

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of COTY MILLER GAVAL, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JOHN MILLER GAVAL,

Respondent-Appellant,

and

DANA SUE STRZALKOWSKI,

Respondent.

UNPUBLISHED

September 16, 2008

No. 284531

Macomb Circuit Court

Family Division

LC No. 2006-000508-NA

Before: Whitbeck, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Respondent John Gaval appeals as of right from a circuit court order terminating his parental rights to the minor child.¹ We affirm.

I. Basic Facts And Procedural History

Gaval and Dana Strzalkowski² are the parents of Coty Gaval, who was born in March 2002. The DHS filed an original petition for termination of both parents' parental rights in October 2006. It alleged that Gaval had a substance abuse problem and had a warrant out for his arrest. Despite that, Strzalkowski left Coty with Gaval for two weeks while she was on vacation.

¹ MCL 712A.19b(3)(a)(ii) (parent deserted child for at least 91 days without seeking custody), (c)(i) (conditions that led to adjudication continue to exist), (g) (parent failed to provide proper care or custody), and (j) (reasonable likelihood that the child will be harmed if returned to the parent).

² Strzalkowski's parental rights were also terminated, but she is not a party to this appeal.

At the time of the preliminary hearing, Gaval was in jail. The trial court authorized the petition and placed the child in foster care.

Strzalkowski later entered a no contest plea to the allegations against her in exchange for dismissal of the request for termination at the original dispositional hearing. Gaval did not attend the hearing. According to Strzalkowski, she went to his sister's house to pick him up, but he claimed that he did not have anything to wear. The trial court took jurisdiction over the child and ordered both parents to participate in services.

Gaval did not attend the dispositional hearing. The trial court continued the child in foster care and adopted the service plan for the parents. The plan included supervised visitation, parenting classes, a substance abuse assessment, a psychological evaluation and counseling if recommended, suitable housing, and employment. Because the foster care worker had not heard from Gaval and he had not been to a visit since the last hearing, the trial court suspended visitation for Gaval until he demonstrated some intent to plan for Coty.

Gaval also did not attend the first review hearing in April 2007. Gaval's attorney reported that he had sent Gaval a letter detailing the proceedings from the dispositional hearing, notifying him of the review hearing, and explaining that Gaval needed to immediately contact the attorney or DHS. The attorney had not heard from Gaval. Henrietta Davis, the foster care worker, reported that she had not had contact with Gaval since early December. According to Davis, Strzalkowski told her that Gaval was in jail due to arrearages of child support of his other children. However, Gaval's counsel stated that Gaval had been incarcerated since mid-February 2007, which did not explain his absences in December and January. The trial court discharged Gaval's counsel and continued the suspension of Gaval's visitation.

Gaval appeared at the next review hearing in July 2007. He had been released from jail on July 10. While in jail, he completed a ten-session cognitive-based substance abuse class. The trial court reinstated supervised visitation. The trial court also ordered a DNA test based on Strzalkowski's claim that Gaval had been denying paternity.

Gaval failed to appear for the permanency planning hearing in October 2007. Davis reported that she had not seen him since the last court hearing and that he had failed to appear for the DNA test on July 31.³ Davis also reported that a recent investigation revealed that Gaval had absconded from parole and that he had warrants out for his arrest. Gaval's counsel reported that he had not heard from Gaval; his letters had been returned and his phone calls went unanswered. In fact, he had only seen Gaval once since November 2006, and that was at the July 2007 review hearing. The trial court authorized the filing of a supplemental petition for termination.

The petition was filed in January 2008. It sought termination of Gaval's parental rights pursuant to MCL 712A.19b(3)(a)(ii), (c)(i), (g), and (j). At a review hearing held the same day, Davis and Gaval's counsel reported that they had not heard from Gaval. Further, Davis testified

³ Gaval apparently appeared for a test at some subsequent date because his attorney reported at the termination hearing that testing had confirmed his paternity.

that despite the fact that she had referred Gaval for parenting classes, substance abuse assessment, and a psychological evaluation, Gaval never presented any verification that he had attended any of those services. Davis testified that she had also never received any documentation that Gaval was employed. Regarding housing, Davis testified that Gaval's last known address before he absconded was with his sister in Hazel Park. Davis stated that "for at least six months or more I have known him to be absent from, he hasn't reported to his parole or probation officer." According to a background check conducted the day of the hearing, Gaval did not have a warrant out for his arrest.

