

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JRG, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

RICHARD BELLEW,

Respondent-Appellant,

and

JOSEPH HEEREN,

Respondent.

UNPUBLISHED

February 2, 2010

No. 292873

Muskegon Circuit Court

Family Division

LC No. 08-036989-NA

Before: Beckering, P.J., and Markey and Borrello, JJ.

PER CURIAM.

Respondent Richard Bellew appeals by right from the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(g) and (j). We affirm.

The child was taken into temporary court custody and placed in foster care because his mother, Kathleen Bolduc, was unable to provide stable housing, heat, food, and proper supervision for her children. At the time the original petition was filed, Bolduc was being evicted from her home, she owed money to the power company, and the children were complaining of hunger because of a lack of food in the home. Bolduc had been working with Protective Services for over a year to improve the family's condition. Respondent did not have custody of the child and was not providing for the child when he was removed from Bolduc's custody. Respondent was not a consistent parenting figure in the child's life because of his criminal behavior and incarcerations. A petition for the termination of respondent's parental rights was filed because respondent was incarcerated for most of the case and had failed to provide support for his child.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). The trial court must

also find that termination of respondent's parental rights is in the child's best interests. MCL 712A.19b(5). This Court reviews a trial court's factual findings in an order terminating parental rights for clear error. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A finding of fact is clearly erroneous, if although there is evidence to support it, the reviewing court is left with the definite and firm conviction that a mistake has been made. *Id.*

Respondent failed to provide proper care and custody for his child, and there was no reasonable expectation that he would be able to provide proper care and custody within a reasonable time considering the child's age pursuant to MCL 712A.19b(3)(g). Respondent asserts that the mother's actions and neglect alone brought the child into care. Respondent is correct in his assertion that the majority of the allegations in the original petition concerned Bolduc, and the trial court asserted jurisdiction over the child based upon Bolduc's plea. However, respondent fails to realize that the child had to be placed in foster care because respondent was incarcerated and unable to provide custody for his son when he was removed from Bolduc's care. Respondent does not acknowledge that he had an independent duty as the child's father to provide him with a safe and stable home.

The record indicates that respondent was at fault for the lack of relationship with the child in his early years. At that time, respondent was a minor, Bolduc began a relationship with Joseph Heeren when she was pregnant with the child, and Heeren testified that he and Bolduc did not want the child to have a relationship with respondent. However, this situation changed. Respondent became an adult, and Bolduc decided that the child should have a relationship with him. In spite of this change in situation, respondent was not a consistent part of the child's life or a parent that provided proper care and custody for his child.

Respondent visited with the child about five to seven times a month whenever he was not incarcerated because he was often in and out of jail. The child spent Christmas of 2007 with respondent. Respondent very minimally contributed to the child's care. Respondent had a job for about two months around June 2007, and at that time, he made one child support payment of \$50. In addition, he supplied about \$1,000 in provisions for the child throughout his life. Thus, there was clear and convincing evidence for the trial court to conclude that respondent had failed to provide proper care and custody for the child.

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. Respondent had spent his life since he was 13 years old engaged in criminal activity, resulting in frequent incarceration. At the termination hearing, respondent was scheduled for release on February 12, 2010, so he was unavailable to parent the child for another eight months. After his release from prison, respondent wanted the child to move in with him and his wife. However, respondent and his wife had only been together for about three or four months before he was incarcerated and the child did not know respondent's wife at all. Although respondent had never been employed consistently, he testified that he had a job at his father's Speedy Lube upon his release. Respondent testified that he had previously worked maybe eight or nine months in his life.

Considering respondent's criminal history of nine years, his lack of an employment history, and his failure to properly provide for the child, the trial court did not clearly err in concluding that respondent failed to provide proper care and custody for his child and there was

no reasonable expectation that he would be able to provide proper care and custody within a reasonable time considering the child's age.

