STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
July 24, 2012

In the Matter of H. TYLER, Minor.

No. 306837
Houghton Circuit Court
Family Division
LC No. 2010-000025-NA

Before: SHAPIRO, P.J., and HOEKSTRA and WHITBECK, JJ.

PER CURIAM.

Respondent father appeals as of right from the trial court order terminating his parental rights to the minor child[1] under MCL 712A.19b(3)(c)(*i*), (g), and (j).[2] We affirm because

[1] The parental rights of the child's mother were also terminated, but she is not a party to this appeal.

[2] The relevant provisions read:

> (3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
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> * * *
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> (c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:
>
> (*i*) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.
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> * * *
>
> (g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to

respondent failed to take advantage of court ordered services and did not demonstrate much interest in parenting the minor child.

Termination of parental rights is appropriate where one or more grounds for termination are proven by clear and convincing evidence. *In re Trejo Minors*, 462 Mich 341, 355; 612 NW2d 407 (2000); *In re B & J*, 279 Mich App 12, 17; 756 NW2d 234 (2008). We review the lower court's findings for clear error. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

The minor child was born in August 2010 and removed in early September. At this time, respondent was incarcerated on a child support bench warrant. Respondent admitted being arrested for felony driving while intoxicated (DWI), his fourth drunk driving offense, and that he had a statewide pickup for child support arrearage. The trial court held a dispositional hearing on September 30, 2010, and ordered respondent to adhere to the service plan and parent agency agreement (PAA) drafted by the Department of Human Services (DHS). The PAA called for drug screens, a substance abuse assessment and compliance with recommendations from the assessment, parenting skills training with the Infant Mental Health program, and visitation with the child. Respondent was released from jail on October 13, 2010, and at the first review in December 2010, he accepted assigned counsel. Regular reviews were held in February and May 2011, and a combination review/permanency planning hearing was held in July 2011.

Respondent never obtained a substance abuse assessment as required by the PAA and attended only two sessions of parenting class and six out of 20 parenting time visits. He stated that he did not need the parenting class because he had raised four other children. Respondent returned to jail in early March 2011, where he remained until the termination hearing in September 2011. While incarcerated, he completed a four-session, 16-hour Smart Recovery program for substance abuse. DHS and the child's caretaker also arranged to have the child visit respondent in jail once a month. However, when respondent was granted work release, he quickly accepted the sheriff's statement that he could not have visits with the child. DHS and the caretaker later arranged with the sheriff's office to allow supervised visits at a coffee shop.

The trial court found that during the time respondent was not incarcerated, his participation in court-ordered services was insufficient. Failure to cooperate in a court-ordered service plan is evidence of neglect. *In re Trejo*, 462 Mich at 360-361, n 16; *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005). Considering his history, the court found he could not provide a safe, nurturing home.

> provide proper care and custody within a reasonable time considering the child's age.
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> * * *
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> (j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

The trial court also found that respondent failed to demonstrate sufficient interest in the child. Respondent had no child care plan or housing plan, and he expected to work full time or more, on release. He did not pay child support for his older children. He said he did not expect to resume a relationship with the child's mother, but they had lived together when respondent was not incarcerated. The child's mother had numerous problems with mental health, substance abuse, immaturity, and instability. The child had special needs, including a heart defect, circulation problems, delays due to prematurity, and a prolapsed rectum. She would need doctors' appointments for these conditions, plus physical therapy and checkups. Respondent did not attend her appointments while not incarcerated. He had no driver's license.

Given respondent's substance abuse history and lack of participation in services when he had the chance, the trial court did not clearly err by finding a reasonable likelihood that the child would be harmed in respondent's care and that he could not provide proper care or custody within a reasonable time. MCL 712A.19b(3)(g), (j).

The record also does not support respondent's argument that the trial court based the termination on the fact of his incarceration. DHS and the trial court complied with *Mason*, 486 Mich at 156-160, by offering respondent a chance to participate in the proceedings and a PAA, both while incarcerated and while living in the community. The court looked to respondent's performance during the four and a half month period when he was not incarcerated and did give him credit for completing the substance abuse program in jail. However, respondent's spotty participation and questionable benefit from services meant that the child would still be at risk in his care. This is especially true for a very young child with special needs. The trial court was not required to afford respondent more time to see if he had truly changed and could be an adequate parent.

We also find no clear error in the trial court's finding that termination of respondent's parental rights was in the child's best interests. MCL 712A.19b(5); MCR 3.977(H)(3), (K); *In re Trejo*, 462 Mich at 356-357; *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009). While respondent displayed adequate parenting skills with the baby, he saw her too few times to form a bond—though he could have seen her more often if he wished. He did not comply with the court's requirements for a substance abuse assessment, treatment if recommended, and parenting skills training. He also had not made plans for the child and would likely be unable to give her the special care and attention she needed or a safe, permanent, substance-free home. The court did not clearly err in its best-interest ruling.

Affirmed.

/s/ Douglas B. Shapiro
/s/ Joel P. Hoekstra
/s/ William C. Whitbeck