

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
September 30, 2010

In the Matter of J. J. CORBIN, Minor.

No. 296397
St. Clair Circuit Court
Family Division
LC No. 04-000586-NA

Before: GLEICHER, P.J., and ZAHRA and K. F. KELLY, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from a circuit court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(g) (failure to provide proper care or custody) and (j) (the child is likely to be harmed if returned to the parent's home). We affirm.

The trial court did not clearly err in finding that § 19b(3)(j) was established by clear and convincing legally admissible evidence. MCR 3.977(E)(3) and (K); *In re Utrera*, 281 Mich App 1, 16-17; 761 NW2d 253 (2008). The child had been in and out of foster care since his birth in 2004, in part because of the mother's mental health and substance abuse problems. Respondent was the child's appointed physical custodian. Despite knowing the risk of harm the mother posed to the child because of her history of prior terminations, her history of unstable housing, and her mental health and substance abuse issues, respondent abandoned his obligations to the child and allowed the mother to assume physical custody and did so at a time when she had just been released from a psychiatric facility and was in the early stages of substance abuse treatment. Even after respondent became aware that the mother had left Sacred Heart, which meant that she was no longer actively involved in substance abuse treatment, the record reflects that respondent only made a half-hearted effort to locate the child and did not seek police assistance until the police were already investigating the mother for a home invasion. Such evidence clearly showed that respondent was too willing to risk the child's welfare when it suited him to do so. Further, this was not a one-time lapse of judgment. The evidence also showed that respondent had resumed cohabitation with the mother sometime after the guardianship ended and allowed her to resume the role of the child's primary caretaker. Therefore, we conclude that based on respondent's conduct, it was reasonably likely that the child would be harmed if returned to respondent's custody. Because termination was proper under § 19b(3)(j), any error regarding § 19b(3)(g) was harmless. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

Respondent's claim that termination requires proof of child neglect for the long-term future is without merit. At one time, MCL 712A.19a(e) authorized termination of parental rights

if the parent was “unable to provide a fit home for the child by reason of neglect.” In *Fritts v Krugh*, 354 Mich 97, 114; 92 NW2d 604 (1958), overruled on other grounds by *In re Hatcher*, 443 Mich 426, 444; 505 NW2d 834 (1993), the Court stated that while evidence of temporary neglect was sufficient to allow a court to take jurisdiction over a child, “the entry of an order for permanent custody due to neglect must be based upon testimony of such a nature as to establish or seriously threaten neglect of the child for the long-run future.” That holding was followed in *In re Riffe*, 147 Mich App 658, 671-672; 382 NW2d 842 (1985), the case cited by respondent. However, § 19b(3), enacted 30 years after *Fritts* was decided, now governs termination. The various subsections do not specifically refer to “neglect” but identify parental conduct and circumstances that justify termination of parental rights. For example, § 19b(3)(g) permits termination upon proof of circumstances consistent with neglect that will not be remedied “within a reasonable time considering the child’s age.” Subsection 19b(3)(j) has nothing to do with neglect of the child’s needs but permits termination because the child’s safety is at risk. Therefore, petitioner was not required to prove that respondent would neglect his child for the long-term future.

Further, the trial court did not clearly err in finding that termination of respondent’s parental rights was in the child’s best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 354, 356-357; 612 NW2d 407 (2000). Although there was evidence that respondent loved his son and that they were bonded, the evidence demonstrated that respondent was unwilling to make the commitment to assume the role as the child’s primary caregiver. The child had repeatedly been in and out of foster care since his birth and was in need of stability, which respondent was unwilling to provide. Therefore, the trial court did not err in terminating respondent’s parental rights to the child.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Brian K. Zahra
/s/ Kirsten Frank Kelly