

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
October 11, 2012

In the Matter of REILLY/ANGER, Minors.

No. 310397
Monroe Circuit Court
Family Division
LC No. 11-022109-NA

Before: JANSEN, P.J., and FORT HOOD and SHAPIRO, JJ.

PER CURIAM.

Respondent appeals by right the order terminating his parental rights to his two daughters pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

I. BASIC FACTS

After the first child was born in June 2008, respondent (the child's father), the child's mother, and the child lived together as a family for about seven months. Respondent was incarcerated in March 2009 as a result of a domestic violence incident with the child's mother. While respondent was incarcerated, he agreed to a guardianship with the child's maternal grandparents because he was unable to provide for her and the mother was unable her unable to properly provide for the child because of the mother's alcohol abuse and physical abuse of the children. At the end of his sentence in December 2010, respondent completed a two-month inpatient domestic violence program.

Respondent was available to participate in a court-structured reintegration program from February 2010 until he was incarcerated in Georgia in October 2010. During this time, respondent was ordered to refrain from alcohol and illegal drug use. Respondent was allowed supervised visiting time with the child and was offered parenting classes. Respondent only sporadically visited with the child, moved around often, did not refrain from alcohol use, and did not provide financially for his daughter. In October 2010, respondent went to Georgia to do a job for a friend and ended up charged with and incarcerated for aggravated assault and battery. Because of his incarceration, respondent was not present for the birth of his second child in 2010. Respondent eventually pleaded to a misdemeanor of simple battery, was sentenced to time served, and returned to Michigan in January 2012. Upon returning to Michigan, respondent went back to prison because he never asked permission from his parole officer to go to Georgia. Respondent's earliest release date is January 2013.

II. ANALYSIS

Petitioner filed a petition for temporary jurisdiction of the older child in May 2011, and both parents pleaded to the allegations in the petition. On appeal, respondent argues that his plea was not knowingly and voluntarily made. He asserts that the trial court failed to inform him that his plea could be used as evidence in a proceeding to terminate his parental rights or that petitioner was required to prove that he had neglected or abused his children by a preponderance of legally admissible evidence.

It is well settled that matters affecting and concerning the trial court's exercise of its jurisdiction may be challenged only on direct appeal of the jurisdictional decision and not by collateral attack in a subsequent appeal of an order terminating parental rights.¹ In this case, the order of adjudication was filed on May 31, 2011, and the initial order of disposition was filed on July 5, 2011. Respondent had the opportunity to challenge the trial court's jurisdictional decision in a direct appeal from the July 5, 2011, order following the trial court's exercise of jurisdiction over the older child, but did not do so. He also did not raise a challenge to the trial court's exercise of jurisdiction throughout the case. As a result, this issue is not properly before this court. In any event, a review of the record indicates that the trial court properly informed respondent of the consequences of his plea and did not err in determining that the plea was knowingly and voluntarily made or in accepting the parents' pleas in order to establish jurisdiction.

Respondent also argues that the trial court erred in terminating his parental rights because petitioner failed to offer reasonable services, the trial court relied on inappropriate evidence, and there was a guardianship in place. To terminate parental rights, the trial court must find that petitioner has proven at least one of the statutory grounds for termination by clear and convincing evidence.² This Court reviews for clear error a trial court's decision terminating parental rights.³

The lower court terminated respondent's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j), which provide for termination if:

(c)(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.

¹ *In re S L H*, 277 Mich App 662, 668; 747 NW2d 547 (2008).

² MCL 712A.19b(3); *In re Sours*, 459 Mich 624, 632; 593 NW2d 520 (1999).

³ MCR 3.977(K); *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003).

* * *

(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.

The trial court properly concluded that clear and convincing evidence supported termination pursuant to MCL 712A.19b(3)(c)(i), (g), and (j) and that termination was in the children's best interests. At the time of the termination hearing in March 2012, respondent had never met his younger daughter and had not seen his older daughter since October 2010. When he was available between February 2010 and October 2010, respondent only sporadically visited the child, did not have stable housing, and only contributed about \$200 to her care. Respondent failed to complete parenting classes, failed to refrain from drinking alcohol, and failed to participate in a substance abuse program. Respondent had never provided anything for the youngest child.

