STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of ALEXANDER ROSS TIBBITT, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JACQUELINE TIBBITT,

Respondent-Appellant,

and

CHRISTOPHER TIBBITT,

Respondent.

UNPUBLISHED
January 8, 2009

No. 285873
Macomb Circuit Court
Family Division
LC No. 2006-000605-NA

Before: Zahra, P.J., and O'Connell and Fort Hood, JJ.

PER CURIAM.

Respondent Jacqueline Tibbitt appeals as of right from the court order terminating her parental rights to her minor child pursuant to MCL 712A.19b(3)(c)(*i*), (g), and (j). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent first argues that the evidence was insufficient to warrant termination of her parental rights. In order to terminate parental rights, the trial court must determine that at least one statutory ground for termination has been established by clear and convincing evidence. *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999). We review the trial court's decision for clear error. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

The trial court did not clearly err when it found that termination pursuant to MCL 712A.19b(3)(c)(*i*) had been established by clear and convincing evidence. The initial petition's allegations against respondent included claims that she had mental health and substance abuse issues, and the court ordered her to comply with a parent/agency agreement (PAA). Respondent complied only minimally with services for the next 11 months. After respondent was jailed for a probation violation, she claimed that she received proper mental

health medications and, for the first time, was able to effectively manage her mental health and substance abuse issues. However, she provided no documentation about her medication use to petitioner. Similarly, petitioner had no information regarding respondent's substance abuse treatment. Respondent failed to attend most of her outpatient appointments and did not provide a single drug or hair follicle screen requested from her. At least two letters sent to respondent requesting documentation updates were returned as unclaimed (although one letter was mistakenly sent when respondent was in jail). Therefore, the trial court did not clearly err in finding that the adjudicating conditions were not rectified by the time of the termination hearing.

There was also no reasonable likelihood that the adjudicating conditions would be rectified within a reasonable time considering the child's age. By the time of the termination hearing, the child was six years old and had been removed from the family home on two occasions, with the most recent removal lasting 17 months. Respondent's procrastination until the eleventh hour to comply with many of the PAA's requirements indicates her lack of commitment to addressing the adjudicating conditions. We acknowledge that respondent suffered from respiratory problems that prevented her from fully engaging in services for one to three months, but that did not explain her lack of progress during the remaining available time. The child should not be asked to put his development on hold so respondent can attempt to rectify her problems according to a timetable of her choosing.

Termination was also proper under MCL 712A.19b(3)(g). The evidence indicated that respondent's bipolar disorder had been untreated in the past, that respondent was involved in domestic violence episodes, that she had used cocaine in violation of her probation, and that she was suspected of using alcohol. The evidence also indicated that she failed to timely notify petitioner that the child acted out sexually after a visit with his father, who was a convicted sex offender. This evidence clearly and convincingly established that respondent failed in the past to provide proper care or custody for the minor child. Respondent was slow in her response to the obstacles that prevented her from providing proper care and custody for the child. Although she claimed that her health problems hindered her compliance, she was able to attend visitations (although she sometimes fell asleep at those visitations). Despite four referrals to parenting classes, petitioner had no evidence indicating that respondent completed those classes except for respondent's undocumented claim that she did so while in jail. Therefore, respondent's parenting skills remained an unknown quantity. The trial court did not clearly err when it found that 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.

The evidence also established that termination was applicable under MCL 712A.19b(3)(j) because respondent's mental health and substance abuse issues remained unresolved and respondent lacked a legal source of income. In addition, as the trial court noted, respondent's unstable lifestyle would place the child at risk. Her failure to comply with the PAA was evidence that the child might be at a substantial risk of harm if returned to respondent's care. MCR 3.976(E)(1). Based on this evidence, the trial court did not clearly err when it found that there was a reasonable likelihood that the child would be harmed if returned to respondent's home.

Respondent argues that the services provided by petitioner were not sufficient to assist her in overcoming the obstacles caused by her mental illness because the caseworkers merely provided phone numbers and made referrals but did not ensure that respondent understood what

was required of her. The reasonableness of services is relevant to the sufficiency of evidence for termination of respondent's parental rights. See *In re Newman*, 189 Mich App 61, 71; 472 NW2d 38 (1991). Respondent did not challenge the nature of the services provided to her at the time that the PAA was adopted or soon thereafter, so her challenge was not raised in a timely manner. See *In re Terry*, 240 Mich App 14, 26-27; 610 NW2d 563 (2000). Even if this argument were timely, it would fail because respondent does not establish that she would have fared better if the petitioner offered her other services. See *In re Fried*, 266 Mich App 535, 543; 702 NW2d 192 (2005). According to respondent, her primary obstacle was her inability to afford her mental health medications; she contends that she was first on medications for an extended period of time was when she was in jail and, thereafter, when Community Mental Health provided her assistance with her medications. However, petitioner's referrals included one to Community Mental Health, so it is unclear what more it could have done. In addition, petitioner could not be blamed for respondent's decision to try to self-medicate through the use of illegal substances.

Next, respondent argues that the trial court failed to make specific findings on the record regarding the best interests of the child. This argument fails because, under the best interests statutory provision governing at the time the termination order in this case was entered, the trial court was obligated to enter an order of termination once a statutory ground for termination had been established by clear and convincing evidence, unless the court also found that termination was clearly not in the child's best interests. MCL 712A.19b(5).[1] Therefore, the trial court in this case fully complied with MCL 712A.19b(5) when it found that termination was in the child's best interests, and no further elaboration was needed. Furthermore, the trial court did not clearly err when it made its best interests determination. During the 17-month-long protective proceeding, the child had been moved from his aunt's home to a foster home. Although the child initially missed respondent, he asked mainly about his half-brother after his move to foster care, indicating a relatively weaker bond between respondent and the child. The child's last visit with respondent had been eight months before the end of the termination trial. The child deserves permanency and stability in his life, and he cannot be asked to wait indefinitely for respondent to get her mental health and substance abuse issues under control.

Finally, respondent argues that she was denied her right to a separate hearing concerning the best interests of the child, citing *In re AMAC*, 269 Mich App 533; 711 NW2d 426 (2006). However, the *AMAC* Court did not hold that a separate best interests hearing was required. *Id.* at 537-538. In *AMAC*, termination was sought at the initial disposition, and the respondent was never afforded any opportunity to present best interests evidence. *Id.* at 539-540. In this case, respondent was provided the opportunity to present evidence concerning the child's best interests. Furthermore, the trial court specifically considered the child's best interests and went beyond the governing statutory requirement to affirmatively find that termination of respondent's parental rights was in the child's best interests. Under these circumstances, a separate best interests hearing was not required.

[1] This case was decided before the 2008 amendment to MCL 712A.19b(5) took effect on July 11, 2008. The statute now requires that the trial court make an affirmative finding that termination of parental rights is in the child's best interests before ordering termination.

Affirmed.

/s/ Brian K. Zahra
/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood