

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
February 16, 2012

In the Matter of K. PRESTON, Minor.

No. 304126
Dickinson Circuit Court
Family Division
LC No. 10-000501-NA

Before: SAWYER, P.J., and O'CONNELL and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(i) and (g).¹ We affirm.

In termination proceedings, this Court must defer to the trial court's factual findings if those findings do not constitute clear error. MCR 3.977(K). Both the trial court's decision that a ground for termination has been proven by clear and convincing evidence and the best-interest determination are reviewed for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). "A finding is 'clearly erroneous' [if] although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The conditions leading to adjudication were respondent's abandonment of the child at the child's paternal grandmother's home without making any provisions for the child's legal custody or medical care.² Respondent also had substance abuse issues. Less than a month after the original petition was filed, she was arrested in Wisconsin for possession of heroin and resisting a police officer. Respondent admitting using heroin. At the time of the termination hearing, she was in prison in Wisconsin with an earliest release date of August 2012, and she had been unable

¹ Although it is not clear whether the trial court also found that MCL 712A.19b(3)(c)(ii) was established with regard to respondent, only one ground under MCL 712A.19b(3) must be proven by clear and convincing evidence before terminating parental rights. See *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

² The child's father was in federal custody when the child was left at the paternal grandmother's home. The child's paternal grandmother had no legal authority to care for the child.

to complete substance abuse treatment in prison. She was not able to provide a home for her child, who was 34 months old at the time of the termination hearing, and her substance abuse remained untreated. Therefore, the trial court did not clearly err by finding that the conditions of adjudication continued to exist and that respondent had failed to provide proper care and custody for her child.

The trial court also did not clearly err in finding that respondent would not be able to rectify the conditions leading to adjudication or provide proper care and custody within a reasonable time considering the child's age. Respondent testified that her earliest release date was in August 2012. However, that date rested on the assumptions that she would be sent to boot camp from prison at the earliest possible date and that she could successfully complete boot camp. Even if those optimistic assumptions proved accurate and she successfully completed substance abuse treatment at boot camp, she would still not be immediately capable of providing proper care for the young child. It would be unreasonable to make a young child who had been out of his mother's custody for so long to wait an indefinite period to establish stability and permanency.

Respondent argues that petitioner failed to make reasonable efforts at reunification. When a child is removed from a parent's custody, petitioner is generally required to make reasonable efforts to rectify the conditions leading to the child's removal by adopting a case service plan. MCL 712A.18f(1), (2), (4); *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005). Here, petitioner created a case service plan for respondent, including counseling, parenting classes, and a parent aide, but before she began services respondent was arrested and incarcerated in Wisconsin, where she remained in prison for the remainder of the proceedings. Respondent was aware of the case service plan before she committed the crime in Wisconsin. It would not be reasonable to require petitioner to provide services to a parent who is incarcerated in another state. Petitioner's efforts at reunification were reasonable under the circumstances.

Respondent argues that her placement of the child with his grandmother was her way of providing proper care and custody for him, and that this case was similar to *In re Mason*, 486 Mich 142, 160-161; 782 NW2d 747 (2010). In *Mason*, the trial court only considered the respondent father's inability to provide proper care and custody for his children while he was incarcerated and the Supreme Court held that this was improper because the respondent was not required to personally provide proper care and custody for his children under MCL 712A.19b(3)(h). *Id.* at 165-166. Here, respondent's inability to provide a home and care for her children was not the only condition leading to adjudication or preventing her from providing proper care and custody for her child. Respondent mother also had a substance abuse issue; she tested positive for morphine before her incarceration, was arrested for possession with intent to deliver heroin, and admitted to heroin use upon her arrest. Further, respondent did not place her child with his grandmother; she abandoned him there without providing proper authority to the grandmother to care for him.³ Petitioner assessed respondent's parenting skills before her

³ Respondent told the grandmother that she would return two days later for the child, but instead, the grandmother never heard from respondent again. While obviously not as irresponsible as

incarceration and provided her with a case service plan, and she fully participated in court proceedings. Therefore, this matter is distinguishable from *Mason*.

Finally, the trial court did not clearly err in determining that termination of respondent's parental rights was in the child's best interests. MCL 712A.19b(5). Both of the child's parents would be incarcerated for a significant period of time. The paternal grandmother, with whom the child was placed, was willing to assume guardianship over him, and the trial court considered this option in its best-interest determination. However, because the child was so young and had been away from his parents for so long, the court found that a guardianship would only prolong the child's temporary status and that termination would provide the permanency that he needed. The child was 18 months old when he was left at his grandmother's house, where he remained throughout the duration of the case. Although respondent called him weekly from jail and arranged for her mother to provide items that the child needed, it is unlikely that the child remembered ever living with respondent. Considering the child's young age and need for permanency, the trial court did not clearly err in finding that termination of respondent's parental rights was in the child's best interests.

Affirmed.

/s/ David H. Sawyer
/s/ Peter D. O'Connell
/s/ Amy Ronayne Krause

simply leaving a child entirely unattended, this does not constitute making proper provisions for the child's care in her physical absence.