Two of respondent's incarcerations were the result of parole violations. The first incarceration occurred when responded was involved in the domestic violence incident with the children's mother. The second was the result of his departure from the state without his parole officer's permission. The incarcerations were the resolute of incidents in which responded became violent after consuming alcohol. Considering this evidence, it was clear that the conditions that led to adjudication continued to exist at the termination hearing and that respondent failed to provide proper care and custody for his children.

Respondent argues that he would have a job when he gets out of prison in January 2013,⁴ and that he would be ready to take custody of the children within six months. However, respondent had not provided for his children in two years and had not addressed his issues with alcohol and violence. As such, the trial court properly concluded that respondent would not be able to rectify the conditions that led to adjudication⁵ or provide proper care and custody of the children within a reasonable time⁶ and that there was a reasonable likelihood of harm to the children if they were returned to respondent's care.⁷

Respondent also argues that the older child was in a guardianship that provided her with proper care and custody. However, a review of the record indicates that the guardianship was a temporary guardianship carefully reviewed by the trial court to ensure that respondent and the children's mother would participate in services in order to regain custody. The guardianship was

⁴ Respondent indicated that January 3, 2013, was his earliest possible outdate but that he could be incarcerated beyond that date.

⁵ MCL 712A.19b(3)(c)(i).

⁶ MCL 712A.19b(3)(g).

⁷ MCL 712A.19b(3)(j).

not put into place so that respondent could leave the state or not provide financially or emotionally for his child.

Respondent argues that the trial court erred in terminating his parental rights because petitioner failed to provide reasonable efforts toward reunification. When a child is removed from a parent's custody, petitioner is required to make reasonable efforts to rectify the conditions that caused removal by adopting a case service plan.⁸ The reasonableness of the services offered to a respondent may affect the sufficiency of the evidence to establish a statutory ground for termination, which this Court reviews for clear error.⁹

Respondent left Michigan where the trial court had offered him a court-structured reintegration program that included visitation, parenting classes, and substance abuse treatment. Respondent testified that there were no services available for him in Georgia and that he was confined to his cell 23 hours a day. When respondent returned to Michigan, he was transferred from a correctional facility in Jackson to Adrian within a month, leaving little time for any services before the termination hearing. Accordingly, respondent's lack of participation in services and petitioner's inability to provide services was a direct result of respondent's voluntary departure from the state and subsequent arrest and incarceration, not petitioner's failure to provide reasonable efforts. Moreover, during the eight months that respondent was available, he did not substantially comply with the services that were offered.

Respondent also argues that the trial court improperly considered evidence from the time period of February 2010 to October 2010, when his child was in a guardianship with the maternal grandparents. However, respondent also relies on evidence of his actions during this period in support of his argument that he worked toward reunification. Moreover, a statement of the facts developed from the guardianship file was entered into evidence at the termination hearing without objection from respondent. The trial court also indicated that it was taking judicial notice of the guardianship file. Respondent did not object to the admission of the evidence or to the trial court taking judicial notice of the file. Accordingly, we conclude that the trial court did not improperly consider this evidence.

The trial court also properly concluded that termination was in the children's best interests.¹⁰ Respondent did not have a bond with either child. In September 2011, respondent asked that he be allowed to call the older girl from jail in Georgia. Lora Knott, an expert in child counseling, met with the child three times to determine whether contact with respondent would be beneficial or a detriment to her. Knott concluded that contact would not be beneficial for the child. When shown pictures of herself, her mother, and respondent, the child identified and commented about her mother and herself but made no mention of respondent, never asked about the man in the pictures, and did not engage in any discussion about a father. In addition,

⁸ *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005).

⁹ *Id.* at 541.

¹⁰ MCL 712A.19b(5).

respondent had not provided any financial or emotional support for his children. Accordingly, the trial court did not clearly err in entering an order terminating respondent's parental rights.

Affirmed.

/s/ Kathleen Jansen
/s/ Karen M. Fort Hood
/s/ Douglas B. Shapiro