There was also clear and convincing evidence of a reasonable likelihood, based on the conduct or capacity of respondent, that the child would be harmed if he was returned to respondent's home. At the time the child was taken into temporary court custody, respondent relied on Bolduc for the child's proper care and custody. By the time the child was removed from Bolduc's care, Bolduc had been participating in petitioner's services for over a year. Bolduc did not have money for rent, food, or heat. At the adjudication, Bolduc admitted that the child missed over a month and a half of school because of scabies and delayed medical care. There is no evidence that respondent made any attempts to provide for the child during this time. Moreover, respondent did not even know that the child was in foster care until he saw the child at mall when the child was with his foster mother.

The evidence established that the reason respondent was not properly providing for the child was because of his criminal behavior and frequent incarcerations. Respondent testified that he had been engaged in criminal behavior since he was 13 years old, before the child was born. Respondent's crimes included breaking and entering a motor vehicle, second-degree home invasion, assault and battery, driving on a suspended license, breaking and entering a building, larceny of a motor vehicle, and larceny of a firearm. At the termination hearing, the child could not be returned to respondent's care for eight more months because respondent was incarcerated.

As a result of respondent's criminal behavior and incarcerations, respondent never led a normal adult life, including obtaining and retaining employment and supporting himself and his child. Considering this evidence, the trial court did not clearly err in concluding that there was a reasonable likelihood, based on the conduct or capacity of respondent, that the child would be harmed if he was returned to respondent's home.

The trial court properly terminated respondent's parental rights because clear and convincing evidence supported that termination was in the child's best interests. Respondent asserted that if the child waited just eight more months for his release, respondent would be ready and willing to provide and care for the child. But, there was no evidence to support respondent's assertion. Respondent had never cared for the child on a full-time basis. At most, the child spent a weekend with respondent here and there over the course of his life. At the termination hearing in June 2009, respondent had not seen the child since January 2008. Considering that respondent had been engaged in criminal behavior for the past nine years with frequent incarcerations, it was unlikely that upon his release, respondent was going to be ready to provide the child with proper care and custody while working at a new job and living with a new wife. The trial court properly concluded that termination was in the child's best interests.

Respondent argues that he was deprived of counsel until the termination hearing, which led to the trial court overlooking his interests for the majority of the case, and as a result, to termination. An indigent respondent has the right to appointed counsel in parental rights termination proceedings. MCL 712A.17c(5); MCR 3.915(B)(1)(b). However, a hearing without counsel can constitute harmless error where testimony is later taken at the termination hearing with counsel present. *In re Hall*, 188 Mich App 217, 222-223; 469 NW2d 56 (1991).

Respondent has failed to show that he was harmed by the trial court's failure to appoint him counsel before the termination hearing. In fact, other than asserting that he was not appointed counsel before the termination hearing, respondent fails to offer any explanation of how he was harmed or offer any legal support for his position. It is insufficient for respondent merely to announce his position and then leave it up to this Court to rationalize the basis for his claims and search for authority to sustain or reject his position. *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

Respondent participated in the hearings by telephone because he was incarcerated. The proofs taken at the hearings preceding the termination hearing all pertained to Bolduc because she was the only parent participating in a treatment plan. Respondent was unable to participate in a treatment plan or provide for the child's needs. Respondent was appointed counsel when the petition for the termination of his parental rights was filed and was ably represented when he participated in the termination hearing by speakerphone. His attorney presented respondent's testimony and respondent's plan for the child's care once he was released from prison. However, petitioner presented clear and convincing evidence to support termination of respondent's parental rights. Accordingly, any error in failing to appoint counsel for respondent until March 2009 was harmless because respondent has failed to demonstrate and this Court has failed to discern that the results of the case would have been different had he been represented at the prior hearings. *In re Hall, supra* at 223.

We affirm.

/s/ Jane M. Beckering
/s/ Jane E. Markey
/s/ Stephen L. Borrello