to attend group treatment and did not participate in the substance abuse treatment plan.

Duda also reported that Holkeboer was involved in a domestically violent relationship and that Holkeboer occasionally slept in her van because she was afraid of her ex-boyfriend. Duda testified that, regarding the ex-boyfriend, Holkeboer was not in a relationship with him but had a "high consistent involvement with him" during the pendency of the case. Duda also observed Holkeboer's car at the ex-boyfriend's home, and Holkeboer was at the ex-boyfriend's

home when it was raided for drugs. Duda encouraged Holkeboer to acquire a personal protection order (PPO), but Holkeboer did not do so. Duda also recommended safety plans, such as hiding a cell phone and moving into a domestic violence shelter, but there was no indication Holkeboer did those things. Finally, Duda offered family counseling, but Holkeboer refused to participate.

The trial court ultimately terminated Holkeboer's parental rights, finding that the evidence supported the statutory grounds previously stated and that terminating her rights was in the children's best interests. Holkeboer now appeals, contesting the sufficiency of her services.

II. STANDARD OF REVIEW

We review for clear error whether a trial court engaged in reasonable efforts to reunify a child with his or her parent. *In re Mason*, 486 Mich 142, 152, 166; 782 NW2d 747 (2010). A finding is clearly erroneous if, after reviewing the entire record, we are definitely and firmly convinced that the trial court made a mistake. *Id.* A parent should raise a challenge to the sufficiency of his or her service plan well before the termination hearing. *In re Terry*, 240 Mich App 14, 27; 610 NW2d 563 (2000); *In re Hicks/Brown*, ___ Mich App ___, ___; ___ NW2d ___ (2016); slip op at 9-10.

III. ANALYSIS

Holkeboer contends that the trial court erred by terminating her parental rights because the Department did not engage in reasonable efforts to reunify her with her children. We disagree.

A parent has a fundamental liberty interest in the care and custody of his or her children under the Fourteenth Amendment of the United States Constitution. *Santosky v Kramer*, 455 US 745, 753; 102 S Ct 1388; 71 L Ed 2d 599 (1982). Accordingly, 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); *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). The Department's failure to provide services implicates the sufficiency of the evidence surrounding the termination. See *In re Rood*, 483 Mich 73, 98; 763 NW2d 587 (2009) (opinion by CORRIGAN, J.); *Hicks/Brown*, ___ Mich App at ___; slip op at 10. However, "[w]hile 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 242, 248; 824 NW2d 569 (2012).

In this case, the Department offered Holkeboer a variety of services to attempt to rectify her substance abuse problem, including services designed to protect Holkeboer from the abusive ex-boyfriend to whom her substance abuse was tied. Duda testified that she recommended Holkeboer take advantage of a PPO, a domestic violence shelter, and prepaid emergency phone. There was no indication that Holkeboer did any of those things. Duda also testified about the substance abuse services offered, which included a substance abuse evaluation, treatment plan, and a variety of forms of treatment. Holkeboer failed to take advantage of or participate in the substance abuse services that the Department offered. Accordingly, we conclude that the Department made reasonable efforts to reunify Holkeboer with her child, and the trial court had sufficient evidence to support terminating Holkeboer's parental rights.

We affirm.

/s/ Kathleen Jansen
/s/ Peter D. O'Connell
/s/ Michael J. Riordan