

STATE OF MICHIGAN
COURT OF APPEALS

In re A. ONTIVEROS, Minor.

UNPUBLISHED
February 16, 2016

No. 328910
Kent Circuit Court
Family Division
LC No. 14-053710-NA

Before: MURPHY, P.J., and WILDER and BORRELLO, JJ.

PER CURIAM.

Respondent-father appeals as of right the August 4, 2015 order terminating his parental rights to the minor child, AO, (d/o/b 10/15/2014) pursuant to MCL 712A.19b(3)(a)(ii) (desertion), (c)(i) (conditions of adjudication continue to exist), and (g) (failure to provide proper care and custody). For the reasons set forth in this opinion, we affirm.

The minor child, AO, was removed from the custody of respondent and the child's mother one day after the child's birth because the mother's rights to another minor child were previously terminated and because respondent lacked stable housing and employment and had a history of assaultive behavior. Mother is not a party to this appeal. For approximately one month after AO's removal, respondent performed well during visits. Respondent was incarcerated in late November 2014 for assault and released on December 27, 2014. After respondent's release, he participated in a supervised visit with AO on January 13, 2015, but failed to visit her again until April 13, 2015. After the April visit, respondent did not see the child again. Respondent failed to participate in services referred to him after his December 27, 2015 release. He failed to obtain stable housing or employment. He sometimes stayed at homeless shelters. Respondent refused to communicate with the Department of Health and Human Services (DHHS) for months at a time and DHHS was often unaware of his location. Respondent admitted that he drank alcohol excessively, yet he failed to participate in services to address this problem.

DHHS petitioned to terminate respondent's parental rights to AO pursuant to MCL 712A.19b(3)(a)(ii), (c)(i), and (g). Following a termination hearing and factual findings, the trial court granted the petition and entered an order terminating respondent's parental rights. This appeal ensued.

Respondent argues that the trial court erred in finding statutory grounds for termination. "In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In*

re VanDalen, 293 Mich App 120, 139; 809 NW2d 412 (2011). We review these factual findings for clear error. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009).

In part, the trial court found grounds for termination under MCL 712A.19b(3)(g), which provides that termination is proper where “[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.” With regard to MCL 712A.19b(3)(g), the trial court found that respondent failed to provide the minor child with proper care and custody in that he failed to comply with the parent-agency agreement, he failed to obtain housing, he engaged in assaultive behavior, and he abused substances. These findings were not clearly erroneous.

With respect to the parent-agency agreement, the evidence showed that respondent was compliant before his incarceration, but after he was released from jail on December 27, 2014, he failed to comply. On February 8, 2015, DHHS reported that respondent failed to participate in “any aspect of the parent agency treatment plan or parenting time” for several weeks. Although respondent told DHHS on April 7, 2015, that he was attending AA meetings, there is no evidence in the record to support that respondent participated in any other services after his December 27, 2014 release. Indeed, his compliance became worse as the proceedings progressed. With regard to respondent’s housing, there was no point in the proceedings where respondent’s housing was stable. When AO was removed from the hospital, respondent lived with his sister but was soon forced out of her house. After his December 27, 2014 release from jail, respondent lived with his sister and then briefly at the child’s grandfather’s house, but then stayed at a homeless shelter at various times. DHHS often had no knowledge of where respondent lived. It appears that respondent was homeless during most of the proceedings.

Moreover, respondent failed to participate in services designed to assist him in finding housing and there is no question that respondent engaged in assaultive behavior. During the proceedings, he pleaded guilty to assault, which resulted in his incarceration until December 27, 2014. After his release, he was again arrested for assault. There was an incident in which, instead of striking AO’s mother, respondent struck a door and broke his hand. Respondent also had a history of assaultive behavior against AO’s foster parents. Further, he had a prior criminal record that included assault. Additionally, respondent’s excessive abuse of alcohol was evident throughout the case. Respondent committed the assault for which he was incarcerated in November 2014 while he was intoxicated. Respondent smelled like alcohol when Children’s Protective Services (CPS) met with him on October 22, 2014. Respondent had a “heavy smell of alcohol” when he performed a drug test on October 30, 2014. Respondent admitted to DHHS that he had a problem with alcohol abuse. Other than respondent’s statement to DHHS on April 7, 2015, that he was attending AA meetings, there is no indication in the record that he was participating in services to rectify his drinking problem. On this record, the trial court’s finding of grounds for termination under MCL 712A.19b(3)(g) was not clearly erroneous.

