

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
July 26, 2012

In the Matter of K. K. ALEXANDER, Minor.

No. 306959
Oakland Circuit Court
Family Division
LC No. 10-775263-NA

Before: METER, P.J., and FITZGERALD and WILDER, JJ.

PER CURIAM.

Respondent-appellant [hereinafter respondent] appeals as of right the order terminating his parental rights to the minor child under MCL 712A.19b(3)(c)(i) (conditions that led to the adjudication continue to exist), MCL 712A.19b(3)(g) (without regard to intent, failure to provide proper care and custody), and MCL 712A.19b(3)(j) (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). We affirm.

Respondent first argues that an insufficient factual basis existed to support the trial court's finding that the statutory grounds for termination were proven by clear and convincing evidence. We disagree.

Termination of parental rights requires a finding that at least one of the statutory grounds under MCL 712A. 19b(3) has been established by clear and convincing evidence. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010); *In re B & J*, 279 Mich App 12, 17; 756 NW2d 234 (2008). The trial court must then order termination of parental rights if it finds that termination is in the child's best interests. MCL 712A. 19b(5). This Court reviews for clear error the trial court's factual findings as well as its ultimate decision that a statutory ground for termination of parental rights had been proved by clear and convincing evidence. MCR 3.977(K); *In re Mason*, 486 Mich at 152. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the basis of all evidence is left with the definite and firm conviction that a mistake has been made, giving due regard to the trial court's opportunity to observe the witnesses. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Under MCL 712A.19b(3)(c)(i), the trial court may terminate the parental rights of a parent if the court finds, by clear and convincing evidence, that the parent was a respondent in a proceeding . . . and that 182 or more days have elapsed since the issuance of an initial dispositional order and that the court, by clear and convincing evidence, finds that 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 age of the child. *In re Foster*, 285 Mich App 630, 631; 776 NW2d 415 (2009). MCL 712A.19b(3)(c)(i) evinces a clear legislative intent that children should not be left indefinitely in foster care. *In re Dahms*, 187 Mich App 644, 646-647; 468 NW2d 315 (1991). The focus thus should not only be on how long it would take respondent to improve parenting skills, but also on how long the child could wait for improvement in light of the child's age. *Id.* at 648.

The child was taken into protective custody in August 2010, a parent-agency agreement was created in December 2010, and the court adopted the parent-agency agreement in January 2011. Respondent signed the parent-agency agreement in January 2011. The original allegations included physical abuse and substance abuse, as well as leaving the child with relatives for extended periods of time. To rectify the conditions that led to the adjudication, petitioner recommended individual counseling, substance abuse counseling, domestic violence counseling, parenting classes, random drug screens, and participation in a batterer's intervention program. By August 2011, respondent had only completed five parenting classes. Further, respondent admitted at the trial regarding the supplemental petition to terminate his rights that he did not complete the required services because he felt most were unnecessary. He refused to acknowledge and accept responsibility for the conditions that led to the adjudication. Given respondent's lack of progress in services and his failure to acknowledge and accept responsibility for the conditions, the trial court found that the conditions that led to the original adjudication continued to exist. The trial court found that respondent had been involved in proceedings in excess of 182 days; in fact, the trial court noted that respondent had over a year to begin services and 10 months to complete services as required by the parent-agency agreement, and failed to do so. Because respondent had done "very little" to rectify the situation that led to the adjudication, the trial court found it would also be unlikely he would do so within a reasonable period of time. The trial court did not clearly err in finding that the conditions that led to the adjudication had not been rectified and that there was no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

Under MCL 712A.19b(3)(g), a trial court may terminate parental rights if it finds by clear and convincing evidence that 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 provide proper care and custody within a reasonable period of time considering the child's age. *In re B and J*, 279 Mich App at 19. The trial court found that respondent's lack of participation in services showed a lack of desire to create a bond with the minor. The trial court also found that respondent failed to provide proper care and custody by leaving the minor with relatives for extended periods of time. At the time of trial, respondent had not completed individual counseling, domestic violence counseling, or a batterer's intervention program. Respondent also testified that he felt the individual counseling, domestic violence counseling, and batterer's intervention programs were unnecessary, and instead, he chose to participate in group therapy. Given respondent's lack of progress and insistence that such programs were unnecessary, the trial court did not clearly err in finding that respondent failed to provide the proper care and custody of the child and that he would likely not do so within a reasonable period of time.

Under MCL 712A.19b(3)(j), a court may terminate parental rights if there is a reasonable likelihood that, based on conduct or capacity of the child's parent, the child will be harmed if he or she is returned to the home of the parent. *In re Mason*, 486 Mich at 165. Criminal history

alone does not justify termination. *Id.* However, a parent’s testimony which indicates a lack of judgment, insight, and empathy for the child is relevant to support termination pursuant to MCL 712A.19(b)(j). *In re Utrera*, 281 Mich App 1, 25; 761 NW2d 253 (2008). The trial court noted that the child was brought into the court system under allegations of physical and substance abuse, that respondent failed to complete any counseling regarding either issue, and that he refused to acknowledge the issues. Testimony was presented that respondent failed to comply with any of the services included in the parent-agency agreement, aside from five parenting classes. Further, the child expressed fear of respondent and did not desire to return to his care. The trial court did not clearly err in finding that there was a reasonable likelihood that, based on respondent’s conduct, the child would be harmed if returned to respondent’s care.

Respondent next argues that the trial court clearly erred in finding that it was in the best interests of the child to terminate parental rights because respondent had a desire to parent and simply needed “more time.” We disagree.

A trial court’s determination whether termination of parental rights is in the child’s best interest is reviewed for clear error on appeal. *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009); MCR 3.977(K). Once the court finds that a statutory ground for termination has been established, the trial court shall order termination of parental rights if it finds that termination of parental rights is in the child’s best interest. *In re Jones*, 286 Mich App at 126; MCR 3.977(J). In doing so, a court must make affirmative findings that termination of parental rights is in the child’s best interest. *In re Jones*, 286 Mich App at 129; MCL 712A.19b(5).

The trial court’s ruling was based in pertinent part on the need for permanency in the child’s life. The trial court found that, given the child’s fear of respondent, respondent’s refusal to accept responsibility for his actions, and respondent’s apparent lack of concern for creating a healthy, supportive environment for the child, termination was in the child’s best interest. Respondent has failed to convince us that the trial court’s determination that termination of his parental rights would be in the best interests of the child was clearly erroneous.

Affirmed.

/s/ Patrick M. Meter
/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder