

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
October 11, 2012

In the Matter of T. M. WORDEN, Minor.

No. 309810
Ingham Circuit Court
Family Division
LC No. 09-001378-NA

Before: RONAYNE KRAUSE, P.J., and BORRELLO and RIORDAN, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating his parental rights to his minor child (DOB 5/30/09) pursuant to MCL 712A.19b(3)(g) and (j). For the reasons set forth in this opinion we affirm.

Respondent appeals as of right from an order of the Ingham Circuit Court Family Division, dated March 28, 2012, terminating his parental rights to his minor child.¹ Petitioner initially sought removal of the minor child on July 17, 2009, because the minor child tested positive for cocaine, opiates, and marijuana when he was born. Additionally, both respondent and the child's mother failed to benefit from substance abuse treatment. On November 10, 2009, the trial court assumed jurisdiction over the child based on respondent's plea to the substance abuse allegations. Two years later, and following the termination hearing on March 28, 2012, the trial court found statutory grounds to terminate respondent's parental rights under MCL 712A.19b(3)(g) (regardless of intent, the parent has failed to provide proper care or custody for the child, and no reasonable expectation that the parent will do so within a reasonable timeframe) and MCL 712A.19b(3)(j) (it is reasonably likely, based on prior conduct, that the child will be harmed if returned to the parent). The trial court also found that termination of respondent's parental rights was in the best interest of the child. This appeal then ensued.

Respondent first argues that the trial court committed clear error in finding that clear and convincing evidence existed to terminate his parental rights. We review for clear error the trial

¹ The court also terminated the mother's parental rights to the minor child; however, she has not appealed the court's decision. The trial court first terminated respondent's parental rights after a trial on August 30, 2011; however, the trial court set aside that decision after it determined that respondent had not received adequate notice of the proceedings.

court's factual findings and determination that a statutory ground for termination has been established by clear and convincing evidence. MCR 3.977(E)(3); MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

The trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(g) and (j). These statutes provide:

(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.

Petitioner bore the burden of establishing the above statutory grounds for termination by clear and convincing evidence. *In re JK*, 468 Mich 202, 211; 661 NW2d 216 (2003). Clear and convincing evidence is evidence that creates "in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." *Hunter v Hunter*, 484 Mich 247, 265; 771 NW2d 694 (2009) (quotation marks omitted).

The trial court did not commit clear error in finding that petitioner established by clear and convincing evidence statutory grounds to terminate respondent's parental rights. A parent's failure to comply with the ordered services in the parent-agency agreement may be used as evidence of his or her failure to provide proper care and custody for the children. *In re JK*, 468 Mich at 214. Respondent's foster care worker testified that during the nearly three years that the trial court had jurisdiction over this matter, respondent abused cocaine, marijuana, and opiates. The record also revealed, and the trial court correctly found, that respondent lacked parenting skills, financial stability, and independent housing. Despite being ordered by the trial court to participate in parenting classes, Michigan Works, therapy, and substance abuse treatment, the record abundantly established that respondent failed to complete his parenting classes and the Michigan Works program. Respondent claimed that he completed parenting classes through another service provider, but offered no documentary evidence to support this statement. More seriously, after nearly three years of opportunities to achieve sobriety, he was unable to do so until he was incarcerated and, presumably, no longer had access to drugs. Furthermore, due to a variety of issues, including substance abuse, respondent was ordered to leave the home where the minor child resided. Respondent admitted that he only saw the minor child twice from January 26, 2010 until the date of the termination hearing. Considering respondent's repeated failure to

achieve sobriety and the fact that he has not been permitted to visit with his child due to his nearly constant substance abuse, it is clear that respondent was unable to provide proper care or custody for the child and that there is no reasonable expectation that he would be able to do so within a reasonable amount of time. MCL 712A.19b(3)(g). Thus, the trial court did not clearly err in so finding.

Respondent also argues that the trial court erred by failing to recognize that petitioner failed to adequately provide him with reunification services. Petitioner must make reasonable efforts to reunify the children with the parents (absent aggravating circumstances). MCL 712A.19a(2); *In re Mason*, 486 Mich at 152. However, the record established that petitioner provided respondent with services designed to address his substance abuse. Respondent failed to fully comply with or benefit from those services. Respondent claimed that petitioner's failure to ensure that he had access to a \$2,000 detox facility interfered with his recovery and his opportunity to participate in inpatient treatment, but the record established that respondent had a reasonable alternative to the expensive detox facility. Respondent did not avail himself of any of these alternatives, leading us to conclude, as did the trial court, that respondent's lack of access to his inpatient treatment program was not due to a lack of income but rather due to his own poor choices.

