

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of Z. DOLESHAL, Minor.

UNPUBLISHED
December 12, 2013

No. 316448
Kent Circuit Court
Family Division
LC No. 11-052736-NA

Before: SAWYER, P.J., and MARKEY and STEPHENS, JJ.

PER CURIAM.

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

Respondent first claims that her trial counsel was ineffective for failing to request an adjournment of the second day of the termination hearing after she was delayed from arriving at the courthouse because her vehicle was caught in a flood. We apply by analogy the principles of effective assistance of counsel developed in the context of criminal law to child protective proceedings. *In re CR*, 250 Mich App 185, 197-198; 646 NW2d 506 (2002). Because respondent's claim of ineffective assistance of counsel claim is unpreserved, we review it for mistakes apparent on the record. *People v Rodriguez*, 251 Mich App 10, 38; 650 NW2d 96 (2002). To prevail on her claim, respondent must show that her trial counsel's performance fell below an objective standard of reasonableness and that counsel's representation so prejudiced respondent that but for counsel's unprofessional errors, there is a reasonable probability the result of the proceeding would have been different. *In re CR*, 250 Mich App at 198

Here, at the beginning of the second day of the termination hearing, respondent's counsel informed that trial court that respondent was stranded at her home. The trial court asked respondent's counsel whether she had any objection to resuming the hearing without respondent. Counsel responded that she did not have an objection to starting the second day of the hearing without respondent. Approximately three hours and ten minutes later, respondent was finally able to make it to the courthouse. She subsequently explained that her vehicle was caught in a flood, and the trial court fully accepted and believed her explanation.

Respondent now argues on appeal that her counsel's failure to request an adjournment or a delay in the hearing so that she could be present fell below an objective standard of reasonableness. Assuming without deciding that counsel's performance fell below an objective standard of reasonableness, respondent fails to show that she was prejudiced by her temporary absence from the termination hearing. The record shows the trial court did not clearly err in

finding statutory grounds for termination of respondent's parental rights under MCL 712A.19b(3)(c)(ii), (g), and (j). The trial court also did not clearly err in finding that termination was in the minor child's best interests. Respondent offers no explanation for how her presence would have affected the evidence introduced in her absence. Accordingly, because respondent has not shown a reasonable probability that the result of the termination hearing would have been different if counsel had obtained an adjournment of the hearing until she arrived at court, she cannot prevail on her ineffective assistance of counsel claim. *In re CR*, 250 Mich App at 198.

Respondent also argues that the trial court erred in finding statutory grounds for termination under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). A trial court's findings that a ground for termination has been established and that termination is in the child's best interests are generally reviewed under the clearly erroneous standard. MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

To terminate parental rights, a trial court must find the existence of at least one statutory ground for termination in MCL 712A.19b has been met by clear and convincing evidence. *In re Trejo Minors*, 462 Mich at 355, 360.

Regarding MCL 712A.19b(3)(c)(i), the first dispositional order was entered on December 12, 2011. At the time of adjudication, the trial court found a single statutory ground for jurisdiction under MCL 712A.2(b). The trial court found that respondent's home or environment was an unfit place by reason of neglect or other reasons because of respondent's lack of supervision over the minor child. The termination hearing was held on April 17 and 18, 2013, well over 182 days after the first dispositional order. In its opinion, the trial court incorrectly stated that the condition that led to the adjudication in this case was respondent's emotional stability and mental health. The trial court went on to find that respondent's poor emotional stability and mental health continued to exist at the time of the termination hearing and that, therefore, there was a ground for termination under MCL 712A.19b(3)(c)(i). Because the trial court's finding that the condition that led to the adjudication continued to exist was actually based on a condition that *did not lead to the adjudication*, we conclude that the trial court's finding under MCL 712A.19b(3)(c)(i) was clearly erroneous. *In re Mason*, 486 Mich at 152. But, reversal is not required if another statutory ground for termination is established by clear and convincing evidence because only one is necessary. *In re Trejo Minors*, 462 Mich at 360.

Regarding MCL 712A.19b(3)(g), the trial court found that respondent failed to provide proper care and custody for the minor child and that there was no reasonable expectation that she would be able to provide proper care and custody within a reasonable time considering the minor child's age. The trial court reached this conclusion based on three factual findings. First, the trial court found that respondent failed to address the minor child's allegations of sexual abuse. In this case, the minor child alleged that her older brother had sexually abused her. When the minor child's allegation that her brother sexually abused her came to light, respondent's counselor tried to get respondent to discuss the issue. Respondent initially refused to believe that the minor child was sexually abused. However, respondent eventually became "very, very sure" that another man perpetrated the abuse. Respondent never addressed the minor child's allegations of sexual abuse. Second, the trial court found that respondent frequently struggled

with her finances. Finally, the trial court reiterated an expert witness' opinion that because of respondent's mental health, she was three to five years from being able to provide for the minor child. All of these findings were supported by the record and established that respondent failed to provide proper care and custody and that there was no reasonable expectation that she would be able to do so within a reasonable time. Thus, we conclude that the trial court did not clearly err in finding a statutory ground for termination of respondent mother's parental rights under MCL 712A.19b(3)(g). MCR 3.977(K); *Trejo Minors*, 462 Mich at 356-357, 360.¹

In reaching our conclusion, we note that respondent mother argues that she did not receive sufficient services to address the minor child's sexual abuse. We disagree. While the Department of Human Services has a responsibility to make reasonable efforts to provide services with the goal of reunification, there is also a responsibility on the part of a respondent not only to participate in the services that are offered but to demonstrate that they have sufficiently benefited from the services provided to resume parental responsibilities. *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). Our review of the record reveals that respondent mother received significant services, but failed to sufficiently benefit from the services provided to her. Respondent mother fails to show clear error based on her assertion that reasonable efforts were not made to reunify her with the minor child. MCR 3.977(K).

We affirm.

/s/ David H. Sawyer
/s/ Jane E. Markey
/s/ Cynthia Diane Stephens

¹ Because only one statutory ground for termination must be established, we decline to fully address the remaining statutory grounds for termination. Nevertheless, we have reviewed the remaining grounds and find that the trial court also did not clearly err in finding statutory grounds for termination under MCL 712A.19b(3)(c)(ii), and (j).