STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
September 23, 2010

In the Matter of A. R. HUDSON and T. J. YOUNGER, JR., Minors.

No. 296685
Genesee Circuit Court
Family Division
LC No. 07-122851-NA

In the Matter of A. R. HUDSON, Minor.

No. 296793
Genesee Circuit Court
Family Division
LC No. 07-122851-NA

Before: WILDER, P.J., and CAVANAGH and M. J. KELLY, JJ.

PER CURIAM.

In Docket No. 296685, respondent Huddleston appeals as of right from a circuit court order terminating her parental rights to the minor children, apparently pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). In Docket No. 296793, respondent Hudson appeals as of right from the same circuit court order, which also terminated his parental rights to A.R., apparently pursuant to MCL 712A.19b(3)(a)(ii), (c)(i), (c)(ii), (g), (h), and (j). We affirm the termination of respondent Huddleston's parental rights in Docket No. 296885, reverse the termination of respondent Hudson's parental rights in Docket No. 296793, and remand for further proceedings with respect to respondent Hudson.

Both respondents argue that the trial court erred in finding that a statutory ground for termination was established by clear and convincing evidence. Although the trial court did not specify the statutory basis or bases for its order, contrary to MCR 3.977(I)(3), it appears that the court relied on the grounds requested in the supplemental petition, which requested termination of respondent Huddleston's parental rights pursuant to §§ 19b(3)(c)(i), (c)(ii), (g), and (j), and requested termination of respondent Hudson's parental rights pursuant to §§ 19b(3)(a)(ii), (c)(i), (c)(ii), (g), (h), and (j).

We agree that clear and convincing evidence supported termination of respondent Huddleston's parental rights to A.R. Hudson under §§ 19b(3)(c)(ii), (g), and (j), and supported termination of her parental rights to T.J. Younger under §§ 19b(c)(i) and (j). The evidence showed that respondent Huddleston had a serious substance abuse problem that had been treated

when A.R. first entered foster care in 2007. Respondent Huddleston thereafter relapsed and was using cocaine when A.R. again entered foster care in July 2008, and when T.J. entered foster care in September 2008. Respondent Huddleston was noncompliant with services that were provided to treat her addiction and, at the February 2010 termination hearing, admitted that she was not ready to resume custody of the children because "I'm not fully recovered of my cocaine addiction yet." Respondent Huddleston's unresolved substance abuse problem and noncompliance with other services supports termination under the cited statutory grounds. Therefore, any error in relying on the additional statutory grounds for termination that were cited in the petition was harmless. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

With respect to the children's best interests, the trial court applied an incorrect legal standard when it determined that termination of respondent Huddleston's parental rights was "clearly not contrary to th[e] children's best interests." MCL 712A.19b(5) formerly provided that once a court found a statutory basis for termination, it "shall order termination of parental rights . . . unless the court finds that termination of parental rights to the child is clearly not in the child's best interests." However, the statute was amended by 2008 PA 199, effective July 11, 2008, to require the court to affirmatively find that termination of parental rights is in the child's best interests. Nonetheless, respondent Huddleston does not challenge the trial court's reliance on the pre-amendment version of § 19b(5), and the record clearly shows that termination of respondent Huddleston's parental rights was in the children's best interests. A.R. had been in foster care for all but three months of his life and T.J. had been in foster care all of his life. Respondent Huddleston had not made any progress in overcoming her substance abuse problem and the children were no closer to being returned to her care than they had been when they were originally removed approximately 18 months before the hearing. Under the circumstances, the evidence clearly established that termination of respondent Huddleston's parental rights was in the children's best interests and the trial court's reliance on an erroneous legal standard was harmless. MCR 2.613(A).

Turning to respondent Hudson, we conclude that the trial court clearly erred in finding that termination was warranted under any of the statutory grounds alleged in the petition. The main issues concerning respondent Hudson were his criminal history and the fact that he had been continuously incarcerated since A.R. entered foster care in July 2008. Termination was not warranted under § 19b(3)(a)(ii) because there was no evidence that respondent Hudson intentionally or willfully absented himself from the child's life. See *In re B & J*, 279 Mich App 12, 18-19 n 3; 756 NW2d 234 (2008).

Termination was not warranted under § 19b(3)(c)(ii) because petitioner did not present any evidence of conditions apart from those leading to the adjudication relative to respondent Hudson that would have caused A.R. to come within the court's jurisdiction.

Termination was not warranted under § 19b(3)(j) because there was no evidence that respondent had ever committed a crime against, or had otherwise harmed, A.R. or another child. See *In re Mason*, 486 Mich 142, 165; 782 NW2d 747 (2010).

Finally, termination was not warranted under §§ 19b(3)(c)(i), (g), or (h). Despite petitioner's failure to offer services to respondent after A.R. entered foster care in July 2008, there was evidence that respondent completed parenting classes and anger management classes

in prison and also participated in substance abuse classes. He had arranged for a job upon his release from prison, which was due to occur in less than two weeks after the termination hearing. Such evidence indicated that respondent's incarceration would be rectified, and that respondent would be available to plan for the child and provide custody within a reasonable time. See *In re Mason*, 486 Mich at 164-165. See, also, *In re Kleyla*, ___ Mich App ___; ___ NW2d ___ (Docket No. 294776, issued July 15, 2010), slip op at 5-6. Thus, the trial court clearly erred in terminating respondent Hudson's parental rights to A.R. Accordingly, we reverse the order terminating respondent Hudson's parental rights to A.R. and remand for further proceedings with respect to respondent Hudson.

Affirmed in part, reversed in part, and remanded for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ Kurtis T. Wilder
/s/ Mark J. Cavanagh
/s/ Michael J. Kelly