

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
July 13, 2010

In the Matter of N. DAVIS-KILPATRICK, Minor.

No. 295387
Jackson Circuit Court
Family Division
LC No. 08-002614-NA

In the Matter of N. DAVIS-KILPATRICK, Minor.

No. 295401
Jackson Circuit Court
Family Division
LC No. 08-002614-NA

Before: TALBOT, P.J., and FITZGERALD and DAVIS, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the trial court's order terminating their parental rights to their minor child under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

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). Once the petitioner has established a statutory ground for termination by clear and convincing evidence, and the court finds that termination is in the best interest of the child, the trial court must order termination of parental rights. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich. 341, 355, 612 NW2d 407 (2000). There is an exception to this rule; the court is not required to terminate parental rights if the petitioner has not made reasonable efforts to reunify the child with the parents. *In re Rood*, 483 Mich 73, 105; 763 NW2d 587 (2009), citing MCL 712A.19a(6)(c) (additional internal cites omitted).

The trial court's decision, including the best interest determination, is reviewed under the clearly erroneous standard. MCR 3.977(J); *In re Rood*, 483 Mich at 90-91. "A finding is 'clearly erroneous' [if] although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Rood*, 483 Mich at 91, quoting *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). In applying the clearly erroneous standard, this Court should recognize the special opportunity the trial court

has to assess the credibility of the witnesses. *In re Miller*, 433 Mich at 337, citing MCR 2.613(C).

The trial court did not clearly err in holding that the statutory grounds for termination of respondent father's parental rights were established by clear and convincing evidence under MCL 712A.19b(3)(c)(i), (g), and (j), nor in determining that termination of both respondents' parental rights was in the child's best interests.

The original petition requesting removal of the child alleged that both respondents suffered from mental health problems and drug addiction, that respondent father had physically attacked respondent mother, and that she married respondent father a couple of weeks later. Both respondents admitted the allegations in an amended petition and initially planned to voluntarily relinquish their parental rights to their child, and both changed their minds about that decision more than once during the pendency of this case.

Respondent father dropped out of all services in June 2009, more than four months before the termination hearing began, never to begin them again. Respondent mother went from no participation to participating in all of petitioner's services and several others that she self-initiated against the counsel of both petitioner and the Recovery Court. She also enrolled in college at the same time. Respondent mother never complied fully with services, including drug drops, and had a positive drug test in July 2009. She lied about it twice before admitting that she had voluntarily used cocaine after a second positive drug test a few days later. Her services were increased, but she was explicitly told that, because her child had been in foster care for almost one year, *any* further noncompliance would cause petitioner to change its goal from reunification to adoption. Later that month, respondent mother left the state and missed several scheduled services, including a court date. Petitioner sought termination of both respondents' parental rights. After a termination hearing, the lower court terminated both respondents' parental rights.

Respondent father argues that termination of his parental rights was clear error because petitioner failed to make reasonable attempts to reunify the family by failing to provide him with appropriate services. Under most circumstances, including those present here, the statute requires the state to make "[r]easonable efforts to reunify the child and family." *In re Rood*, 483 Mich at 100, quoting MCL 712A.19a(2). The adequacy of the state's attempts to provide services "may bear on whether there is sufficient evidence to terminate a parent's rights." *Id.* at 89, citing *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). This is true because, if the state does not provide adequate services to a parent, the trial court may lack the evidence by which to decide whether the parent, if provided with appropriate services, would have been able to rectify the conditions that led to adjudication or to provide proper care and custody, within a reasonable time considering the child's age. *Id.* at 115-118. Therefore, if the state fails to make reasonable efforts, the trial court "is not required to terminate parental rights." *Id.* at 105, citing MCL 712A.19a(6)(c) (additional internal cites omitted).

