

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
February 16, 2012

In the Matter of A. HOMISTER, Minor.

No. 305448
Kent Circuit Court
Family Division
LC No. 10-051610-NA

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

PER CURIAM.

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

The child in this case was removed from the child's mother as a result of the mother's substance abuse and neglect of the child, who was not quite two years old at the time of removal. Respondent had not seen the child for four months before the child's removal. At the time of the adjudication hearing, respondent was in jail for absconding on a probation violation in a separate case and was therefore unavailable to care for the child.

About one month later, respondent was released from jail and entered into a parent agency agreement with petitioner by which respondent agreed to participate in services with the goal of gaining custody of the child. Respondent was to obtain employment and stable housing, attend substance abuse assessment and treatment, attend a psychological examination, attend parenting classes, and visit regularly with the child. Respondent, however, failed to comply with most aspects of the parent agency agreement. Perhaps most notably, respondent failed to visit regularly with the child even though transportation was provided by petitioner. Shortly before the termination hearing, another child was born to respondent and his girlfriend¹, and respondent informed petitioner that he would not be visiting with the child in this case anymore at that time as he was busy with the new child who was premature and required hospitalization.

Petitioner ultimately sought termination of respondent's parental rights. The termination hearing began on April 17, 2011, and was scheduled to continue on May 9, 2011. The May 9,

¹ The mother of the new child was not the mother of the child in this case.

2011, hearing date was later adjourned at respondent's request because of the birth of his new child. The continued termination hearing was therefore continued to June 23, 2011. On the morning of the continued hearing, however, respondent's attorney informed the trial court that he had received a message that respondent had been arrested the previous night on an outstanding warrant. This event was apparently not entirely unexpected as respondent had previously informed petitioner that he believed that there was an outstanding warrant for his arrest. Respondent's counsel sought adjournment of the continued termination hearing, which the trial court denied. The trial court then proceeded with the continued termination hearing in respondent's absence, at the conclusion of which the trial court terminated respondent's parental rights to the child.

Respondent first contends that the trial court improperly denied his motion to adjourn the continued termination hearing. We disagree. A trial court in a child protective proceeding may not adjourn a hearing except for good cause and after considering the best interests of the child. MCR 3.923(G). To demonstrate good cause for adjournment, the moving party must show a "legally sufficient or substantial reason." *In re Utrera*, 281 Mich App 1; 761 NW2d 253 (2008). This Court reviews the trial court's decision regarding whether to adjourn a termination hearing for an abuse of discretion. *Id.* at 8. A trial court abuses its discretion if its decision falls outside the range of reasonable and principled outcomes. *In re MKK*, 286 Mich App 546, 564; 781 NW2d 132 (2009).

In this case, the trial court considered the child's best interests and determined that those interests were served by not again adjourning the termination hearing. The trial court noted that the child had been in care for approximately 14 months and that there was no assurance that respondent would be able to attend on some other date in light of respondent's frequent incarcerations². The trial court found no legally sufficient or substantial reason to delay the termination hearing and our review of the record reveals none. We therefore cannot say that the trial court abused its discretion in declining to adjourn the continued termination hearing.

Respondent next contends that the trial court erred in terminating his parental rights under subsections (3)(c)(i), (g), and (j). Again, we disagree. To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been demonstrated by clear and convincing evidence. *In re Fried*, 266 Mich App 535, 540-541; 702 NW2d 192 (2005). In this case, a review of the record supports the trial court's finding that termination of respondent's parental rights was warranted under subsection (3)(c)(i) because the conditions that led to adjudication continued to exist and there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering the age of the child. At the time of adjudication respondent was in jail for absconding on probation and was unable to care for the child, lacked stable employment and housing, was

² There is no contention that respondent was incarcerated by the Michigan Department of Corrections, which would call into question a respondent's right to attend telephonically pursuant to MCR 2.004.

abusing marijuana, and was not visiting regularly with the child. At the time of termination, these conditions remained virtually the same, although respondent had obtained a prescription for the use of medical marijuana shortly before termination. Not only did respondent fail to correct any of the conditions that had resulted in adjudication, but respondent's failure to comply with any of the services offered demonstrated that it was unlikely that the conditions would be rectified within a reasonable time, if ever.

The record similarly supports the trial court's finding under subsection (3)(g) that respondent failed to provide proper care and custody for the child and that there was no reasonable expectation that he would be able to do so within a reasonable time considering the age of the child. A parent's failure to comply with the parent agency agreement is evidence of failure to provide proper care and custody. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). Respondent's almost nonexistent efforts to comply with the parent agency agreement revealed his inability or unwillingness to acquire the necessary skills to provide for and parent the child within a reasonable time, if ever.

Similarly, the record supports the trial court's determination that termination was warranted under subsection (3)(j), finding that there was a reasonable likelihood based on the conduct or capacity of respondent that the child would be harmed if placed in respondent's custody. Respondent continued to live in an inadequate living situation with virtually no income, continued to use large quantities of marijuana ostensibly to cope with chronic pain, and continued to demonstrate extreme apathy regarding the child. Placing a three-year-old child in an inadequate living situation with virtually no financial support and an apathetic custodian so burdened by chronic pain would place the child at risk of harm.

We also conclude that the trial court did not clearly err in determining that termination of respondent's parental rights was in the best interests of the child. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000). We reject respondent's argument that the trial court should have ordered a guardianship for the children as a less drastic measure instead of terminating respondent's parental rights. While a trial court may establish a guardianship in lieu of termination, see MCL 712A.19a, the trial court in this case did not err in terminating respondent's parental rights upon finding that it was in the child's best interests. See *In re IEM*, 233 Mich App 438, 453; 592 NW2d 751 (1999).

Affirmed.

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