In addition, the trial court did not commit clear error in determining that petitioner established by clear and convincing evidence that the child faced a risk of harm if returned to respondent's care. MCL 712A.19b(3)(j). Respondent consistently used drugs up until he was incarcerated for a probation violation on November 1, 2011. Respondent admitted that he was unemployed, lacked independent housing, and had no proven parenting skills or job skills. Respondent only consistently abstained from drugs while he was incarcerated. While respondent argues that his clean time in jail was evidence of his willingness to change for the better, respondent's arguments are unpersuasive given his prior extensive drug abuse and considering the fact that he may have been sober only because he lacked access to drugs while incarcerated. Considering respondent's pattern of instability, chronic substance abuse, and inability to care for himself over a considerable period of time, it is clear that reunifying the minor child with respondent would place the child at substantial risk of harm.

Respondent also argues that petitioner failed to provide him with reunification services while incarcerated. A parent's incarceration does not relieve petitioner of its obligation to provide services to the parent. *In re Mason*, 486 Mich at 160. However, respondent was only incarcerated at the end of these proceedings, after petitioner had sought to terminate his parental rights. To the extent that respondent was deprived of access to petitioner's services during the final four months before the hearing, this was merely a consequence of his own failure to comply with his probation requirements. Prior to his incarceration, respondent was, for nearly three years, afforded a vast array of services to assist him with all of his issues. Respondent either failed to follow through with these services, tested positive for drugs or failed to attend drug screenings thereby effectively eliminating him from eligibility in many reunification services. In short, respondent's failures relative to the amount and number of services offered to him were a result of his own choices, rather than a denial of choices. By the time respondent was incarcerated, respondent had years to avail himself of a myriad of services and programs. Despite all of these opportunities, respondent failed to comply in any meaningful manner with the reunification services afforded to him. The record also reveals that during this extensive

period of time, respondent visited the minor child just twice, continued to test positive for drugs, failed to attend or avail himself of the services afforded him, blaming others for his inability to stay sober and visit the minor child. Given this rather lengthy history, respondent's continued and repeated failure to avail himself of numerous reunification services, we cannot find respondent was denied reunification services as required under *Mason*.

Finally, respondent finally argues that the trial court committed clear error in finding that termination of his parental rights was in the best interest of the minor child. We review for clear error the lower court's determination regarding whether termination of a person's parental rights is in the best interests of the children. MCR 3.977(K); *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009).

Once petitioner establishes a statutory ground under MCL 712A.19b(3) to terminate a parent's parental rights, the trial court must terminate the parent's parental rights if it finds that termination is in the best interests of the child. MCL 712A.19b(5); MCR 3.977(H)(3); *In re Jones*, 286 Mich App at 129. The trial court must weigh all evidence in the whole record to determine whether termination of parental rights is in the best interest of the children. *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000). "[W]hile it is inappropriate for a court to consider the advantages of a foster home in deciding whether a statutory ground for termination has been established, such considerations are appropriate in a best-interests determination." *In re Foster*, 285 Mich App 630, 635; 776 NW2d 415 (2009).

The trial court did not commit clear error in finding that termination of respondent's parental rights was in the best interest of the minor child. A parent's failure to engage in meaningful contact with a child "preclude[s] the development of any family bonds." *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004). As previously stated, at the time of the termination hearing, respondent had only seen the child twice in two years. This was due to the fact that respondent's parenting time was suspended until he consistently tested negative for drugs. With the exception of his four months in jail, respondent failed to meet this threshold. Further, those two visits were in direct violation of the court order because respondent never tested clean long enough to reinstate his parenting time. This level of contact was inadequate to establish or preserve a parent/child relationship between the child and respondent. While respondent asserts that petitioner should have permitted visitation during his incarceration because he was currently sober, that was no longer an option because of the pending termination petition. MCR 3.977(D). Although respondent asserts that his brief sobriety while incarcerated and future aspirations were evidence of his ability to care for the child, this evidence was dwarfed by his long history of failings. Accordingly, we find that the trial court's determination was not clearly erroneous.

Affirmed.

/s/ Amy Ronayne Krause
/s/ Stephen L. Borrello
/s/ Michael J. Riordan