The state's efforts were reasonable in this case. Respondent father had ample opportunity to demonstrate his ability and willingness to parent by participating in, and benefiting from, the many services provided by petitioner in an effort to facilitate reunification. Substantial clear and convincing evidence established that petitioner provided respondent father with many services, including the AIM program to help him to stop committing domestic violence, anger management classes, drug abuse treatment, and a parenting class. The trial court had no need to

resort to conjecture about whether respondent father would be able to provide the minor child with proper care and custody within a reasonable time, because he stopped all services in June 2009 and never began again. See *In re Rood*, 483 Mich at 89. The court had no evidence that he was drug free or that he had completed treatment to address his propensity toward domestic violence. The court did not clearly err in holding that petitioner had established statutory grounds for termination of respondent father's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j).

Respondent mother does not argue that petitioner failed to prove grounds for termination of her parental rights. Both respondents argue that the termination of their respective parental rights was not in the child's best interests and violated their due process rights.

Respondent father appears to argue that it was not in the child's best interests to terminate his parental rights because he was willing to do whatever it took to keep his family together, and the court should have taken advantage of that opportunity before violating his Fourteenth Amendment right to his child. He argues further that he was always appropriate with the child, he provided for her needs during his parenting time, and he simply made a mistake in stopping services. Respondent mother contends that it was not in the child's best interests to terminate her parental rights because she has a fundamental liberty interest in raising her child and because she is not as bad a parent as unspecified others whose parental rights have been terminated only after "multiple opportunities" to improve, which she did not have.

Whether the court's decision to terminate parental rights violated respondents' due process rights is a question of constitutional law that is reviewed de novo. *In re Rood*, 483 Mich. at 91. Because the constitutional issue was not preserved, the review is for plain error affecting substantial rights. *Wolford v Duncan*, 279 Mich App 631, 637; 760 NW2d 253 (2008). Respondents' constitutional arguments fail. "Once the petitioner has presented clear and convincing evidence that persuades the court that at least one ground for termination is established under subsection 19b(5), the liberty interest of the parent no longer includes the right to custody and control of the children." *In re Trejo*, 462 Mich at 355 (internal citation omitted). In other words, once petitioner established a statutory ground for termination of each respondents' parental rights, the state's interest in protecting their child trumped any constitutional interest either once had in raising that child. See *id.* at 356.

Respondents' remaining arguments regarding the best interest determination are equally unavailing. "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). See also *In re Hansen*, 285 Mich App 158, 165; 774 NW2d 698 (2009). A trial court may consider evidence on the whole record in making its best interest determination. *In re Trejo*, 462 Mich at 353.

Here, the evidence established that both respondents were mentally ill, noncompliant with medication, addicted to cocaine, and involved in repeated domestic violence, both before the removal of the minor child and after respondent mother relapsed in early July 2009. Both vacillated between wanting to fight to get their daughter back and simply giving up because recovery was difficult and there was no guarantee of success. Respondent father characterizes his decision to stop services as "a mistake," but he cites no case law to support his apparent

position that *why* he stopped services is relevant in any way to the determination of a child's best interest. The evidence clearly established that he was incapable of parenting his daughter full time. He could not even manage his own affairs without respondent mother or his sister to make his appointments for him.

Respondent mother never stopped participating in services completely, but she did not comply with petitioner or the court when they directed her to deal with her problems in an organized, focused manner. And she never fully complied with petitioner's services, even before she was caught using cocaine twice in July 2009. She failed to provide drug screens on multiple occasions and could have had cocaine in her system at any or all of those times. Respondent mother's claim that she was drug-free was not credible because both her psychological profile and the court's observation of her testimony established that she lies whenever she believes it is beneficial to do so. Moreover, respondent mother cites no case law to show that it is relevant to a best interest determination whether courts have treated other respondents more leniently.

The minor child was thriving in her foster placement. After 16 months of assistance, both respondents remained incapable of providing the minor child with the permanence and stability that she needed. The trial court did not clearly err in holding that it was in the child's best interests to terminate respondents' parental rights.

Affirmed.

/s/ Michael J. Talbot
/s/ E. Thomas Fitzgerald
/s/ Alton T. Davis