

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

October 28, 2010

In the Matter of MOHR, Minors.

No. 296439

Kent Circuit Court

Family Division

LC Nos. 08-052399-NA

08-052400-NA

Before: HOEKSTRA, P.J., and FITZGERALD and STEPHENS, JJ.

PER CURIAM.

Respondent father appeals as of right from the trial court order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), and (g). We affirm.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence and that termination is in the best interest of the children. MCL 712A.19b(5); *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). The trial court's decision terminating parental rights is reviewed for clear error. MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 355-357; 612 NW2d 407 (2000); *Sours*, 459 Mich at 632-633. 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. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003); *In re Miller*, 433 Mich 331, 337; 455 NW2d 161 (1989). Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *Miller*, 433 Mich at 337.

Termination of parental rights was proper under MCL 712A.19b(3)(c)(i) because respondent never addressed the domestic violence in his relationship with the children's mother. On October 25, 2008, the children's mother called the police claiming that respondent pushed her into a wall and choked her. Respondent admitted pushing her. There continued to be reports of domestic violence throughout the case. On August 19, 2009, after eight months of treatment, the parties got into an argument that caused the children's mother to fear respondent. Respondent's domestic violence counselor did not believe respondent internalized the information in their sessions or benefited from them. The domestic violence counselor was concerned about respondent's communication with the children's mother and the way he belittled and blamed her, and the counselor noted that their arguments were the type found in an unhealthy relationship. Likewise, the therapist who began treating respondent in August 2009 noted that respondent was degrading to the children's mother. He dominated the conversation and was emotionally controlling.

Respondent contends that the trial court erroneously found that domestic violence continued to be an issue throughout the case even though the children's mother denied stating that she was fearful of being hurt by respondent or that he ever physically harmed her. Every witness except the parties themselves indicated that domestic violence continued to be a problem and will likely exist in their relationship in the future. Because the trial court is in the best position to judge the credibility of a witness, deference is accorded to the trial court's assessment of the credibility of the witnesses who appeared before it. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989), MCR 2.613(C). Given the parties' history of minimizing the domestic violence perpetrated by respondent, the benefit they stood to gain from convincing the trial court they had addressed their domestic violence issues, and the contradicting testimony of the other witnesses, there is no reason to doubt the findings of the trial court.

Moreover, respondent's contention that the issue of domestic violence was never addressed during adjudication is without merit. The children's mother made admissions at an adjudicative hearing, before respondent had established paternity. The trial court's jurisdiction is tied to the children, and petitioner is not required to sustain the burden of proof at adjudication with respect to every parent involved in a protective proceeding before the trial court can act in a dispositional capacity. *In re CR*, 250 Mich App 185, 205; 646 NW2d 506 (2002).

Respondent also argues that the trial court erred in finding that the parties admitted he hit Dagur with his hand. Although no such admission was made by either party before the trial court on June 20, 2008, at a hearing on August 13, 2008, the children's mother admitted contacting CPS after respondent hit Dagur with his hand two weeks earlier. She also admitted a history of domestic violence between herself and respondent. An admission by respondent himself was unnecessary to establish jurisdiction. The trial court only erred with regard to its findings involving the date that the mother's admission was made and by suggesting that both parties made this admission. Therefore, any error made by the trial court in its termination order was harmless. MCR 2.613(A); MCR 3.902(A).

Respondent also argues that the insights he gained from participating in therapy and that his heartfelt statements showed that he understood the impact and application of his lessons. Respondent's assertions are not supported by the trial court's record. The evidence showed that respondent was intelligent and capable of understanding the issues addressed in therapy sessions. However, the evidence also showed that respondent was unable or unwilling to apply these lessons and make improvements in his relationship. Thus, despite respondent's assertions to the contrary, there is no evidence that the domestic violence issue was sufficiently addressed by respondent, and the trial court's finding under MCL 712A.19b(3)(c)(i) was therefore proper.

The trial court also did not err in its finding under MCL 712A.19b(3)(c)(ii). The trial court properly found that, although respondent's substance abuse and emotional stability were not conditions leading to the initial adjudication, they continued to be issues at the time of the permanent custody hearing.