Respondent argues that the trial court erred in terminating his rights because termination was premature. We disagree. DHHS did not request termination in its initial petition to the trial court. *In re Moss*, 301 Mich App 76, 91; 836 NW2d 182 (2013); MCR 3.961(B)(6). Instead, it provided respondent an opportunity to work toward reunification. The fact that respondent was incarcerated for approximately one month did not impede respondent’s ability. While he was

incarcerated, DHHS mailed him packets of information regarding child care and services. DHHS instructed respondent to submit to DHHS work that he performed concerning this information. Respondent satisfactorily performed the work and submitted it to DHHS. Thus, evidence shows that reasonable efforts at reunification continued through respondent's incarceration. See *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). Indeed, respondent does not dispute that reasonable efforts were made while he was incarcerated.

Moreover, after respondent was released from jail on December 27, 2014, he was afforded multiple opportunities for visits and he was referred to numerous services. Respondent visited AO on January 13, 2015, but he failed to visit her again until April 13, 2015. After the April 13, 2015 visit, respondent did not visit her again. He utterly failed to participate in services after his December 27, 2014 release from jail. Although evidence indicates that respondent was incarcerated again briefly in April and May 2015, he was not incarcerated for the majority of the proceedings after December 27, 2015. He failed to show any benefit from services or willingness to participate in them. Contrary to respondent's argument, his high IQ or lack of psychological illness—as indicated by his psychological assessment—did not afford him more time than would be given to a parent with mental deficiencies, nor did it exempt him from his obligation to participate in services. To the contrary, respondent's psychological assessment indicates that he was aware of what the parent-agency agreement required of him and what he needed to do to reunify with AO, yet he failed to make efforts to comply.

Similarly, the fact that respondent had no prior encounters with CPS is irrelevant to determining whether termination was premature. As discussed *supra*, the trial court did not clearly err in finding no reasonable likelihood that respondent would rectify his problems complying with the parent-agency agreement, failing to obtain housing, engaging in assaultive behavior, or abusing alcohol within a reasonable time. *In re Moss*, 301 Mich App at 80. Finally, contrary to respondent's argument, the record does not support that respondent was prevented from visiting AO because of reasons beyond his control.

In sum, termination was not premature and the trial court did not clearly err in terminating respondent's rights under MCL 712A.19b(3)(g). *In re VanDalen*, 293 Mich App at 139. Because we conclude that there was clear and convincing evidence to support at least one statutory ground for termination, we need not consider the additional grounds upon which the trial court based its decision. *In re HRC*, 286 Mich App at 461.

Next, respondent argues that the trial court erred in finding that termination was in AO's best interests. We disagree.

“Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights.” *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012) (citations omitted). When considering best interests, the focus is on the child rather than the parent. *In re Moss*, 301 Mich App at 87. The trial court should consider all available evidence to determine the child's best interests, *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000), and may consider such factors as “the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home,” *In re Olive/Metts*, 297 Mich App at 41-42 (citations omitted).

The trial court found that termination was in AO's best interests because she had no bond with respondent, she had almost no contact with him throughout her life, that respondent lacked parenting ability, and that AO needed permanency and stability. There is ample evidence supporting the trial court's finding that AO had no bond with respondent. Additionally, respondent's lack of housing or employment rendered him unable to meet AO's needs. And, his unwillingness to make efforts to participate in services evidenced his lack of commitment to parenting the child. In contrast, AO's foster parents had suitable housing, were committed to caring for the child, had adopted AO's brother, and were willing to adopt AO. For all of the reasons stated herein, the trial court did not clearly err in finding that termination was in AO's best interests. *In re Moss*, 301 Mich App at 87.

Affirmed.

/s/ William B. Murphy

/s/ Kurtis T. Wilder

/s/ Stephen L. Borrello