

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
September 13, 2012

In the Matter of H. ATKINS, Minor.

No. 308810
Berrien Circuit Court
Family Division
LC No. 2010-000032-NA

Before: WILDER, P.J., and O'CONNELL and K.F. KELLY, JJ.

PER CURIAM.

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

To terminate parental rights, a trial court must find clear and convincing evidence on at least one of the statutory grounds alleged in the petition. *In re Powers*, 244 Mich App 111, 117-118; 624 NW2d 472 (2000). Once a statutory ground is established, the trial court must order termination of parental rights if the court finds that termination is in the child's best interests. MCL 712A.19b(5). This Court reviews a trial court's termination decision for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009); MCR 3.977(K). Clear error exists "if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004). A trial court may consider evidence on the whole record in making its best-interest determination, which is also reviewed for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

In this case, we find no clear error in the trial court's conclusion that statutory grounds for termination were established by clear and convincing evidence under MCL 712A.19b(3)(c)(i) (conditions that led to adjudication unlikely to be rectified in a reasonable time). The principal condition that led to adjudication was respondent's ongoing criminal behavior and substance abuse. Even when monitored by tether, respondent had illegal substances in the home where his four-month old child lived. Additional barriers to reunification were lack of suitable housing, employment, and parenting skills. Respondent was incarcerated for the duration of the case and was anticipated to be released four months after the termination proceeding. Additionally, respondent had several other children with whom he had no parental relationship, and he had no plans for housing or employment upon release. The trial court terminated respondent's parental rights because the evidence indicated that the time needed for respondent to develop any parenting skills would be lengthy in comparison to the child's age.

Further, the evidence established that termination of respondent's parental rights was in the minor's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Testimony indicated that upon his release respondent would need a lengthy time to participate in services in order to be able to care for the child, and success in developing those skills was questionable because of his extensive history of criminal behavior and substance abuse. The child had been in the foster care placement with her maternal siblings for nearly two years and was doing well. The child needed permanency, and respondent had not demonstrated progress toward achieving permanency for the child.

Respondent argues that he was not provided with sufficient services while incarcerated. MCL 712A.19a(2) requires that "[r]easonable efforts to reunify the child and the family must be made in all cases [subject to exceptions not applicable here]." "Generally, when a child is removed from the parents' custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *In re HRC*, 286 Mich App 444, 462; 781 NW2d 105 (2009) (citation omitted). Our Supreme Court has explained that "[t]he state is not relieved of its duties to engage an absent parent merely because that parent is incarcerated." *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

In this case, we find no error in the trial court's conclusion that reasonable efforts for reunification were made. The record indicates that respondent father received a case service plan, regularly communicated with the foster care worker, and that the foster care worker communicated with respondent's prison caseworker. Additionally, the record indicates that while he was in prison, respondent received services that addressed at least some barriers to reunification, specifically substance abuse. Importantly, respondent's parental rights were not terminated primarily because of his incarceration, but because of his long history of criminal behavior, his failure in the past to refrain from criminal activity in the presence of the child, and the estimated length of time needed to develop an ability to provide a parental relationship with the child, given the child's age.

Having found no clear error with regard to MCL 712A.19b(3)(c)(i), we need not consider the other statutory grounds for termination. The trial court did not err in terminating respondent's parental rights.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Peter D. O'Connell
/s/ Kirsten Frank Kelly