Davis further testified that Gaval had not visited Coty since "right before Christmas" in December 2006, and had not called or written to the boy. Coty, in turn, had not inquired about Gaval. Davis recommended termination of Gaval's parental rights because "the conditions that led to Coty's placement continue to exist and natural father has not been involved since Coty's been in care, but the two times that he visited in December . . . 2006, and it would be in Coty's best interest" because the child had improved emotionally and mentally and was in a stable environment.

The referee found that termination was warranted under § 19b(3)(a)(ii) because Gaval "had deserted this child since the beginning of the case . . . and he had not sought custody of this child during a good portion of this time. He has not seen his child since 2006, and so certainly has not provided any care for the child during this period of time." The referee also found that termination was warranted under § 19b(3)(c)(i) because Gaval "had a history, also concerns about substance abuse issues, inability to care for the child, that he failed to protect the child while the child was in the mother's care and there were several concerns outlined by Miss Davis." The referee continued:

He was incarcerated during a good portion of this case. He may have rectified some of the conditions that existed earlier. However, as we stand today approximately a year and a half after Coty was removed, we still don't have any compliance that we can see on the Parent/Agency Agreement. There's been nothing presented today to indicate that he's addressed any of these issues that brought Coty into care. There's been no compliance on the parenting classes, with visits, with substance abuse . . . the psychological evaluation. There's no documentation of employment, housing or income and, he may have addressed the criminal history, but he has not given us anything that would indicate to me that he is prepared to be a parent to Coty. And so there's no reasonable likelihood that these conditions that exist today with regard to the parents will be rectified within a reasonable time, considering the age of Coty, and Coty's only six.

The referee additionally found that termination was warranted under § 19b(3)(g) and (j).

Regarding the child's best interests, the referee stated:

We also heard testimony from Miss Davis about Coty's care. Coty is in a foster home at this point. The testimony was that he is progressing and flourishing in this environment. That he's in a safe and stable environment and that has been beneficial to him.

He has not had any contact with his father since 2006 and so that is more than a year in this child's short time of life and so I don't believe, really, that Coty has a bond with him or knows his father or has any kind of a relationship with his father at all. And so in fact I believe that Mr. Gaval would be a stranger to Coty at this time and so I certainly believe that a (inaudible) at that (inaudible) it would be in Coty's best interest for Mr. Gaval's rights to be terminated.

II. Statutory Grounds For Termination

A. Standard Of Review

To terminate parental rights, the trial court must find that the petitioner has proven at least one of the statutory grounds for termination by clear and convincing evidence.⁴ We review for clear error a trial court's decision terminating parental rights.⁵ A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made.⁶ Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.⁷

B. Analysis

The child entered foster care in October 2006. Gaval visited him twice in December 2006, and then ceased all contact with the child, even during periods when he was not incarcerated. Further, although the agency made referrals for services, Gaval failed to participate and thus never demonstrated that he had rectified his substance abuse problem and was able to provide proper care and custody. A parent's failure to comply with the parent/agency agreement is evidence of a parent's failure to provide proper care and custody for the child and can be a valid indication of neglect.⁸ We, therefore, conclude that the trial court did not clearly err in finding that statutory grounds for termination of Gaval's parental rights were established by clear and convincing evidence.

III. Best Interests Determination

A. Standard Of Review

Once a petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court shall order termination of parental rights, unless the trial court finds from evidence on the whole record that termination is clearly not in the child's best

⁴ MCL 712A.19b(3); *In re Sours Minors*, 459 Mich 624, 632-633; 593 NW2d 520 (1999).

⁵ MCR 3.977(J); *In re Trejo Minors*, 462 Mich 341, 355-357; 612 NW2d 407 (2000); *Sours*, *supra* at 633.

⁶ *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

⁷ MCR 2.613(c); *In re Miller*, 433 Mich 331, 337; 455 NW2d 161 (1989).

⁸ *JK*, *supra* at 214; *Trejo*, *supra* at 360-363, 361, n 16.

interests.⁹ There is no specific burden on either party to present evidence of the children's best interests; rather, the trial court should weigh all evidence available.¹⁰ We review the trial court's decision regarding the child's best interests for clear error.¹¹

B. Analysis

Given the lack of evidence regarding any bond between Gaval and the child, we conclude that the evidence did not show that the child's best interests precluded termination.

In sum, we conclude that Gaval's parental rights were properly terminated.

Affirmed.

/s/ William C. Whitbeck

/s/ Richard A. Bandstra

/s/ Pat M. Donofrio

⁹ MCL 712A.19b(5); *Trejo, supra* at 350.

¹⁰ *Trejo, supra* at 354.

¹¹ *Id.* at 356-357.