

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
October 11, 2012

In the Matter of S. A. LEHTO, Minor.

No. 310497
Dickinson Circuit Court
Family Division
LC No. 10-000523-NA

Before: SAAD, P.J., and WHITBECK and M. J. KELLY, JJ.

PER CURIAM.

Respondent appeals by right the trial court's order terminating his parental rights to his son under MCL 712A.19b(3)(c)(i) and (3)(g). Because we conclude that there were no errors warranting relief, we affirm.

The trial court took jurisdiction over the minor in November 2010 after his mother, a drug addict, had left him with individuals who were not providing proper care. Respondent was incarcerated at the time and had been incarcerated for most of the child's life. The longest period that respondent had remained drug free outside of institutions was approximately eight months.

Respondent initially made laudable efforts to reform himself and be in a position to parent the minor child. While in jail, he participated in a Positive Parenting curriculum. After his release, he completed an inpatient drug treatment program, which included the "Fathers to Dads" parenting program. He also cooperated with the provision of services and successfully participated in supervised visits. He eventually even had unsupervised and overnight parenting time. Respondent consistently had negative drug screens and secured appropriate housing by moving in with his new girlfriend, who also cooperated with the Department of Human Service and tested clean for drugs. Respondent found gainful employment and established a good bond with his son. On the basis of these positive changes, the trial court returned the minor to respondent's care in September 2011, but retained jurisdiction.

In November 2011, the Department requested the emergency removal of the minor from respondent's care. It did so because respondent had been arrested and was serving 60 days in jail for violating his probation by consorting with a felon. Respondent had also had two recent dilute drug screens and, although he denied it, had allegedly assaulted his girlfriend. His son recounted witnessing this event. Respondent apparently was not charged with domestic violence as part of a plea agreement regarding his probation violation. Respondent was to be released in January 2012, but tested positive for Norbuprenorphine (Suboxone) when he returned from work release.

As a result, he was subject to another probation violation hearing and, in March 2012, the trial court sentenced him to serve 22 months in prison.

At a permanency planning hearing held on March 14, 2012, the court concluded that proceedings should be initiated to terminate respondent's parental rights. The court explained that respondent's relapse showed that he had failed to sufficiently benefit from the case service plan. The court also found it noteworthy that respondent had had only limited involvement in his son's life.

The trial court subsequently terminated respondent's parental rights under MCL 712A.19b(3)(c)(i) and (g). The trial court found that the conditions that led to adjudication continued to exist because respondent was again incarcerated and would be for at least seven months.¹ MCL 712A.19b(3)(c)(i). The court also found that respondent was not able to provide proper care and custody and had not been able to do so for most of the child's life due to his legal troubles. MCL 712A.19b(3)(g). The court noted that the minor had been "in the care and custody of the Court or others" for the majority of his life and that an assumed release date in January 2013 would mean that reunification would be at least one year away to allot time for respondent to demonstrate that he had overcome his drug problem and had a suitable home. The court also found that, although respondent had shown great promise, it was clear that any gains that he had made were since lost:

[Respondent] had a good and appropriate home with his then partner . . . but it was clear to this Court that things were rapidly deteriorating and falling apart. There were some dilute screens; the allegations of domestic violence; and this Court had an opportunity to see [respondent] and it was clear to this Court there was a substantial change in his physical appearance and demeanor before this court. . . . While it is difficult to describe for the record, at his earlier appearances he appeared physically fit. His eyes were bright and clean. He had a positive attitude. When he appeared before the Court at the time that [the minor] was again removed, [respondent] had a very sunken look. . . . [H]is eyes were no longer bright and clean. His appearance and physical demeanor had deteriorated. He appeared to be an angry and combative young man with regard to the issues facing him rather than having the positive attitude and outlook that he had exhibited to the Court before.

* * *

So considering all those factors the Court finds by clear and convincing evidence that there is no reasonable likelihood that the conditions would be rectified within a reasonable time. The reasonable time is now or within a very few short months. . . . It is not for [the minor] to have to wait another year to see if things come back together for his father and wait for permanence.

¹ Respondent's earliest release date is in January 2013, but the Offender Tracking Information System shows that his maximum release date is in 2043.

The court catalogued the services provided and found that reasonable efforts were made to rectify the initial conditions. Further, the court concluded that termination would be in the child's best interests.

Respondent first argues that the trial court clearly erred in concluding that the statutory grounds for termination were established. This Court reviews the trial court's findings of fact in a termination of parental rights proceeding, "as well as its ultimate determination that a statutory ground for termination of parental rights has been proved" for clear error. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010); see also MCR 3.977(K). "A finding of fact is clearly erroneous 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).

The conditions that initially led to the Department's involvement with respondent were his incarceration and substance abuse. Given respondent's renewed incarceration and relapse into drug use, the trial court did not clearly err in finding that these conditions continued to exist. Moreover, they clearly impaired his current ability to provide proper care and custody. Respondent had an ongoing problem with substance abuse and criminality. He had been incarcerated for most of the child's life and for a good deal of time before he was born. While respondent's progress had been laudable, his relapse into drug use and arrest were clear and convincing evidence that respondent could not sustain his progress within a reasonable time. Respondent managed to successfully care for his son for approximately 11 weeks—11 weeks out of his five-year life—before returning to the habits that caused the Department to intervene in the first place. We cannot conclude that the trial court clearly erred in the finding that the statutory grounds had been met; on the record evidence, the trial court could reasonably find that respondent would be unable to make the changes necessary in order to properly provide and care for his son within a reasonable time considering his son's age. *In re Mason*, 486 Mich at 152.

Once a statutory ground for termination is established by clear and convincing evidence, the trial court must determine from evidence on the whole record whether termination is in the child's best interests; if so, then the trial court is required to order termination of parental rights. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 351; 612 NW2d 407 (2000). This Court reviews for clear error the trial court's finding that it is in the child's best interest to terminate his or her parent's parental rights. *Trejo*, 462 Mich at 356-357.

On appeal, respondent suggests that the incarceration for the relapse affected his ability to care for his son, but not the relapse itself. He emphasizes the fact that he was able to remain sober for a lengthy period of time and, while sober, was able to properly care for his son. The trial court found that the 11-week period during which he had custody was not a significant period of time. The record indicates that respondent was released from inpatient treatment in March 2011, had dilute drops in November 2011, and tested positive for Norbuprenorphine in January 2012. Thus, his most recent period of being drug free was eight to 10 months. While there were factors that weighed in respondent's favor with regard to the child's best interests, the evidence also showed that respondent's track record with drugs and prison made the likelihood of his being able to take charge of his son for a sustained period a gamble. And, although the trial court might have concluded that such a gamble would be in the child's best interests, it cannot be said that the trial court clearly erred in reaching the opposite conclusion.

There were no errors warranting relief.

Affirmed.

/s/ Henry William Saad
/s/ William C. Whitbeck
/s/ Michael J. Kelly