

STATE OF MICHIGAN
COURT OF APPEALS

In re CUNDIFF/SWARTWOOD, Minors.

UNPUBLISHED
December 15, 2015

No. 326674
Kent Circuit Court
Family Division
LC No. 13-051672-NA;
13-051673-NA;
13-051674-NA;
14-050504-NA

Before: MARKEY, P.J., and OWENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent mother appeals by right the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i) (conditions that led to the adjudication continue to exist) and (g) (failure to provide proper care and custody). We affirm.

Respondent argues that the trial court erred in finding that petitioner provided her with reasonable reunification efforts regarding her mental health and her struggles with being a victim of domestic violence. Because respondent did not object to the mental health services or domestic violence services provided to her or indicate that they were inadequate, this issue is unpreserved. *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). We review this issue for plain error affecting substantial rights. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

Generally, the petitioner seeking termination of parental rights “must make reasonable efforts to rectify conditions, to reunify families, and to avoid termination of parental rights.” *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008). An exception where aggravated circumstances exist is not present in this case. See MCL 712A.19a(2). Respondent received domestic violence/healthy relationship counseling from approximately August 2013 to February 2014. Respondent later opted to stop that counseling and to start counseling with Community Mental Health in Mecosta County. The counseling that Community Mental Health program provided respondent was not specifically tailored to address dealing with domestic violence victimization or healthy relationships. Respondent’s caseworker was informed that Community Mental Health would terminate respondent’s counseling with them if respondent’s caseworker obtained outside domestic violence victimization/healthy relationship counseling for respondent. The caseworker received assurances, however, that respondent’s counselor through Community

Mental Health was addressing respondent's trauma, anger, and feelings toward domestic violence during respondent's counseling sessions and promised to obtain a domestic violence/healthy relationship curriculum to help respondent during their counseling sessions. Respondent at one point also temporarily moved into a domestic violence shelter, but she only received two weeks of domestic violence victimization counseling through the shelter because she was initially resistant to that counseling. After respondent left the shelter, she did not continue with counseling because she did not contact her outreach worker. Respondent also successfully completed a parenting class designed to help her parent children exposed to domestic violence. The trial court was mostly concerned about the number of men the respondent was introducing to her children within a short period of time. Respondent was involved with therapy designed to help people with borderline personality disorder, but respondent did not attend that therapy after the end of September 2014. Respondent further did not attend any counseling sessions in December 2014 because she moved to another shelter, despite her caseworker's encouragement that she contact a counseling service recommended to her. Respondent participated in six counseling sessions during January and February 2015 and none in March 2015.

Thus, the evidence clearly shows that respondent received counseling and other services off and on throughout this case, but respondent changed counselors and at times did not attend her counseling sessions. "While 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." *Frey*, 297 Mich App at 248. There was no plain error in the trial court's finding that petitioner made reasonable reunification efforts regarding respondent's mental health and healthy relationship counseling. *Utrera*, 281 Mich App at 8.

Respondent also challenges the trial court's findings regarding the statutory grounds for termination and the minor children's best interests. A trial court's factual findings in terminating parental rights, including a finding that a ground for termination has been established and that termination is in a child's best interests, are reviewed for clear error. MCR 3.977(K); *Frey*, 297 Mich App at 244, 248.

To terminate parental rights, a trial court must find the existence of a statutory ground for termination in MCL 712A.19b has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). Here, the trial court found statutory grounds for terminating respondent's parental rights under MCL 712A.19b(3)(c)(i) and (g).

Regarding MCL 712A.19b(3)(c)(i), the termination hearing must be held 182 days or more after the issuance of the initial dispositional order, and the trial court must find that 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[ren]'s age[s]." Here, the termination hearing for respondent was held well over 182 after the issuance of the first dispositional order. The "conditions that led to the adjudication" that applied to all of the minor children equally at the time of their respective adjudications were respondent's issues with unhealthy relationships and emotional instability.

Respondent admitted that in 2013, she repeatedly allowed the minor children's father into her home and that their children had witnessed domestic violence. Moreover, the minor children were removed on January 31, 2014, after it came to light that a series of additional domestic incidents occurred between respondent and the children's father on September 9, 2013, November 15, 2013, and January 1, 2014. Respondent subsequently told her caseworker that domestic violence occurred in the minor children's presence and that the last physical incident that transpired between her and the children's father before she obtained the PPO against him occurred in front of the children. Therefore, respondent's struggles with domestic violence victimization were present during this case, and despite the fact that respondent apparently ended her relationship with the children's father, there is no evidence in the record that respondent completed services or successfully addressed her struggle with domestic violence victimization/healthy relationships. However, more importantly, there is no evidence in the record that respondent completed services or successfully addressed her emotional instability.

A trial court may rely on a parent's history of failing to address an issue in finding that there was no reasonable expectation that the respondent would be able to address that issue within a reasonable time. See *In re Archer*, 277 Mich App 71, 75-76; 744 NW2d 1 (2007). Given the children's ages and the amount of time and services already provided to respondent, the trial court did not clearly err in finding that there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering the children's ages. Accordingly, the trial court did not clearly err in finding a statutory ground for termination under MCL 712A.19b(3)(c)(i). MCR 3.977(K); *Frey*, 297 Mich App at 244. Additionally, while only one statutory ground for termination must be established, *id.*, the trial court did not clearly err in finding a ground for termination under MCL 712A.19b(3)(g) because the evidence supported the trial court's finding that respondent failed to provide proper care and custody for the minor children, and there was no reasonable expectation that respondent would be able to provide proper care and custody within a reasonable time considering the children's ages.

Finally, respondent challenges the best interest finding. After a trial court has established a statutory ground for termination by clear and convincing evidence, the trial court shall order termination of parental rights if it finds by a preponderance of the evidence "that termination of parental rights is in the child's best interests[.]" MCL 712A.19b(5); see *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). In this case, the trial court found by a preponderance of the evidence that it was in the minor children's best interests to terminate respondent's parental rights because of respondent's history, the lack of a parenting bond between respondent and the minor children, and the children's need for permanency. These factors were supported by the record, and were all proper for the trial court to consider. *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012).

The trial court specifically focused on respondent's ability to assess risk and her judgment regarding the children and was very clear that respondent was not seeking another abusive relationship. As the trial court so aptly put it, it was about her judgment, focus and priorities and indicated in its ruling that when considering whether there was "continued involvement in domestic violence", it found that there was no evidence of respondent being a victim of domestic violence since she cut ties with the father of her children. As this Court has previously stated,

To be clear, it would be impermissible for a parent's parental rights to be terminated solely because he or she was a victim of domestic violence. However, this termination was properly based on the fact that respondent's own behaviors were directly harming the children or exposing them to harm. *In re Plump*, 294 Mich App 270, 273; 817 NW2d 119 (2011).

Respondent, through her lack of counseling for her mental health issues, exposed her children to harm. The trial court did not clearly err in finding that termination of respondent's parental rights was in the minor children's best interests. *Id.* at 40; *Frey*, 297 Mich App at 248; MCR 3.977(H)(3)(b) and (K).

We affirm.

/s/ Jane E. Markey

/s/ Donald S. Owens

/s/ Amy Ronayne Krause