

STATE OF MICHIGAN
COURT OF APPEALS

In re D J SMITH, Minor.

UNPUBLISHED
March 8, 2016

No. 329155
Washtenaw Circuit Court
Family Division
LC No. 14-000043-NA

Before: SERVITTO, P.J., and GADOLA and O'BRIEN, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating his parental rights to his minor son under MCL 712A.19b(3)(g) (failure to provide proper care and custody). We affirm.

Respondent first challenges the trial court's findings regarding the statutory ground for termination. To terminate parental rights, a trial court must find that clear and convincing evidence supports termination under at least one of the statutory grounds in MCL 712A.19b. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). If a trial court finds that clear and convincing evidence establishes a statutory ground, the trial court shall order termination of parental rights if it finds by a preponderance of the evidence that termination of parental rights is in the child's best interests. MCL 712A.19b(5); see also *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). We review for clear error a trial court's factual findings in a termination of parental rights case, including a court's findings that a statutory ground for termination has been established and that termination is in a child's best interests. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

Termination is warranted under MCL 712A.19b(3)(g) if a "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." In this case, respondent had a significant criminal record related to actions he took against members of his household. Respondent was repeatedly convicted of child abuse and domestic violence. Respondent's criminality toward family members culminated in 2014 when he pleaded guilty to domestic violence for assaulting the child's mother while the child was in the home, and in 2015 when respondent pleaded no contest to accosting a minor for immoral purposes and assault with intent to commit criminal sexual conduct regarding the child's half-sister.

On appeal, respondent argues that the trial court improperly relied on his criminal record when deciding whether to terminate his parental rights because he did not perpetrate any crimes

against his son and because unlawful conduct alone does not demonstrate parental unfitness. However, in *In re LaFlure*, 48 Mich App 377, 392; 210 NW2d 482 (1973), this Court held that “[h]ow a parent treats one child is certainly probative of how that parent may treat other children.” This doctrine of anticipatory neglect continues to guide us. *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001). Respondent’s abuse of the child’s half-sibling was evidence of his failure to provide proper care and custody for the child. *AH*, 245 Mich App at 84; *LaFlure*, 48 Mich App at 392. Moreover, evidence revealed that respondent’s domestic violence had a clear negative effect on the child. In 2014, respondent perpetrated domestic violence against the child’s mother, and in response, the child attacked respondent. Accordingly, respondent’s actions and criminal history support the trial court’s finding under MCL 712A.19b(3)(g).

We reject respondent’s argument that he provided proper care and custody by placing the child with the child’s mother. In *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010), our Supreme Court explained that “a child’s placement with relatives weighs against termination under MCL 712A.19a(6)(a).” The Court held that a parent may fulfill the duty to provide proper care and custody by voluntarily granting custody of a child to a relative. *Id.* at 163-164. MCL 712A.13a(j) defines the word “relative” as used in MCL 712A.19a(6)(a) to mean someone other than a child’s parent. Further, although the child lived with his mother throughout the case, there is no indication that respondent took any action to place the minor child in the mother’s care.

Additionally, the evidence supported that there was no reasonable expectation that respondent would be able to provide proper care and custody within a reasonable time considering the child’s age. Given the minor child’s age, the amount of time he had already spent solely in his mother’s care, respondent’s history of failing to provide proper care and custody, and the fact that respondent would be imprisoned for an approximate minimum of six years after the termination hearing, the trial court did not clearly err by finding that there was no reasonable expectation that respondent would be able to provide proper care and custody within a reasonable time.¹ In sum, the trial court did not clearly err by finding that a statutory ground for termination was established under MCL 712A.19b(3)(g).²

Finally, although respondent does not raise the issue on appeal, we are convinced after review of the record that the trial court did not clearly err by finding that termination was in the child’s best interests. Respondent testified that he had a strong bond with the minor child, but this assertion was unsupported by the remainder of the record, and a strong parent/child bond may be outweighed by other factors when determining whether termination is in a child’s best

¹ We note that in light of the above circumstances, and the fact that respondent was incarcerated at the time of the termination hearing, MCL 712A.19b(3)(h) may have also provided a proper ground for termination of respondent’s parental rights.

² Respondent also argues that services could have been put in place to promote his bond with the child without terminating his parental rights. However, petitioner sought termination of respondent’s parental rights in its original and only petition, and “[s]ervices need not be provided where reunification is not intended.” *In re LE*, 278 Mich App 1, 21; 747 NW2d 883 (2008).

interests. *In re LE*, 278 Mich App 1, 29-30; 747 NW2d 883 (2008). Considering the evidence described above, the trial court did not clearly err by terminating respondent's parental rights.

Affirmed.

/s/ Deborah A. Servitto

/s/ Michael F. Gadola

/s/ Colleen A. O'Brien