

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 20, 2012

In re J.D.H., B.B.H., and M.M.H., Minors.

No. 310333
St. Clair Circuit Court
Family Division
LC No. 10-000370-NA

Before: STEPHENS, P.J., and OWENS and MURRAY, JJ.

PER CURIAM.

Respondent-father appeals as of right from the order of the family division of the circuit court terminating his parental rights to his minor children, J.D.H., B.B.H., and M.M.H., under MCL 712A.19b(3)(i) (conditions of adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (children will likely be harmed if returned).

I. FACTS

This case began in September 2010 when M.M.H. was born testing positive for marijuana. Concerns that arose thereafter included that J.D.H. and B.B.H. were found outside playing in the family car without any parental supervision, that the children's mother dropped off the two older children at the paternal grandmother's home because she could not care for them, and that the parents took the two older children to the maternal grandparents' home when they could not feed them, leaving the four-month-old baby at home alone. A petition for temporary court wardship was authorized and the children were removed from the parental home. The parents consented to the court's jurisdiction in October 2010.

Respondent-father only partially complied with the court orders. He complied fairly well with orders to maintain suitable housing and a legal source of income, and attended parenting classes and visitation with the children. There was no evidence of any substance abuse problem on respondent-father's part. However, and importantly, his participation in counseling was sporadic, and he did not benefit from it.

The trial court suspended the mother's parenting time in June 2011, and in November of that year the court authorized a petition requesting termination of the mother's parental rights, and further ordered respondent-father to have no contact with the mother and otherwise to take steps to end his relationship with her. The mother's parental rights were separately terminated on April 17, 2012.

At the time of respondent-father's termination hearing, he was on probation for credit-card fraud. He was arrested on a probation violation for failure to pay approximately \$3,000 in court-ordered restitution. He was released on bond but failed to appear for sentencing on the probation violation. A bench warrant was issued for his arrest, which remained open at the time of the termination hearing.

The greater concern, however, was that respondent-father continued to have contact with the children's mother, and allowed contact between her and the children in violation of court orders. Respondent-father had progressed to unsupervised visitation in October 2011, the second of which took place on Halloween. On that occasion, respondent-father took the children to the maternal grandparents' home, where the children's mother appeared. The children's foster parent testified that respondent-father admitted to the visit with the mother upon returning the children, and added that respondent-father asserted that in so doing he had "done the right thing." The foster mother further testified that visits with the mother were hard on the children and caused some regression in their behavior.

After the Halloween visit, the trial court ordered respondent-father to have no contact whatsoever with the mother, and to take steps to end his relationship with her. Respondent-father testified that he separated from the mother and filed for divorce in February 2012, but no such complaint was on record at the time of the termination hearing.

The hearing referee concluded that respondent-father "has established that he cannot be trusted to protect the children from contact with the mother." Citing that concern, and also respondent-father's failure to benefit from counseling and his open bench warrant, the referee recommended termination of his parental rights. The trial court adopted the referee's findings and conclusions, and entered an order of termination on April 30, 2012.

Respondent-father argues that the trial court erred in concluding that termination was warranted under the three statutory criteria and that termination was in the children's best interests. An appellate court "review[s] for clear error both the court's decision that a ground for termination has been proven by clear and convincing evidence and . . . the court's decision regarding the child's best interest." *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). See also MCR 5.974(I). A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A reviewing court must defer to the special ability of the trial court to judge the credibility of witnesses. *Id.*

The trial court terminated respondent-father's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j). Those statutory provisions set forth the following bases for termination:

(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:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial

dispositional order, and the court, by clear and convincing evidence, finds . . . the following:

(i) 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 child's age.

* * *

(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.

MCL 712A.19b(5) in turn provides, "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made."

The referee's findings of fact and conclusions of law that underlay the termination of the mother's parental rights recounted the facts that underlay the early stages of this case, then reported that the mother was sentenced to a term of probation in December 2009 for illegal use of a financial transaction device, then incurred two probation violations, one of which involved a positive drug test, followed by a term of jail incarceration. The referee further noted that the mother failed to complete 21 out of 26 drug screens to which she was referred, that her probation officer reported that she was not motivated to complete probation successfully, and that the foster care worker reported that the mother had failed to maintain stable employment or housing. The referee additionally noted that the mother had failed to complete any of three counseling referrals, or to comply with the requirement that she attend meetings intended to address substance abuse problems, and that the foster care worker reported that the mother often missed visitation with the children.

Significantly, in this appeal, respondent-father does not attempt to portray the children's mother as someone suitable to expose the children to. Instead, respondent-father protests that "[t]he marriage to the children's mother can certainly be rectified within a reasonable time and Appellant testified that they were no longer involved together and he had tried to take steps to end the marriage." However, the trial court was not obliged to credit respondent-father's testimony about the lack of a continuing relationship between respondent-father and the mother, but was entitled to attach significance to the lack of any actual divorce proceedings even as the termination hearing took place.

Because the mother's unsuitability as someone to expose the children to is not in dispute, and because the record shows both that respondent-father felt at liberty to bring about such exposure despite court orders to the contrary, and failed to bring about even the beginnings of the divorce process, because respondent-father failed to comply with important orders of the court, and because he did not benefit from counseling, the trial court did not clearly err in concluding that the conditions of the adjudication continued to exist, that respondent-father failed to provide proper care and custody, that these things were not likely to be corrected in a reasonable time, that there was a risk of harm to the children if they were returned to respondent-father, and that termination was in the children's best interests.

Affirmed.

/s/ Cynthia Diane Stephens

/s/ Donald S. Owens

/s/ Christopher M. Murray