

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BTB and SAB, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

WILLIAM BULL,

Respondent-Appellant,

and

RENEE BULL,

Respondent.

UNPUBLISHED

April 17, 2001

No. 229736

Newaygo Circuit Court

Family Division

LC No. 00-004749-NA

Before: Hoekstra, P.J., and Whitbeck and Cooper, JJ.

PER CURIAM.

Respondent-appellant William Bull appeals as of right from the family court's order terminating his parental rights to his adopted minor son, BTB, and his biological minor daughter, SAB. Respondent Renee Bull pleaded no contest to the Family Independence Agency's (FIA) allegations that she abused and neglected her children. She subsequently relinquished her parental rights to BTB and SAB, both of whom are her biological children, and does not appeal. We affirm.

I. Basic Facts And Procedural History

The Bull family has a longstanding history with the FIA. The FIA originally petitioned the family court to terminate Renee Bull's parental rights to her two older children, RC and CS, because of medical neglect, physical neglect, inadequate parenting skills, and an inability to maintain housing. The family court terminated her parental rights to RC and CS in 1991. When she met William Bull and gave birth to BTB¹ and SAB following that decision, the FIA offered

¹ Renee Bull evidently was pregnant with BTB when she met William Bull.

her approximately sixteen different services and programs from 1991 through 1999. These services and programs ranged from Headstart for the children to psychological counseling, legal assistance, transportation, and assistance with locating housing. Renee Bull, who reportedly has a mild form of mental retardation, participated in some, but not all of these services and case workers did not find that she had improved her parenting skills from the services and programs she did access. The extent to which William Bull was offered or participated in any of these services is not clear.

In 1996, BTB and SAB claimed that William Bull sexually abused them. Case workers “substantiated” the claims. Renee Bull originally cooperated with the case workers in keeping him out of the home. However, within four months, she indicated that she intended to allow him to return home to live with her and the children. William and Renee Bull divorced in 1998. From 1998 through January 2000, when the FIA filed the original petition in this case, Renee Bull and her children lived with a series of men who physically abused her and physically, sexually, and verbally abused her children. Some of the abuse occurred while Renee Bull was in the home and she took no action to prevent it. Even though case workers had warned her not to allow these men to stay in her home, Renee Bull stated that she did not remember these warnings and denied that these men posed a risk for her children. Nor did Renee Bull consistently provide for the children’s basic needs. For example, she did not keep enough food in her home to feed the children, when she had food she allowed the men in the home to eat it, and on a number of occasions the children had to ask other adults in the neighborhood for food.

William Bull, who denied that he sexually assaulted his children, admitted that he had almost no contact with his children during this two-year period² following his divorce and that he had not made it a priority to know what was happening to his children. He had seen or spoken with the children between twelve and twenty times since the divorce but, he claimed, more frequent visitation was impossible because he was in jail for part of the time and, when not incarcerated, Renee Bull’s parents and brother were too busy to supervise visitation as the custody order required,³ and there was an occasion when a personal protection order prevented him from having contact with the children. Moreover, he noted, Renee Bull did not have a telephone and she moved to another town without telling him. The last time William Bull definitely remembered seeing the children was one day during summer 1998 when he and his parents took the children to a Burger King for lunch. He recalled that as a fun outing. He may have also seen the children at a friend’s home in August 1999. He financially contributed to the children’s support and provided their health insurance from late 1998 through May 1999, when he lost his job. He owed approximately \$8,000 in back child support and had not given the children any birthday or Christmas presents in 1999 because he was unemployed. Nor had he provided the children with any food or clothing, though he had previously given Renee Bull

² Renee Bull told a case worker that William Bull had not seen the children in more than two years and William Bull reportedly told a case worker that he had not seen the children for four years.

³ A probation order may have also prevented William Bull from having unsupervised visitation with his children during part of this time.

small amounts of cash when she asked for it and told her to inform him if the children needed anything because he would make sure that he or his family provided for them.

The FIA was not able to locate William Bull when it filed the original petition in this case and, as a result, gave him notice of the proceedings by publication. The FIA was finally able to locate him after conducting a search on the Law Enforcement Information Network (LEIN), which indicated that he was in jail in Kent County awaiting sentencing for indecent exposure. He had been previously arrested, convicted, and incarcerated for a number of other offenses, including two other sexual offenses. This was his second offense for which he was being sentenced as a sexually delinquent person. He attributed his legal difficulties to alcohol abuse and emotional problems. Nevertheless, William Bull informed the family court that he could “guarantee” that he would be out of jail within about six months because of his plea agreement, he would not reoffend, he would abstain from drugs and alcohol, and that he understood his personal problems. He emphasized that when he was living with his children he provided for all their needs, his children knew that he loved them, and he was willing to provide them a home and make sure they had anything they needed, including counseling, when he was released. William Bull also stated that he believed returning the children to him was in their best interests because, as a child, he had also been in the foster care system, he was their father, and “being raised by your biological parent is a whole lot different and better than being raised by adoptive parents.”

