STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of MANCIEL, Minors.

UNPUBLISHED
December 19, 2013

No. 315659
Wayne Circuit Court
Family Division
LC No. 02-412296-NA

Before: BOONSTRA, P.J., and DONOFRIO and BECKERING, JJ.

PER CURIAM.

Respondent father appeals as of right the trial court's order terminating his parental rights to the two minor children, "LTM" and "TLM," pursuant to MCL 712A.19b(3)(c)(*i*) (conditions that led to adjudication continue to exist), (g) (failure to provide proper care or custody), (h) (parent is imprisoned for a period exceeding two years), and (j) (reasonable likelihood of harm if children are returned to parent). Because the trial court did not clearly err by finding that clear and convincing evidence supported the statutory grounds for termination and that termination of respondent's parental rights was in the children's best interests, we affirm.

This case is before this Court for the second time. The trial court previously terminated respondent's parental rights to LTM, but this Court reversed on the basis that petitioner had made no efforts to engage respondent in services. *In re Manciel II*, unpublished opinion per curiam of the Court of Appeals, entered August 12, 2010 (Docket No. 296359). The proceedings on remand involved LTM and his younger sister, TLM, born August 9, 2011. The trial court terminated respondent's parental rights to both children.

Respondent argues that the trial court clearly erred by finding that clear and convincing evidence established the statutory grounds for termination. We review for clear error a trial court's determination that a statutory ground for termination has been proven by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A decision is clearly erroneous if, "although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

Our review of the record demonstrates that clear and convincing evidence supported the statutory bases for termination. LTM's adjudication occurred in January 2010, in relevant part because he tested positive for cocaine at birth. Respondent acknowledged that he was aware of the child's mother's cocaine use during her pregnancy with LTM. LTM's mother also gave birth

to TLM, who likewise tested positive for cocaine at birth. Respondent engaged in sexual relations with the children's mother and fathered TLM in violation of a no-contact order.

It is undisputed that respondent completed parenting classes and individual counseling, attended most of his parenting time sessions, and complied with his obligation to participate in mental health treatment. Respondent only partially complied with his obligation to submit random drug screens, however, and submitted a January 2012 screen that was positive for cocaine. Respondent was also unemployed, had a lengthy criminal history, and lived in a home that was unsuitable for a child because it was unsafe and unsanitary. When a caseworker attempted to visit the home, respondent was not there because he absconded from probation. Respondent told the caseworker that his attorney had advised him not to stay at the house. In May 2012, respondent was incarcerated on home invasion and robbery charges. At the time of the March 2013 termination hearing, three years after LTM's adjudication and one year after TLM's adjudication, respondent still did not have a legal source of income, suitable housing, or any means to care for the children. He was also incarcerated with an earliest release date of May 9, 2032.

We note that respondent appealed his criminal convictions to this Court, which remanded his case to the trial court for an evidentiary hearing,[1] following which the trial court granted defendant a new trial. Because this Court retained jurisdiction, respondent's appeal is still pending before this Court. Even if defendant ultimately receives a new trial and is acquitted, however, termination of his parental rights was nevertheless proper under MCL 712A.19b(3)(c)(*i*), (g), and (j). "Only one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights . . . ." *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). Thus, even if respondent is not ultimately imprisoned for a period exceeding two years as stated in MCL 712A.19b(3)(h), termination was proper on the remaining three grounds.

With respect to respondent's contention that petitioner inadequately investigated potential relative caregivers, the record demonstrates that petitioner investigated two relative placements, including respondent's sister, whose home was unfit because of her husband's criminal history, and respondent's son, who was not able to care for the children because he attended school and lived with his mother. Although respondent contends that petitioner neglected to investigate additional relative caregivers, citing *In re Mason*, 486 Mich 142; 782 NW2d 747 (2010), the facts underlying that case are distinguishable from the instant case. In *In re Mason*, 486 Mich at 161, the Court observed that a parent need not personally care for a child if the parent is in prison. The Court recognized that the trial court in that case "never considered whether respondent could fulfill his duty to provide proper care and custody in the future by voluntarily granting legal custody to his relatives during his remaining term of incarceration." *Id*. at 163. In the instant case, however, petitioner investigated two potential relative placements that respondent suggested before the termination hearing. In light of petitioner's investigation of two

[1] *People v Manciel*, unpublished order of the Court of Appeals, entered July 3, 2013 (Docket No. 312804).

potential relatives, we conclude that petitioner undertook reasonable efforts in this regard. Moreover, respondent did not identify any other potential relative placements until the termination hearing, at which he claimed that another sister and two cousins might be suitable placements. By that time, however, the children had been in their foster care placements for nearly their entire lives, and respondent had indicated that he preferred that TLM's foster mother adopt her. Thus, the trial court did not clearly err by finding that the statutory grounds for termination were proven by clear and convincing evidence.

Respondent also argues that the trial court clearly erred by finding that termination of his parental rights was in the children's best interests. "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[.]" MCL 712A.19b(5). The record demonstrates that respondent and the children shared a bond and that respondent interacted appropriately with the children. The record also demonstrates, however, that respondent was unable to care for the children himself and that he did not provide for the children's care and custody during his incarceration. The children were bonded with their foster caregivers, who wished to adopt them. By September 2012, LTM had "no behavioral and emotional concerns," "continue[d] to develop age appropriately in all domains" and was bonded with the other children in his home. TLM was also in good health and "display[ed] age appropriate developmental tasks in all domains." In light of respondent's inability to care for the children, the children's need for permanency, and the availability of adoptive placements with the children's foster parents, the trial court did not clearly err by finding that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Mark T. Boonstra
/s/ Pat M. Donofrio
/s/ Jane M. Beckering