STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
March 15, 2012

In the Matter of B. M. WALLACE, Minor.

No. 305785
Eaton Circuit Court
Family Division
LC No. 10-017666-NA

Before: RONAYNE KRAUSE, P.J., and DONOFRIO and FORT HOOD, JJ.

PER CURIAM.

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

To terminate parental rights, the trial court must find that the petitioner has proven at least one of the statutory grounds for termination by clear and convincing evidence. MCL 712A.19b(3); MCR 3.977(H)(3)(a); *In re Sours*, 459 Mich 624, 632; 593 NW2d 520 (1999). We review for clear error a trial court's decision terminating parental rights. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Sours*, 459 Mich at 633. A finding is clearly erroneous if, although there is evidence to support it, this Court is 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). We give regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); MCR 3.902(A); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Despite extensive services over the course of eight and a half months, respondent remained unable to provide proper care and custody of his child mainly as a result of longstanding cognitive issues. Although he was participating in counseling services, respondent was not aware of his cognitive deficits or the fact that these issues greatly affected his ability to effectively parent a young child. Respondent continued to blame petitioner for the situation and did not believe he needed services. Respondent did not deal with three open criminal warrants in his name and merely stated that someone else must have been using his name. During the period when he could have shown the trial court he had a significant bond with his child and could be responsible, he missed half of the offered visitation with his daughter. When he did visit the young child, respondent had difficulty picking up on the child's cues. He was also unaware of how to care for the child during the visits. Specifically, when the child was seven months old, he had the child in a car seat on a couch and did not strap her in and the child began to cry. When the Department of Human Services worker told him this was a safety concern, he said that the

child was crying just to "get to him." Respondent was never able to establish a bond with his child or make significant improvements in his parenting abilities. Appropriate housing was also an issue because, during both home visits, there was no crib or other suitable place for the child to sleep. The trial court did not clearly err when it found clear and convincing evidence that respondent had not provided proper care and custody of his daughter and would not be able to do so within a reasonable time considering her age. In addition, the evidence was clear and convincing that the child would be at risk of harm to her physical development and emotional well-being if placed in respondent's care.

Respondent argues that petitioner should have provided him with additional, individualized services located closer to his home to accommodate his disabilities. Respondent raises this issue for the first time on appeal and in fact does not explicitly cite the Americans with Disabilities Act (ADA), 42 USC 12101, *et seq.* In the context of the ADA's relationship to Michigan's statutory scheme governing the termination of parental rights, if petitioner "fails to take into account the parents' limitations or disabilities and make any reasonable accommodations, then it cannot be found that reasonable efforts were made to reunite the family." *In re Terry*, 240 Mich App 14, 26; 610 NW2d 563 (2000). Accommodations under the ADA should be sought when the case service plan is adopted or soon afterward. *Id.* "Any claim that the parent's rights under the ADA were violated must be raised well before a dispositional hearing regarding whether to terminate . . . parental rights, and the failure to timely raise the issue constitutes a waiver." *Id.* at n 5. Because respondent failed to raise this issue in a timely manner, we could consider this issue waived.

In any event, the record reveals that petitioner did provide respondent with extra assistance tailored to his specific needs. Petitioner was aware of respondent's cognitive issues and the fact that he lived in Wayne County, his child lived in Eaton County, and he did not drive. The caseworker made every effort to find parenting classes and counseling services for respondent in Wayne County. Petitioner researched bus transportation for respondent to visit his daughter, but respondent did not find it satisfactory and only took the bus one time. Petitioner then provided a volunteer driver who drove respondent directly to and from visitation every other week. Petitioner referred respondent to counseling services in Wayne County, but respondent had not kept up with his Medicaid paperwork and did not qualify for free services in Wayne County. Petitioner researched the necessary Medicaid paperwork and ensured that it would be sent to respondent. Not wanting respondent to have to wait for counseling services, petitioner scheduled respondent's counseling sessions immediately after his visits with the child in Eaton County; this allowed respondent to participate in counseling services more conveniently and to take advantage of the volunteer driver petitioner had procured for him. Petitioner provided a one-to-one parenting coach during every visit who attempted to teach respondent, unsuccessfully, appropriate parenting skills. The coach also provided advice on how to pick up on the child's cues in an effort to help respondent form a bond with his child. Additionally, a caseworker would be present at visitation if respondent had questions or if a safety issue arose.

It is clear that petitioner provided sufficient assistance and services tailored to respondent's needs, but respondent continued to believe that he did not need services and that petitioner created the situation. Respondent did not understand why he simply could not take the child home. Despite intensive services, respondent only showed a minimal amount of progress

and was unable to form a bond with the child. Even with additional time and services, it is very unlikely that respondent could improve sufficiently to provide an adequate home for his child.

Finally, respondent asserts that the trial court clearly erred in its best-interest determination. MCL 712A.19b(5); MCR 3.977(K). We conclude that the trial court did not clearly err determining that termination of respondent's parental rights was in the child's best interests. The child is very young, just 14 months old at the time of the termination order, and deserves to be brought up in an environment that is healthy, stable, and permanent. Respondent visited her only half of the time that was available to him, the child never lived with respondent, and no bond existed between them. The trial court properly found that although respondent loved the child, he suffered from significant cognitive issues and did not demonstrate an ability to recognize and verbalize his own deficits. He did not demonstrate that he could meet the needs of his child, provide a safe home for her, and care for her on a daily basis.

Affirmed.

/s/ Amy Ronayne Krause
/s/ Pat M. Donofrio
/s/ Karen Fort Hood