

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of HANNAH MARIE-SUE
FOCKLER, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

STEVEN WOLFE,

Respondent-Appellant.

UNPUBLISHED

May 15, 2008

No. 281600

Montcalm Circuit Court

Family Division

LC No. 2006-000277-NA

Before: Jansen, P.J., and Zahra and Gleicher, JJ.

PER CURIAM.

Respondent father, Steven Wolfe, appeals as of right from the October 29, 2007, order terminating his parental rights to Hannah Marie-Sue Fockler (d/o/b 11/14/06), under MCL 712A.19b(3)(c)(ii) (other conditions exist which would lead to adjudication), (g) (failure to provide proper care and custody), and (j) (child would be harmed if returned to parent), which was entered by Montcalm Circuit Court. We affirm.

I. Standard of Review

This Court reviews decisions terminating parental rights for clear error. MCR 3.977(J). Clear error has been defined as a decision that strikes this Court as more than just maybe or probably wrong. *In re Trejo*, 462 Mich 341, 357; 612 NW2d 407 (2000). Additionally, the trial court's findings of fact may not be set aside unless they are clearly erroneous, and this Court shall give regard to the trial court's special opportunity to judge the credibility of witnesses who appeared before it. MCR 2.613(C).

II. Analysis

The minor child's mother, a minor herself, was under the court's jurisdiction in a neglect action when the minor child was born, and the conditions of the original adjudication all concerned the child's mother. She voluntarily released her rights to the child during these proceedings. Respondent was listed as the putative father on the initial petition and eventually established legal paternity.

Respondent's parental rights were terminated pursuant to MCL 712A.19b(3)(c)(ii), (g), and (j), which provide:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order and the court, by clear and convincing evidence, finds either of the following:

* * *

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The 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.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

A. Section 19b(3)(c)(ii)

The trial court did not clearly err in finding that section (c)(ii) was established by clear and convincing evidence. Respondent does not argue that he was not given notice and a hearing regarding the "other conditions," but that he was denied a reasonable opportunity to rectify the conditions because petitioner did not assist him in receiving services and because his case service plan was only in effect 119 days.

Respondent had ongoing issues of substance abuse and criminal activity. The criminal activity was both troubling in itself and because his incarcerations prevented respondent from enrolling in parenting classes and visiting Hannah. Although respondent knew the general terms of a case service plan for months before it was ordered, he continued to use marijuana and tested positive for marijuana after his case service plan was in place. Respondent committed a larceny while the case service plan was in place and violated his probation for larceny by receiving a

minor in possession conviction. The case service plan was in effect for over three months and respondent continued to commit crimes and failed to begin any of the requirements of his case service plan. Therefore, the trial court did not clearly err in finding that the other conditions that would bring Hannah under the court's jurisdiction had not been rectified after respondent was provided a reasonable opportunity to do so.¹

Petitioner is required to make reasonable efforts to rectify the conditions that caused a child's removal by providing a respondent with a case service plan. *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005); MCL 712A.18f(1), (2), and (4). Here, petitioner provided respondent with a case service plan, but did not refer respondent for a psychological evaluation or counseling services because respondent said that he might have completed a psychological evaluation for probation and that he was attending counseling as part of probation. Petitioner's reliance on respondent's statements was reasonable.

The trial court also did not clearly err in finding that there was no reasonable likelihood that these conditions would be rectified within a reasonable time. In over three months, respondent had made very little effort to begin his case service plan and had committed crimes, causing him to be in and out of jail. Respondent also did not follow the requirements of either his juvenile probation or his adult probation. Therefore, the trial court did not clearly err in finding that there was no reasonable likelihood that respondent would rectify these conditions within a reasonable time considering Hannah's very young age.

B. Section 19b(3)(g)

Also, the trial court did not clearly err in finding that respondent failed to provide proper care and custody for Hannah and that there was no reasonable likelihood that he would be able to do so within a reasonable time. Although respondent's mother and grandmother were willing to assist him with providing for Hannah, respondent had absolutely no means of providing for Hannah on his own or even contributing to her care. He also was not ready to care for an infant on his own and his incarcerations prevented him from developing a bond with Hannah through visitation and from taking a parenting class. His substance use and continued criminality also prevented him from providing Hannah with a stable home environment. Petitioner did not have the opportunity to consider placing Hannah with respondent after paternity was established because respondent was in and out of jail. Clearly, respondent failed to provide Hannah with proper care and custody.

Given that respondent had several months to prepare to provide Hannah with proper care and custody while the results of the paternity test were pending and that he had over three months after the case service plan was in effect and he made very little progress, if any, toward providing proper care and custody, the trial court did not clearly err in finding that respondent

¹ The 182-day requirement in section (c)(ii) begins to run from the initial dispositional order. The initial dispositional orders in this case were entered December 13, 2006, and respondent was ordered to take the necessary steps to establish that he was the child's legal father. More than 182 days had passed when respondent's parental rights were terminated on October 29, 2007.

could not provide proper care and custody for Hannah within a reasonable time, given her very young age.

C. Section 19b(3)(j)

The trial court found that, because of respondent's continued use of marijuana and alcohol, criminality, failure to receive mental health services, and lack of bond with Hannah, there was a reasonable likelihood that Hannah would be harmed if placed with respondent. While there is no evidence of abuse or any reason to believe that respondent would physically harm Hannah, for the reasons discussed above, we cannot conclude that the trial court clearly erred in finding that the elements of section (j) were established.

III. Conclusion

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence.

Affirmed.

/s/ Kathleen Jansen

/s/ Brian K. Zahra

/s/ Elizabeth L. Gleicher