During respondent's psychological evaluation on February 6, 2009, he was diagnosed with a generalized anxiety mood disorder with depressive features and suspicion of adult ADHD. Respondent expressed suicidal thoughts without intent, and disclosed a lengthy history of alcohol and substance abuse. While respondent correctly argues that he engaged in counseling to address his mental health issues, he disregards the fact that he made no progress in therapy

because he did not do the homework or process the information addressed in sessions. He also only attended counseling at the onset of the case, prior to his psychological evaluation, and he was discharged due to noncompliance when he failed to appear for appointments.

Respondent argues that his psychological evaluation did not include any findings of serious pathology. Respondent minimizes the statements made by his evaluating psychologist. While the record shows that respondent's anxiety and depression were considered treatable and not pathological, he was still in need of treatment to address his issues so that he could provide a suitable home for his children.

Moreover, the trial court's record showed that respondent was referred for psychiatric care and prescribed an anti-depressant in effort to address anxiety and depression but he did not take his medication as prescribed and stopped attending psychiatric sessions altogether. Respondent argues that he stopped taking his prescribed medication because he found it unhelpful and was experiencing side effects from it. There is no evidence that respondent communicated his concerns to his psychiatrist or made any efforts to participate in his psychiatric treatment. Respondent misrepresents the testimony of his mental health providers when he argues that he was not viewed as suicidal. Respondent had suicidal thoughts without intent, and he had a history of untreated depression throughout the case. While he may not have followed through with an actual suicide attempt, his depression would have interfered with his ability to care for his children had they been returned to his care. By the time of the permanent custody hearing there was no evidence that respondent had addressed his mental health issues or emotional stability.

Respondent also never addressed his substance abuse by the time of the permanent custody hearing. In his brief on appeal respondent concedes that he had two positive marijuana screens during the time his children were in foster care, but he argues that one of the drug screens was suspect. He argues that the trial court should have relied on the negative hair follicle test and not the positive saliva or urine drug screen given during the same time period. Despite respondent's repeated denial that he was a substance abuser and minimization of his substance use, his psychological evaluation diagnosed him with alcohol and cannabis dependence. Respondent admitted to smoking marijuana in July 2008 and had positive drug screens from August 6, 2009 through November 2009. The children's mother also found him with a marijuana bowl. Thus, the evidence showed that respondent continued to use illegal drugs throughout the case.

Respondent also argues that since there was no evidence that he abused alcohol he did not need to attend AA. Respondent admitted to drinking occasionally and believed he drank in a controlled fashion. However, the evidence showed that respondent went on a three day drinking binge in July 2008 (just after the children's removal) and the children's mother told the caseworker that respondent drank daily. Given respondent's history of alcohol and drug abuse he was referred to NA/AA for biweekly sessions but only attended two times throughout the case insisting he did not need it. He was discharged from substance abuse therapy at Pine Rest due to non compliance. Respondent asserts that not being in total compliance with a treatment plan does not warrant termination of parental rights. However, as the parent, respondent has the burden of complying with services delineated in the treatment plan and showing evidence of an improved home which respondent did not do. *In re Kantola*, 139 Mich App 23, 28; 361 NW2d

20 (1984). Thus, despite respondent's insistence that he did not use marijuana and he drank in a controlled fashion, he did not seek treatment or demonstrate a sustained period of sobriety.

The trial court also did not err in its findings under MCL 712A.19b(3)(g) because respondent was unable to provide proper care and custody of his children. Respondent's unaddressed emotional issues, untreated domestic violence and substance use interfered with his ability to provide proper care and custody for the children. Moreover, although respondent was trained as an auto mechanic, he was unable to find employment, in part, due to his felony criminal record. Respondent was also \$2,000 in arrears in taxes, and could not financially support his children. Moreover, respondent had issues with housing throughout the case. He did not obtain independent housing until May 2009 and although the caseworker assessed his apartment as suitable, she also stated that it was cluttered and messy. Thus, respondent's ability to provide proper care and custody for a sustained period of time has not been demonstrated.

Respondent argues that the trial court the trial court used his criminal history as a barrier to the return of his children even though he had no expectation of incarceration due to any new crimes. Respondent's assertion is without merit. Although the trial court references respondent's criminal history because it was a partial basis for the adjudication, there is no evidence that the trial court relied on respondent's criminal history in deciding to terminate parental rights. Respondent's criminal history was relevant in identifying him as someone with a propensity towards violence and crime which was important in protecting the children from harm. However, his history alone was not used as a basis to terminate parental rights. Thus, termination of respondent's parental rights under MCL 712A.19b(3)(c)(i), (c)(ii), and (g) was proper.

Affirmed.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Cynthia Diane Stephens