STATE OF MICHIGAN

COURT OF APPEALS

In re A. McLEOD, Minor.

UNPUBLISHED
April 26, 2016

No. 330220
Crawford Circuit Court
Family Division
LC No. 13-004148-NA

Before: SAWYER, P.J., and MURPHY and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent father appeals as of right from an order terminating his parental rights to his daughter under MCL 712A.19b(3)(c)(*ii*) (conditions other than those that led to adjudication exist and parent has not rectified), MCL 712A.19b(3)(g) (failure to provide proper care and custody), and MCL 712A.19b(3)(j) (reasonable likelihood of harm). We affirm.

I. FACTUAL BACKGROUND

This case began in November of 2013 when respondent and AM's mother were both sent to jail. During a hearing on December 4, 2013, the trial court took jurisdiction over AM based on the mother's plea that she had improperly supervised AM and her two other children and had tested positive for drugs on numerous occasions.[1] Shortly after the case began, respondent sought out treatment at a place called "Harbor Hall" and later at a facility referred to as "T House." However, respondent left "T House" before finishing the program there. He explained that he was asked to leave because "T House" workers did not like it when he took time to attend parenting sessions with his daughter. Respondent's first case manager, Matthew Lorence, testified that the "T House" supervisor had informed him that respondent had been kicked out for failing to pay rent and not abiding by the rules. Respondent was very consistent in attending parenting times with AM. Lorence acknowledged that respondent would always bring a healthy snack, a diaper bag with wipes, and a toy bag. Additionally, in the initial review hearings Lorence consistently testified that a bond existed between respondent and AM and that the two interacted well together. Lorence also testified at initial hearings that respondent was motivated and communicated regularly with him.

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[1] The mother's parental rights to AM were also terminated, but she has not taken an appeal.

Respondent obtained employment painting propane tanks at a place called "Fick and Sons." After leaving "T House," respondent lived in a camper trailer with his brother. Lorence testified that this was a concern because respondent's brother and other family members had a history of substance abuse issues.

Following the Supreme Court's decision in *In re Sanders*, 495 Mich 394; 852 NW2d 524 (2014), which necessitated an adjudication hearing specific to respondent, respondent entered a plea at a hearing on October 15, 2014. Respondent admitted that he had substance abuse issues and that at the time he was not in a position to provide proper care and custody for AM. At a hearing on November 5, 2014, Lorence reported that respondent had been incarcerated for a probation violation because he had gotten "picked up from being with his brother while he was shoplifting from a local store" and that respondent had tested positive for alcohol and Vicodin without a prescription. Lorence also testified that respondent had told him that he had gotten morphine and fentanyl from the local hospital after having a laceration, but that when Lorence checked with the hospital, he discovered the hospital had not provided respondent with these medications. Respondent was eventually sentenced to serve a period of time in the state prison system.

Respondent was unable to have visits with AM while he was in prison or to attend parenting classes. However, respondent did complete parenting packets that Lorence sent him and testified that he received his GED and attended AA/NA meetings. Additionally, while it was initially reported by Lorence that respondent would be in the state prison system for at least a year, respondent was able to get into a "boot camp" program that had the potential to drastically reduce his prison sentence. While in this program, respondent completed and received perfect scores on three programs: "Cage your Rage," "Thinking Matters," and "Pick a Partner." Respondent successfully completed the program and was released from prison in May of 2015. However, respondent was on "tether" with the Department of Corrections and reported that he was required to live with his brother who was also on "tether." Respondent himself testified that the home was not suitable for AM because it had no refrigerator and he and his brother cooked and showered at a neighbor's trailer. Respondent obtained employment upon his release from prison at an ice company called "Arctic Glacier."

By the time respondent was released from prison, Lorence was no longer managing his case because he had obtained different employment. Supervisor Delora O'Neill testified at respondent's termination hearing that the current case manager, Ryan LaBean, had not taken over respondent's case until June of 2015. O'Neill was unable to provide any detail about who was managing respondent's case in between but testified vaguely about an employee who quit after three weeks.

At respondent's termination hearing, Lorence and O'Neill were petitioner's sole witnesses. Respondent's case manager at the time, LaBean, did not testify. Lorence's testimony generally concerned the history of the case, including respondent's stints at "Harbor Hall," "T House," and his relapse resulting in his probation violation and prison sentence. Lorence also testified that respondent had showed frustration during parenting times. Further, for the first time at the termination hearing and without any explanation or elaboration, Lorence testified that respondent's bond with AM was more of a friendship bond than a parental bond. Lorence also testified that the bond would be diminished due to respondent's period of incarceration.

However, Lorence acknowledged that he had not been involved with the case since respondent's release, and also acknowledged that when respondent would come for visits, AM would run up and hug him.

O'Neill testified at the termination hearing that respondent had been attending parenting classes since his release but that she was concerned because respondent had only provided records of attending three AA/NA meetings and had not yet made an appointment with Community Mental Health to address the mental health portion of the parent-agency agreement. Respondent testified that he had not spoken with Community Mental Health because he had only recently discovered that he had insurance. Lorence and O'Neill both testified that they were recommending termination in part because of AM's bond with her foster family. Lorence particularly testified at length about how well the foster parents took care of AM and how AM was bonded with them and called them mom and dad. Lorence testified that he believed the foster family was able to provide AM with the stability and permanency that respondent had never been able to provide her. Respondent acknowledged that AM was bonded with her foster family and that he was not currently in a position to provide AM with a proper home, but he told the Court that he was actively repairing his trailer to make it suitable for AM and that he would be ready in six months.

