

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
September 18, 2012

In the Matter of CRUZ, Minors.

No. 307379
Wayne Circuit Court
Family Division
LC No. 09-489373-NA

Before: CAVANAGH, P.J., and SAAD and DONOFRIO, JJ.

PER CURIAM.

Respondent appeals the trial court's order that terminated his parental rights to the minor children pursuant to MCL 712A.19b(3)(a)(ii), (g), and (j). For the reasons set forth below, we affirm.

A court may terminate parental rights if it finds that 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). This Court reviews 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). This Court gives 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).

Respondent argues that petitioner failed to present clear and convincing evidence to support termination of his parental rights pursuant to both MCL 712A.19b(3)(g) and (j).¹

¹ In its brief on appeal, petitioner concedes that there was not clear and convincing evidence to terminate respondent's parental rights for desertion pursuant to MCL 712A.19b(3)(a)(ii) because, although he did not seek custody of the children, respondent did provide them with minimal financial support and occasionally spoke to them by telephone. However, it is of no consequence to the resolution of this case because petitioner must prove just one statutory

Respondent maintains that no evidence showed that he is “unfit” or that he cannot provide proper care and custody for the children if given the opportunity. He also argues that petitioner did not prepare a parent-agency agreement for him.

The mother of the children moved from Texas to Michigan when one child was seven years old and the other was almost six. The Department of Human Services filed a petition requesting the court to take jurisdiction over the children four months later. The children remained in care, in two different family placements, for over two years until the termination hearing. Respondent was aware that the children were in the care of others because he participated over the telephone in the first permanency planning conference in August 2009. Despite that fact, during the entire first year that the children were placed with other family members, respondent remained in Texas. Respondent did not report an address to petitioner, call petitioner, or answer inquiries from caseworkers until September 2010, when a caseworker tracked him down through a telephone number she obtained from one of the children’s aunts. The caseworker attempted to engage respondent in the care of his children, but respondent explained that he was not able to plan for the children because he worked a job that required him to move around and he was not financially stable. Respondent told the caseworker that he sent money and that he was under the impression that the children’s mother was working at getting the children back.

When another caseworker took over the case in October 2010, she attempted to reach respondent, but the telephone number petitioner had for respondent no longer worked. The first time the caseworker was able to speak with respondent was in March 2011, after the children’s mother provided a new telephone number for him. The caseworker explained to respondent that his children remained in the care of other relatives. When respondent stated that he believed the mother was working to be reunified with the children, the caseworker explained to him that the mother was not progressing and that it looked like she was not going to be able to plan for the children. Although respondent expressed surprise and concern when he learned that the mother was not following her parent-agency agreement, he nonetheless told the caseworker that he was unable to plan for the children. The caseworker inquired if respondent wanted an out-of-town inquiry and assessment to prepare for the children, but respondent declined, stating that he was not in a position to plan for the children because he was renting a room and did not have suitable housing. Respondent also told the caseworker that he was convicted of driving while intoxicated and was having a difficult time paying his fines.

Since March 2011, the caseworker called respondent monthly, but respondent never called the caseworker’s office. Respondent admitted at the hearing that he had four different telephone numbers while the children were in care, although there was no evidence that he ever contacted a caseworker to report that his contact information changed. During the caseworker’s telephone call in September 2010 and then starting again in March 2011 and every month since, the caseworker asked respondent if he wished to plan for his children. Respondent specifically told her during each contact that he was not in a position to plan for the children because of his

ground for the court to terminate respondent’s parental rights. MCL 712A.19b(3); *In re Powers*, 244 Mich App 111, 119-120; 624 NW2d 472 (2000).

unsuitable housing situation and his financial obligations. As late as the week before the termination hearing, respondent again told the caseworker that he was renting a room and that he could not plan for the children.

While petitioner did not give respondent a formalized parent-agency agreement, the caseworker testified that she told respondent more than once that, if he wanted an opportunity to plan for his children, an assessment would be made in Texas. All he would need to do is show that he had a suitable home for the children and a legal source of income, and to visit the children. Respondent admitted that he only rented a room in a house and that it was not suitable for himself and the two children. While respondent testified that he worked in excavation, he never provided written verification of his employment. With regard to visitation, respondent never visited the children in Michigan in two and a half years and never physically attended a hearing throughout the case. Respondent never saw the younger child at any point during this time and only saw the older child once when an aunt drove her to Texas to visit another relative.

Respondent claims the court should not have terminated his parental rights because petitioner never offered him services. Although the agency charged with the care of the children is required to report to the trial court the efforts made to rectify the conditions that led to the removal of the child, MCR 3.973(E)(2), services are not mandated in all situations. See *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005); *In re Terry*, 240 Mich App 14, 26 n 4; 610 NW2d 563 (2000). Here, the record clearly shows that respondent never came forward and expressed any interest in planning or the care of his children. Respondent was not incarcerated or otherwise unavailable to parent his children but, instead, specifically declined to care for them. Indeed, case workers tracked respondent down and gave him every opportunity to offer himself as a potential caretaker of his children, but respondent declined every time. Furthermore, respondent never visited his children and used the excuse that he did not want to see his wife, despite the fact that the children were in the care of a relative for most of that time.

Rather than plan for the care of the children, respondent entrusted them to their mother, who was a drug user and routinely incarcerated. Respondent would only occasionally send money to the children to assist with their care and the trial court concluded that the amount was minimal. The children had no bond with respondent and were progressing in their foster care placement, which was a possible adoptive home. Respondent was content with the idea that his children were placed with relatives instead of in his care. In fact, at the termination hearing, respondent stated that he wanted the children uprooted from their current placement and moved to Texas to live with another maternal aunt who lived closer to his home. Even at that latest of dates, respondent did not have a suitable home for his children, and said he would need at least another four months to get himself together to take the children himself. We reject respondent's argument that petitioner was obligated to provide services to him directed toward reunification when he repeatedly declined to plan for his children. Again, services are not mandated in all situations. *In re Terry*, 240 Mich App at 26, n 4.

Throughout this case, respondent did not demonstrate any recognition of the needs of his children and, instead put himself first and made excuses about his own choices. Respondent's past conduct is indicative of his future conduct. Respondent's choices do not demonstrate that he can or will put the needs of his children before his own to provide a safe, stable, and suitable home for them. In sum, clear and convincing evidence supports the trial court's finding that

respondent failed to give the children proper care and custody and there is no reasonable expectation that respondent will be able to do so within a reasonable time given the children's ages. MCL 712A.19b(3)(g). The same evidence supports the trial court's decision to terminate respondent's parental rights under MCL 712A.19b(3)(j), which is directed to the "conduct or capacity" of the parent and the likelihood of harm to the child if returned to the parent's care. The evidence shows that respondent lacks the interest in, or capacity to, provide a safe, stable, and nurturing environment to raise the children. The trial court did not err in ruling that there is a reasonable likelihood the children will be harmed if returned to his care.

Finally, the trial court did not clearly err in holding that termination of respondent's parental rights is in the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich at 356-357. The children are young and were in the care of others for two and a half years while shuffled to different family placements. They deserve to be brought up in an environment that is healthy, stable, and permanent.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Henry William Saad
/s/ Pat M. Donofrio