At the close of the termination hearing in August 2000, the FIA asked the family court to terminate William Bull’s parental rights because there was clear and convincing evidence of his criminality, he had not contributed to his children’s support or care for two years, and there was evidence that BTB had been sexually abused. Although the petition seeking termination did not specifically cite all the statutory grounds the FIA believed the evidence supported, it suggested that the FIA was proceeding against William Bull pursuant to MCL 712.19b(3)(a)(ii), (b)(i), and (g); MSA 27.3178(598.19b)(3)(a)(ii), (b)(i), and (g).⁴

The trial court made several findings of fact when ruling on the case from the bench:

I don’t think there’s any question that over a period of in excess of two years . . . Mr. Bull has not had any type of substantial or meaningful relationship with these children from the point of even missing holiday[s]; [not] providing gifts; not contacting. Regardless off whether these excuses are proper or improper, the fact of the matter is I wouldn’t think that these children would know him. He indicated that the longest period that he’s met with them was to go to a Burger King [on] one occasion with his parents. Also, . . . he has not properly provided

⁴ The petition also referred to MCL 712.19b(3)(i); MSA 27.3178(598.19b)(3)(i), which permits termination of parental rights when there is clear and convincing evidence that “[p]arental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.” Evidently, however, this ground did not apply to William Bull because the only evidence on the record of a previous termination of parental rights involved Renee Bull’s parental rights to RC CS before William Bull even met Renee Bull.

for the support of the children or made any type of a diligent or acceptable effort relative to support these children. On top of that, given his own criminality in this situation, [his time in and out of jail and on probation] . . . essentially is what has caused the breakdown of this marriage. . . . He's absolutely in no position at this particular point in time, from the fact that he doesn't have his own personal liberty, let alone the wherewithal to even provide or to begin to provide for these children. Given these circumstances, his history which goes back substantially beyond the time of the divorce, better than two years ago and almost ignoring these children, as he would say to keep himself out of trouble. The Court would terminate his parental rights to these children. He just essentially has failed to make any type of an effort. . . . If he hadn't gotten hit with LEIN, he certainly wouldn't have been coming forward, that apparently is the only time the system has come in contact with him is when they run across him for some criminal violation, then they get a outstanding warrant for his arrest for non-support. . . .

Taken as a whole, these findings indicate that the family court terminated William Bull's parental rights under subsection (a)(ii) for abandonment and subsection (g) for failing to provide proper care and custody for the children.

II. Standard Of Review

Appellate courts review a family court's decision to terminate parental rights for clear error.⁵

III. Clear And Convincing Evidence

On appeal, first William Bull contends that there was insufficient evidence of a statutory ground to terminate his parental rights because he had testified that he would be released soon, he had provided for the children in the past, and he would provide for the children in the future. MCL 712.19b(3)(g); MSA 27.3178(598.19b)(3)(g) allows a family court to terminate parental rights if there is clear and convincing evidence that

[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.

William Bull conceded that he had provided no financial support for his children between May 1999, when he lost his job, and August 2000, when the family court terminated his parental rights. Given the deplorable conditions in which the children were living, it is clear that he also failed to provide proper care for them during this time. While some of the reasons why he failed to ensure that his children had this proper care and custody may have been out of his control, he also freely admitted that he had not made his children a priority during that time. Consequently,

⁵ *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCR 5.974(I).

even if he will be released⁶ shortly, these past failures, his lack of a definite and realistic plan for their future care, his periodic unemployment and recidivism, his ongoing alcohol and emotional problems, and the children's young ages constituted the clear and convincing evidence necessary to terminate his parental rights under subsection (g).

William Bull also contends that there was no substantial evidence that he had ever sexually abused his children other than the case worker's claim that the children's allegations had been "substantiated," implicating the sufficiency of the evidence to terminate his parental rights under MCL 712.19b(3)(b)(i); MSA 27.3178(598.19b)(3)(b)(i). He asserts that the allegations against him were false, a product of Renee Bull's vindictive nature, and she had recanted her accusations. In fact, he says, he passed a polygraph test, proving that he had not sexually abused his children and that there was no likelihood that he would abuse them in the future. Nevertheless, read carefully, the family court's statements on the record indicate that it did not rely on the evidence of sexual abuse to terminate parental rights. Thus, assuming that William Bull never sexually molested either of his children, he has failed to present a reason to reverse the family court's order.

Further, a family court needs only one statutory ground to terminate parental rights.⁷ In addition to the evidence supporting termination under subsection (g), there was clear and convincing evidence of the grounds for termination described in subsection (a)(ii). Subsection (a)(ii) permits termination if there is clear and convincing evidence that "[t]he child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period." Even assuming that William Bull correctly recalled that he had last seen his children at a friend's home in August 1999, more than ninety-one days elapsed before the FIA filed the original petition in January 2000 and, by the time of the termination hearing, it had been approximately a year since he had seen his children. There is no evidence that he ever sought their custody during this time, nor that he could have done so because he was incarcerated. Thus, even if there was no other evidence supporting termination of his parental rights, the evidence of abandonment was sufficient to support the family court's order.

IV. Best Interests

William Bull asserts that termination clearly was not in the children's best interests. Once there is clear and convincing evidence of at least one statutory ground for termination, the family court "must issue an order terminating parental rights unless there exists clear evidence, on the whole record, that termination is not in the child[ren]'s best interests."⁸ Though he has not developed a full argument on this factor in his brief on appeal, we infer from his testimony that he believes from his own experiences with foster care that being allowed to return to a biological parent or, in BTB's case, an adoptive parent is always better than having the parent-child relationship severed. We have no quarrel with the notion that biological and adoptive

⁶ He may have already been released while this appeal has been pending.

⁷ MCL 712A.19b(3); MSA 27.3178(598.19b)(3); see *In re IEM*, 233 Mich App 438, 450-451; 592 NW2d 751 (1999).

⁸ *Trejo, supra* at 354; MCL 712A.19b(5); MSA 27.3178(598.19b)(5).

parents typically provide care, emotional support, day-to-day structure, and love that is best for their children. Nevertheless, the evidence of abandonment, repeat criminal offenses, and the failure to provide appropriate care and custody for the children is clear and convincing evidence that William Bull has not and will not be likely to be the person to give these things to these children within a reasonable time considering their young ages. Thus, we do not see any evidence that the family court erred in terminating his parental rights based on the children's best interests.

Affirmed.

/s/ Joel P. Hoekstra
/s/ William C. Whitbeck
/s/ Jessica R. Cooper