

STATE OF MICHIGAN
COURT OF APPEALS

In re BARBER, Minors.

UNPUBLISHED
September 22, 2016

No. 331891
Jackson Circuit Court
Family Division
LC No. 13-001032-NA

Before: JANSEN, P.J., and K. F. KELLY and O'BRIEN, JJ.

PER CURIAM.

Respondent appeals as of right the circuit court's February 25, 2016 order terminating his parental rights to two minor children pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j), challenging only the circuit court's determination that at least one of those statutory grounds was proved by clear and convincing evidence. We affirm. The children's mother voluntarily terminated her parental rights, and they are not at issue in this appeal.

As stated above, the circuit court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). Those statutory provisions provide as follows:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of the initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the

conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care and 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.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

On appeal, respondent argues that the circuit court clearly erred in terminating his parental rights pursuant to each of the statutory grounds set forth above. We disagree.

This Court reviews a circuit court's determination that at least one statutory ground for termination has been proved by clear and convincing evidence and a circuit court's determination that the termination of parental rights is in the child's best interests for clear error. *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009). A circuit court's determinations in this regard are clearly erroneous if we are 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). To terminate parental rights under MCL 712A.19b(3), only one statutory ground need be proven. *In re Williams*, 286 Mich App at 271; see also *In re Trejo Minors*, 462 Mich 341, 355; 612 NW2d 407 (2000).

Respondent's argument on appeal focuses on the fact that he was released from prison prior to the termination hearing. He claims that, as a result of his release, he is now able to provide proper care and custody for the children or will be able to do so within a reasonable time. He points to the fact that he has a home, is self-employed, is drug-free, has a relationship with one of the children, and completed a parenting class and psychological evaluation. Therefore, he concludes, he is now prepared to parent his children or will be prepared to do so soon. The record indicates otherwise.

The children were removed from their mother's care in April 2013 based on allegations of domestic violence between their mother and her partner. Indeed, their mother expressly admitted, several months later, that she was unable to provide proper care and custody for the children and that termination of her parental rights was in their best interests in voluntarily releasing her parental rights. As indicated by our use of the words "mother's care" only, respondent was not responsible for the children's care at the time that they were removed. Rather, he was incarcerated. He was first incarcerated in August 2008, then released in August 2011, then incarcerated several months later in early 2012, then released again in August 2012, incarcerated a third time in March 2013, released yet again in August 2013, and imprisoned for a fourth time in March 2014. Approximately six weeks before the termination hearing in this case, on January 12, 2016, he was released from prison for the fourth time since 2011. Nothing in the

record suggests that respondent made any attempts to provide proper care and custody for the children during his incarceration on any of those occasions.

While defendant claims that this Court should ignore his refusal to participate in services and provide for the children prior to his separate adjudication in September 2014 in light of *In re Sanders*, 495 Mich 394, 407-423; 852 NW2d 524 (2014) (overruling the one-parent doctrine, which permitted a trial court to enter dispositional orders with respect to both parents where only one parent had been adjudicated), that fact, alone, does not justify respondent's failure to meaningfully provide for the children before, but more importantly after, that adjudication. While, between March 2014 and January 2016, respondent did participate in a parenting class, complete his psychological evaluation, and participate in telephone calls with the children, those efforts appear minimal when compared with his lack of effort in trying to understand one of the children's serious and ongoing health issues and his failure to appreciate the impact of his reoccurring incarceration on the children.

Indeed, as it relates to MCL 712A.19b(3) (c)(i), (c)(ii), (g), and (j), respondent's failure to provide proper care and custody for the children remained constant throughout the proceedings. It is important to make clear that respondent made no attempts to provide proper care and custody for the children while he was incarcerated. But, even if we ignore the fact that he was incarcerated for a majority of the children's lives, respondent never took advantage of his temporary lack of imprisonment. The record reflects that he rarely contacted his children, made no attempt to speak with the children's therapists (before or after adjudication), made little to no attempt to learn about one of the children's serious and ongoing health issues (before or after adjudication), and was unlikely to be able to adequately care for the children for, at a minimum, another year and a half. As the circuit court correctly realized, these failures, when juxtaposed against the children's immediate need for permanency, strongly favored termination. Thus, we find no error requiring relief. While defendant does not contest the circuit court's best-interests determination on appeal, we would also note our agreement with the circuit court's determination in that regard as well.

On appeal, respondent appears to liken the facts of this case to those of *In re Mason*, 486 Mich 142; 782 NW2d 747 (2010), but his attempt to do so is unpersuasive. In that case, the Department of Health and Human Services (DHHS) failed to inform the father of his right to participate in hearings, failed to ensure that the father had an adequate opportunity to participate in the parent-agency agreement, and failed to adequately consider relative placement. *Id.* at 152-166. That is not the case here. Conversely, DHHS informed defendant of his right to participate in hearings (which respondent exercised), provided sufficient services for respondent to address the concerns outlined above, attempted to arrange in-person visits between respondent and the children (but ultimately declined to do so based on the children's therapists' recommendations),

and adequately considered relative placement (but found it unsuitable). Thus, while *In re Mason* does stand for the proposition that incarceration, alone, does not justify the termination of one's parental rights as defendant suggests, *id.* at 160, it does not compel reversal here.

Affirmed.

/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly
/s/ Colleen A. O'Brien