The transcript of the trial court's opinion is roughly 20 pages long. The first 16½ pages simply recount the facts of the case and state what facts the trial court particularly found credible. Specifically, the trial court credited Lorence's testimony about respondent getting frustrated with AM during parenting time and his testimony that respondent's bond to AM was one of friendship and not parental, whereas she was very bonded with her foster family. The trial court did state that it credited respondent's testimony that he had received services in prison and was employed. The trial court then found that sufficient evidence existed for termination of respondent's parental rights under MCL 712A.19b(3)(c)(*ii*), stating that there were "various conditions" that respondent had an opportunity to rectify, that he failed to do so, and that it did not seem likely respondent would be able to rectify those conditions in a reasonable time. The trial court also found that statutory grounds for termination existed under MCL 712A.19b(3)(g) because respondent was not in a position to provide care and custody for AM, and the trial court did not think with respondent's history of relapsing and violating probation that he would be able to provide care and custody for AM, even if given six months' time. The trial court also found statutory grounds for termination under MCL 712A.19b(3)(j), pointing to respondent's substance abuse and failure to have an acceptable living situation. Finally, the trial court concluded that termination of respondent's parental rights would be in AM's best interest due to the "substantial" length of time that the case had gone on as well as the stability and ability to satisfy AM's physical and emotional needs that the foster family had provided.

II. STANDARD OF REVIEW

This Court reviews "for clear error both the trial court's decision that a ground for termination of parental rights has been proved by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interests." *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003); MCR 3.977(K). A decision of the trial court is clearly erroneous if "the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re JK*, 468 Mich at 209-210.

III. ANALYSIS

Petitioner bears the burden of proving the existence of at least one of the Legislature's enumerated conditions to terminate a parent's parental rights by clear and convincing evidence. *In re JK*, 468 Mich at 210. Clear and convincing evidence is "the most demanding standard applied in civil cases" and has been defined by the Supreme Court as evidence that

> produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue. . . . [*In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995).]

We find that such clear and convincing evidence exists with respect to each of the statutory grounds, specifically MCL 712A.19b(3)(g).

MCL 712A.19b(3)(g) states that termination is appropriate if "[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." "The statute requires 'clear and convincing evidence' of both a failure and an inability to provide proper care and custody." *In re Hulbert*, 186 Mich App 600, 605; 465 NW2d 36 (1990). The statute requires both "clear and convincing proof that the parent has not provided proper care and custody and will not be able to provide proper care and custody within a reasonable time." *In re Mason*, 486 Mich 142, 164-165; 782 NW2d 747 (2010). "[A] criminal history alone does not justify termination." *Id.* at 165.

Respondent clearly has failed to provide proper care and custody for AM in the past. While there is evidence that respondent has been making some improvement, we are not left with a definite and firm conviction that the trial court was mistaken in concluding that there was clear and convincing evidence at the time of the termination hearing that there was no reasonable expectation that respondent would be able to provide proper care and custody within a reasonable time. Respondent did not have suitable living conditions for AM at that time. While there was some evidence that he was working towards getting a home ready, it is not clear that he would be able to succeed in doing so within a reasonable time. The trial court's legal analysis on subsection (3)(g) regarding whether respondent would be able to provide care and custody in the future focused on respondent's relapse, which resulted in his probation violation and prison sentence. As the Supreme Court stated, "a criminal history alone does not justify termination." *In re Mason*, 486 at 165. But given respondent's pattern of relapsing and reoffending, the trial court was justified in concluding that there was no reasonable expectation that respondent would be able to provide proper care or custody within a reasonable time.

Because we have concluded that termination was justified under this ground, we need not consider respondent's challenge to the trial court's conclusion on the other two grounds. We do, however, need to address whether the trial court erred in determining that termination was in the child's best interests. We review this decision for clear error. *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012).

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). The trial court must find by a preponderance of the evidence that termination is in the best interests of the children. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). "[R]egard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Miller*, 433 Mich at 337. The children's bond with the parent, the parent's parenting ability, and the children's need for permanency, stability, and finality are all factors for the court to consider in deciding whether termination is in the best interests of the children. *In re Olive/Metts Minors*, 297 Mich App at 41-42.

In the present case, the trial court found that termination was in AM's best interests due to her bond with the foster family, her need for stability, respondent's bond with AM being more of a friendship than a parental bond, and respondent's substance abuse. The trial court's conclusion that respondent's bond with AM was more friendship than parental was based on the unsupported assertion of Lorence who had not observed any interaction between the two since respondent was released from prison. But the trial court's observations that the case had been going on for a considerable length of time and that AM had begun to bond with her foster family were properly supported by the evidence in the record. Given the evidence regarding the stability and permanency that the foster family can provide AM and the length of time that this case has been ongoing, the trial court did not clearly err in concluding that by a preponderance of the evidence termination of respondent's parental rights was in AM's best interest.

Affirmed.

/s/ David H. Sawyer
/s/ William B. Murphy
/s/ Amy Ronayne Krause