

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
June 12, 2012

In the Matter of N. L. KING, Minor.

No. 305593
Livingston Circuit Court
Family Division
LC No. 2010-013328-NA

Before: OWENS, P.J., and TALBOT and METER, JJ.

PER CURIAM.

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

The trial court did not clearly err in finding that the statutory grounds for termination of respondent's parental rights were established by clear and convincing evidence. MCR 3.977(K); *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). The minor child never resided with respondent father or her mother, but was placed at birth in the home of her maternal grandparents, who obtained guardianship over her when she was two months old. Respondent father was incarcerated for domestic violence when the child was born, but was released when the child was 18 days old, and the child's mother was prohibited from having unsupervised contact with any child under 17 years of age as a condition of parole for a previous first-degree child-abuse conviction. By the time the child was nine months old, her mother had failed to comply adequately with requirements of the court-structured guardianship plan to enable her to care for the child, and respondent, although he frequently visited the child in the home of the maternal grandparents, had issues with emotional stability and abused alcohol. Petitioner petitioned the trial court for the child's temporary wardship on April 9, 2010, and the child's mother voluntarily released her parental rights on August 4, 2010, but respondent sought unification.

The conditions of adjudication with regard to respondent were his history of criminality involving violence, domestic violence against the child's mother and disregard of the no-contact order between them, abuse of alcohol, and homelessness. More than 182 days elapsed between entry of the June 15, 2010, initial dispositional order in this case and termination of respondent's parental rights on July 22, 2011. See MCL 712A.19b(3)(c)(i). The evidence showed that respondent was unable at the outset of these proceedings to provide the minor child with proper care because he lacked a home, abused alcohol, and had difficulty managing his anger when corrected or stressed. See MCL 712A.19b(3)(g).

The evidence supported the trial court's finding that respondent did not rectify the condition of his ten-year history of criminality but added to it by assaulting two persons during the proceedings, one of whom was the child's mother, with whom he was prohibited from having contact. Police reports contained in the lower-court record clearly showed that respondent was involved as a perpetrator in these assaults and pleaded guilty to those offenses in the related criminal proceedings, but at the termination hearing he denied being involved. He was jailed for four months and was released one month before the termination hearing.

The evidence also supported the trial court's finding that respondent failed to improve his emotional health. The concern petitioner had at the outset of the proceedings involved respondent's inability to parent the child calmly and safely because he became angry and reacted violently when corrected or stressed, and this concern was not alleviated during the proceedings. His psychological evaluation, which was needed to form the basis for treatment, was invalid because he minimized any problems and shortcomings and emphasized only socially desirable characteristics on a psychological test. A follow-up evaluation was also invalid because he was overly defensive. He failed to benefit from counseling designed to help him regulate his emotions and consider consequences before taking action. As reported by his therapist, he disengaged from therapy after ten individual sessions, and continued to make decisions without considering the consequences to himself and others. The therapist noted that respondent did not consider compliance with petitioner's requirements a priority.

The evidence also showed that respondent did not successfully rectify the alcohol use that was part and parcel of his emotional health and an underlying factor in his instances of violence. Although respondent admitted he had a problem with alcohol, the evidence showed that he underreported his use of alcohol in the substance-abuse assessment, continued what seemed to be periodic binge uses during the proceedings, participated in only two group substance-abuse therapy sessions in a three-month period, and did not regularly attend Alcoholics Anonymous meetings until one month before the termination hearing. He attended many, but not every, weekly Domestic Abuse Intervention Program (DAIP) classes during these proceedings and was dismissed for missing three consecutive classes, but was later reinstated. However, the fact that he was jailed during the proceedings as a result of assault while under the influence of alcohol demonstrated that he did not adequately benefit from substance-abuse counseling or DAIP classes.

Respondent's testimony at the termination hearing supported the trial court's finding that he remained homeless and during the 18 months of the child's life had not become able to provide a suitable home.

The evidence supported the trial court's findings under §§ 19b(3)(c)(i) and (g) that there was no reasonable likelihood that respondent would rectify the conditions of adjudication or become able to provide the child with proper care within a reasonable time. Respondent had some strengths. He was articulate and able to present well, but he minimized or denied negative facts and overestimated his abilities. The confidence he expressed about being able to provide a safe and proper home and parenting for the child was not supported by the facts. He had the desire to care for his child, was physically able to find employment at times, and possessed the intellectual ability to become able to parent, but did not seriously invest in or benefit from counseling to stabilize his emotional health, stop abusing alcohol, or complete DAIP classes.

For years he had engaged in a pattern of poor decision making that resulted in a cycle of intoxication, violent altercations, incarceration, and homelessness, and he did not rectify that pattern with the intervention of services during these proceedings. He remained unable to provide the safe, stable, proper, and consistent home and care that a toddler required.

The trial court correctly noted that the child was not removed from respondent's home and he had never provided her care, and thus the consideration under subsection § 19b(3)(j) was not whether she could *return* to his home, but whether there was a reasonable likelihood that she would be harmed if placed in his home for the first time. As noted by the trial court, the likelihood of harm to the minor child stemmed from the instability and violence created by respondent's abuse of alcohol, difficulty managing his anger, and failure to consider the consequences of his decisions on himself and others. Clear evidence that respondent still abused alcohol and engaged in two violent incidents during the proceedings showed that respondent made insufficient progress in becoming able to care safely for the minor child even after participation in intensive services. Also, as a practical matter, respondent had no home in which to place the child because he was entering a halfway house at the time of the termination hearing. Respondent's condition did not significantly improve since the outset of the proceedings, and the trial court did not err in finding that the child would likely suffer harm if placed in his care.

In addition, the trial court did not clearly err in finding termination of respondent's parental rights in the minor child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Contrary to respondent's assertion on appeal, petitioner's filing of a termination petition at the time of permanency planning did not short-circuit respondent's unification attempt, but rather his attempt was interrupted by his incarceration. The evidence showed that respondent partially participated in services, but that his attempt was not always diligent, he had already disengaged from counseling before he became incarcerated, and he had not yet completed DAIP classes, to which he had first been referred as a condition of probation in 2009. Also contrary to respondent's assertion on appeal, the evidence did not show that the child was strongly bonded to him, but only that over time she became more comfortable with him at visits.

Given that respondent failed to make progress toward rectifying his long-term cycle of alcohol abuse, propensity for anger and violence, incarceration, and homelessness despite intervention services over more than one year, and given that there was no reasonable likelihood that he would rectify those conditions within a reasonable time, the trial court did not err in finding it in the child's best interests to terminate respondent's parental rights.

Affirmed.

/s/ Donald S. Owens

/s/ Michael J. Talbot

/s/ Patrick M. Meter