

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
September 20, 2012

In the Matter of D. FLOYD, Minor.

No. 308476
Ottawa Circuit Court
Family Division
LC No. 09-063698-NA

Before: M. J. KELLY, P.J., and HOEKSTRA and STEPHENS, JJ.

PER CURIAM.

Respondent father appeals as of right the trial court's order terminating his parental rights to the minor child under MCL 712A.19b(3)(g) and (j). Because we conclude that the trial court did not clearly err in finding at least one statutory ground for termination was proved by clear and convincing evidence, we affirm.

On appeal, respondent argues that the trial court clearly erred in finding clear and convincing evidence to support the statutory grounds for termination under MCL 712A.19b(3)(g) and (j). Specifically, respondent maintains that the trial court disregarded the evidence demonstrating that he would be able to address his substance abuse, criminality, and parenting issues within a reasonable time. Further, respondent argues that he had a plan for housing, substance abuse treatment, and stress management; accordingly, respondent maintains that the evidence did not support the trial court's conclusion that it was reasonably likely that the child would be harmed if returned to his care.

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 Minors*, 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 Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Sours Minors*, 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); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

In this case, respondent's parental rights were terminated pursuant to MCL 712A.19b(3)(g), and (j), which provide in pertinent part:

(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:

* * *

(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 provide proper care and custody within a reasonable time considering the child's age.

* * *

(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.

In regard to §19b(3)(g), the evidence presented at the termination hearing demonstrated that respondent showed little to no progress in the eight months between adjudication and termination. The initial condition that led to adjudication was respondent's criminality, specifically, fleeing law enforcement while the child's mother was being questioned and leaving no one to care for the child. Because respondent's whereabouts were unknown for more than a year, the matter of respondent's parental rights was not adjudicated until more than 1-1/2 years after the trial court took temporary custody of the child. Respondent was eventually found in a hotel room with the child's mother, the child, a loaded gun, and cocaine. When respondent pleaded to an amended petition, he agreed to comply with the treatment plan which required a psychological evaluation, a substance abuse assessment, drug screens, completion of parenting classes, and that respondent secure housing. Respondent completed the psychological testing and a substance abuse assessment. He had clean drug screens for about two or three months, but then tested positive for cocaine. At that point, he refused further screens and services. Respondent was, at different times, enrolled in two different parenting classes and failed to complete either one. At one point, respondent informed his caseworker he wanted a less demanding parenting class. Respondent did not exercise all of his parenting time. Throughout the case, respondent had various convictions and spent time in jail. Finally, he failed to secure independent or consistent housing. At the time of the termination hearing the child was approximately 3-1/2 years old and had not been in the care of the respondent for more than one year.

Accordingly, the trial court did not clearly err in finding clear and convincing evidence to support the statutory grounds set forth in §19b(3)(g), because the evidence demonstrated that respondent failed to seriously participate in services and continued to have issues with criminality and substance abuse. Moreover, respondent was absent from the minor child's life for a substantial period of time, and had not cared for the child in more than a year. This evidence supports the trial court's conclusion that respondent failed to provide proper care or custody for the child and that there is no reasonable expectation that he will be able to provide proper care and custody within a reasonable time considering the child's age.

Because we conclude that the trial court did not clearly err in finding clear and convincing evidence to support the statutory grounds set forth in §19b(3)(g), any error in regard to §19b(3)(j) is harmless because only one statutory ground is necessary to support a termination order. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000). However, the same evidence supporting the trial court's conclusion in regard to §19b(3)(g) also supports the trial court's conclusion regarding the statutory grounds set forth in §19b(3)(j). Respondent's failure to complete a parenting class, secure housing, and demonstrate an ability to resolve his issues with substance abuse and criminality supports the trial court's conclusion that there was a reasonable likelihood that the minor child would be harmed if returned to respondent. Thus, the trial court did not clearly err in finding that §§19b(3)(g) and (j) were established by clear and convincing evidence, *In re Trejo Minors*, 462 Mich at 355-357; MCR 3.977(H)(3)(a) and (K), and accordingly, did not clearly err in terminating respondent's parental rights to the minor child.¹

Affirmed.

/s/ Michael J. Kelly
/s/ Joel P. Hoekstra
/s/ Cynthia Diane Stephens

¹ Respondent does not challenge the trial court's best-interests determination on appeal.