STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
August 7, 2012

In the Matter of J. E. M. WILLIAMS, Minor.

No. 308281
Oakland Circuit Court
Family Division
LC No. 09-758830-NA

Before: MURRAY, P.J., and FORT HOOD and BORRELLO, JJ.

PER CURIAM.

Respondent appeals as of right the trial court order terminating his parental rights to the minor 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). For the reasons set forth in this opinion, we affirm.

This case arises from a petition for child protective proceedings that was filed May 1, 2009. The petition alleged that the minor's mother had her parental rights terminated to two of the minor's siblings in the past two years as a result of each testing positive for cocaine at birth. The petition also alleged that respondent was unemployed and lacked suitable housing to care for the minor.

From that date until a bench trial was held on October 27, 2011, the trial court found that respondent failed to provide proper custody and care for the minor and there was not a reasonable expectation that he would be able to provide the same within a reasonable period of time, considering the minor's age. MCL 712A.19b(3)(g). In support of this finding, the trial court noted that although respondent loves the minor and thinks he is looking out for the minor's best interests, he does not have income sufficient to support the minor, continues drug use, exposes the minor to "a known drug addict," lives with someone whose background is inappropriate, and "refuse[d] to pick his son over that individual."

Additionally, based on respondent's conduct, the trial court found that there was a reasonable likelihood that the minor would be harmed if returned to respondent's home, pursuant to MCL 712A.19b(3)(j). In support of this finding, the trial court again noted respondent's drug use, that respondent "won't choose his son over drugs, . . . his prior girlfriend, . . . or his current girlfriend." The trial court thus found that petitioner proved by clear and convincing evidence that one or more of the facts in the supplemental petition to terminate parental rights was true

and that petitioner presented sufficient evidence for the trial court to terminate respondent's parental rights.

The trial court then proceeded to the best interest hearing. The trial court found that, although there was a strong bond between respondent and the minor, and respondent loves the minor, respondent "has been given every opportunity to reunite with his child," and respondent

> has been saying, [to the minor] wait . . . wait until I choose you over drugs, wait until I have appropriate housing[,] wait until I dump your drug addict mother[,] wait until I get rid of my felon girlfriend[,] wait until I finish rehab[,] wait until I get around to contacting protective services to let them look at this alleged apartment that I mentioned in October and have not invited protective services to look at. You need to wait.

Based on respondent's conduct, the trial court held that respondent was "detrimental" to the minor. Therefore, the trial court found that termination was in the minor's best interest. This appeal ensued.

Respondent argues that petitioner failed to present sufficient evidence for the trial court to terminate parental rights pursuant to MCL 712A.19b(3)(c)(*i*), MCL 712A.19b(3)(g), and MCL 712A.19b(3)(j). A trial court's decision that a ground for termination of parental rights has been proved by clear and convincing evidence is reviewed for clear error. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010); MCR 3.977(K). A decision is clearly erroneous if, although there was evidence to support it, the appellate court on the entire evidence is left with the definite and firm conviction that a mistake was made. *Id.* at 152; MCR 3.977(K).

In order to terminate parental rights, a trial court must find that at least one of the statutory grounds set forth in MCL 712A.19b(3) has been proved by clear and convincing evidence. *In re Fried*, 266 Mich App 535, 541-541; 702 NW2d 192 (2005); MCR 3.977(F)(1)(b); MCR 3.977(G)(3). The burden is on the petitioner to prove the existence of a statutory ground for termination of parental rights. *In re B and J*, 279 Mich App 12, 18; 756 NW2d 234 (2008); MCL 712A.19b(3).

Respondent first argues that petitioner did not make reasonable efforts toward reunification. When a child is removed from a parent's custody, the agency charged with the care of a child must report to the trial court the efforts made to rectify the conditions which led to the removal of the child. *In re Plump*, 294 Mich App 270, 272-273; ___ NW2d ___ (2011); MCL 712A.18f(4); MCL 712A.19a(2)(c). Before the trial court enters an order of disposition, permanency order, or terminates parental rights, it must state whether reasonable efforts have been made to prevent the child's removal from the home or to rectify the conditions which caused the child to be removed from the home. *Id.* at 272-273. Services are not mandated in all situations, but the agency must justify the decision not to provide services. *Id*.

