

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
March 13, 2012

In the Matter of V. F. WHITLEY, Minor.

No. 305217
Wayne Circuit Court
Family Division
LC No. 03-420129

Before: MURPHY, C.J., and HOEKSTRA and MURRAY, JJ.

PER CURIAM.

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

The minor child came to the court's attention after she was found unattended, wandering around a park approximately a block from her home. Police removed the then four-year-old child from her mother's home because all of the adults there were under the influence of alcohol and drugs. Respondent, the child's father, was incarcerated at the time, and he remained incarcerated throughout the pendency of the case. Respondent completed parenting classes, substance abuse classes, and a violence prevention class while in prison. He had telephone visitation with the child until he received two major misconduct citations and, as a result, prison officials suspended his visitation.

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 its 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) (citation and quotations omitted).

The trial court did not clearly err in finding that petitioner established MCL 712A.19b(3)(c)(i), (g), and (h).¹ The conditions leading to adjudication mostly concerned the child's mother, except that respondent was incarcerated, unable to care for his daughter, and had issues of domestic violence and substance abuse. At the time of the termination hearing, respondent was still unable to care for his daughter because he remained incarcerated and did not provide a suitable substitute for her care. The trial court also found, as a matter of fact, that respondent had not resolved his issues with domestic violence and substance abuse, despite his completion of services addressing those areas. Based on respondent's outburst during the termination hearing testimony of the child's mother and his prison misconduct dealing with wrongfully obtained prescription drugs, the trial court did not commit clear error in finding that these conditions had not been rectified.

The trial court also did not clearly err in finding that respondent father would not be able to rectify the conditions leading to adjudication or provide proper care and custody for the child within a reasonable time considering her age. Although respondent may have been able to rectify his domestic violence and substance abuse issues while incarcerated, he could not provide care and custody for the child and would not be able to do so at least until his release from prison, a minimum time of over two years. Although respondent father testified that he could be released a few months earlier than that date if he were permitted to participate in a boot camp program, he also testified that he would not be able to care for his daughter during boot camp. There was no question that the child would be deprived of a normal home due to respondent's incarceration for a period of over two years. The trial court did not clearly err in finding that this was not a reasonable period of time considering the child's young age.

The trial court also did not clearly err in finding that termination of respondent's parental rights was in the child's best interests. MCL 712A.19b(5). Whatever bond respondent had with his daughter was diminished by his incarceration and subsequent misconduct citations, which prevented even telephone contact. He would remain incarcerated for such a period that the child would be in foster care for at least four years if his rights were not terminated. It was not in the child's best interests to force her to wait for an uncertain future relationship with her father.

Affirmed.

/s/ William B. Murphy
/s/ Joel P. Hoekstra
/s/ Christopher M. Murray

¹ Respondent's brief on appeal only challenges the factual basis for the trial court's decision, and does not cite or address any of the statutory provisions upon which termination was based.