The minor came into care in response to allegations that respondent was unable to provide suitable housing and income for the minor. Petitioner created a parent agency agreement ("PAA"), which respondent signed and the trial court adopted, providing for parenting skills training; respondent also agreed to maintain contact with the case manager, maintain suitable

housing, maintain a legal source of income, and develop a budget and safety plan. In early 2011, the trial court also ordered weekly drug screens. Respondent was referred to parenting skills training and, in fact, respondent completed parenting skills training. Respondent was also referred to drug screens, although he completed less than half of the required screens and tested positive for drugs on four occasions. Respondent was also provided with visitation with the minor, as well as bus passes for all services and visitation. Further, petitioner performed a home study of each home that respondent resided in aside from his last home. However, at the time of termination, respondent resided with his fiancé, who had a significant criminal history, and, moreover, as of January 2012, respondent had not allowed petitioner into the home for a home study. Accordingly, we find that respondent's claim that petitioner did not make efforts toward reunification is without merit.

MCL 712A.19b(3)(c)(*i*) states that the court may terminate 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 minor came into care in May 2009, in response to allegations that respondent was unable to provide suitable housing and income to care for the minor. The PAA, signed by respondent and adopted by the trial court, provided that respondent participate in parenting skills training, maintain contact with the case manager at least once per week, maintain suitable housing, maintain a legal source of income, and develop a budget and safety plan for the minor. In February and March 2011, amongst concerns that respondent maintained contact with the minor's mother, the trial court added weekly drug screens and respondent was referred to weekly drug screens.

Until the day of trial, respondent never had suitable housing for the minor. First, respondent obtained an apartment that did not allow small children, and then obtained an apartment that was too small. Following this, respondent obtained suitable housing in terms of space, but lived with a fiancé who had a criminal history as well as a missing person report on her child. Respondent also refused to remove the fiancé from his home. Respondent never obtained adequate income to care for the minor. Finally, respondent frequently missed drug screens and tested positive for opiates and/or cocaine on four occasions. Even if two of the results for opiates were for respondent's prescribed medication, respondent also tested positive for cocaine on two occasions. Respondent also frequently missed visits with the minor, and in July 2011, ceased visitation with the minor. The trial court thus did not err in finding that the conditions that lead to adjudication thus continued to exist. Further, by the time of trial, two years had elapsed since initial disposition. The trial court thus did not err in finding that the conditions that lead to adjudication continued to exist in excess of 182 days past the initial order

of disposition, and that there was no reasonable likelihood that respondent would rectify the conditions within a reasonable period of time.

MCL 712A.19b(3)(g) provides that a 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.[1] As discussed *supra*, respondent failed to obtain suitable housing during the pendency of the case. In fact, up to the date of trial, respondent lived with his fiancé, who had a significant criminal history and a missing child report, and failed to remove the fiancé from his home. Respondent also never acquired necessary income to care for the minor and was inconsistent with visitation. Respondent tested positive for drugs on four occasions and missed multiple drug screens. Respondent maintained a relationship with the minor's mother, evinced by the fact that respondent fathered a child with the minor's mother in early 2011. The trial court thus did not err in finding that respondent was unable to provide the proper care and custody for the minor, and that it was unlikely respondent would be able to provide such care within a reasonable period of time considering the minor's age.

MCL 712A.19b(3)(j) provides that 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.* at 165. 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). Respondent maintained a relationship with the minor's mother and refused to take responsibility for the relationship. Respondent tested positive for drugs on four occasions, insisting that the drug screens were false. Prior to July 2011, respondent was inconsistent with visitation, causing distress in the minor. Respondent eventually ceased visitation with the minor in July 2011, citing the emotional distress visitation caused him and the minor. Respondent also never maintained suitable housing; at the time of termination, in October 2011, respondent lived with a fiancé that had a criminal history as well as a missing child. The trial court thus did not err in finding that the minor would likely be harmed if returned to respondent's care.

Respondent next argues that the trial court clearly erred in finding that termination was in the minor's best interest, as by the time of the best interest hearing, in January 2012, respondent had maintained suitable housing and dissolved his relationship with his fiancé, as well as gone to drug rehabilitation. 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

[1] When one statutory ground for termination is established by clear and convincing evidence, an appellate court need not consider whether other grounds cited by the trial court also support a termination decision. *In re Foster*, 285 Mich App at 633.

finds that termination of parental rights is in the child's best interest. *Id.* 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. *Id.* at 129; MCL 712A.19b(5).

The trial court found that although respondent had reportedly ended his relationship with his fiancé in October 2011, he had not allowed a caseworker to evaluate his home. Further, the trial court noted that respondent now had an additional child with the minor's mother. Although the minor had a bond with respondent, the trial court found that based upon the evidence discussed *supra*, his behavior could only be found to be detrimental to the minor. The trial court thus did not clearly err in finding that termination of respondent's parental rights was in the minor's best interest.

Affirmed.

/s/ Christopher M. Murray
/s/ Karen M. Fort Hood
/s/ Stephen L. Borrello