

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of Y. A. WARNER, Minor.

UNPUBLISHED
November 19, 2013

Nos. 315962; 316091
Kent Circuit Court
Family Division
LC No. 11-052556-NA

Before: FITZGERALD, P.J., and MARKEY and BECKERING, JJ.

PER CURIAM.

In these consolidated appeals, respondent mother and respondent father appeal as of right the trial court's order terminating their parental rights to the minor child under MCL 712A.19b(3)(c)(i) and (g). Respondent father also challenges the termination of his parental rights pursuant to MCL 712A.19b(3)(n)(i). We affirm.

I. STATUTORY GROUNDS

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b has been proven by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000); *In re Fried*, 266 Mich App 535, 540-541; 702 NW2d 192 (2005). We review for clear error the trial court's findings on appeal from an order terminating parental rights. *In re Trejo*, 462 Mich at 356-357; see also MCR 3.977(K). A finding is clearly erroneous when, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). Deference is given to the trial court's assessment of the credibility of the witnesses. *In re Newman*, 189 Mich App 61, 65; 472 NW2d 38 (1991).

The trial court terminated respondents' parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i) and (g); respondent father's rights were also terminated pursuant to MCL 712A.19b(3)(n)(i). These grounds provide for termination in the following circumstances:

(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.

* * *

(n) The parent is convicted of 1 or more of the following, and the court determines that termination is in the child’s best interests because continuing the parent-child relationship with the parent would be harmful to the child:

(i) A violation of section 316, 317, 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.316, 750.317, 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

We conclude that the trial court did not clearly err by finding that the statutory grounds were established by clear and convincing evidence. See *In re Trejo*, 462 Mich at 356-357. With regard to MCL 712A.19b(3)(c)(i), the conditions that led to adjudication regarding respondent mother were substance abuse, domestic violence, and unstable employment and housing. During the 1-1/2 years this case was open, respondent mother did not complete a substance abuse or domestic violence program. There were additional instances of domestic violence, and she screened positive for marijuana three months before termination. At the time of termination, she had stable housing, but she paid for it with a student loan, and there was evidence that she was on academic probation. Regarding respondent father, the conditions that led to adjudication were his criminal behavior and incarceration. At the time of termination, he remained incarcerated, and his parole eligibility was delayed. Respondent father failed to take full advantage of programs offered that were related to his ability to become unified with the child, lost prison employment by displaying a poor attitude, and was removed from a cognitive-programming class in prison three times for failure to participate—a class with an aim of getting “offenders to be able to start thinking differently than in the way that has gotten them into trouble.” Moreover, the record evidence illustrated that respondent-father flipped over a table at

his parole hearing despite having taken a class on emotional stability. Although respondent father's incarceration in itself impacted his ability to have the child in his life, respondent father did little to minimize the effect that the barrier of incarceration had between him and his child; indeed, defendant's conduct while in prison reflected poorly on his ability to be unified with his young child in the future. On this record, the trial court did not clearly err by finding clear and convincing evidence that the conditions which led to adjudication continued to exist and that there was no reasonable likelihood that they would be rectified within a reasonable time considering the age of the child. See MCL 712A.19b(3)(c)(i); *In re Trejo*, 462 Mich at 356-357.

Regarding MCL 712A.19b(3)(g), respondent mother failed to provide proper care and custody previously when she left the child in the care of a couple with whom she attended church, did not have contact with them for several days, and then the couple could no longer care for the child. During the case, she did not visit the child for 11 months and never reached a point when she could provide proper care and custody. Respondent father was incarcerated for the duration of the child's life and never provided proper care or custody, nor did he identify any relatives with whom the child could be placed. He would not be released for at least an additional year, and there was no indication he would be able to provide proper care and custody at such a time. The trial court did not clearly err by finding clear and convincing evidence that respondents did not provide proper care and custody for the child and that there was no reasonable expectation that either would be able to do so within a reasonable time considering the age of the child. See MCL 712A.19b(3)(g); *In re Trejo*, 462 Mich at 356-357.

Regarding MCL 712A.19b(3)(n)(i), there is no dispute that respondent father was convicted of fourth-degree criminal sexual conduct, MCL 750.520e, which is one of the enumerated offenses under MCL 712A.19b(3)(n)(i). Further, the record supports the trial court's finding that continuing the parent-child relationship would be harmful to the child. First, there is no parent-child relationship. Respondent father had neither met the child nor undertook to communicate with her in any way. Given the complete lack of evidence of any bond or relationship between the child and respondent father and that respondent father's earliest release date was slightly over one year in the future, continuing, or rather, initiating the parent-child relationship would be harmful to the child. Thus, the trial court did not clearly err by terminating parental rights on this basis. See MCL 712A.19b(3)(n)(i); *In re Trejo*, 462 Mich at 356-357.

II. BEST INTERESTS

Only respondent mother challenges whether termination was in the child's best interests. This Court reviews a trial court's decision regarding the child's best interests for clear error. *In re Trejo*, 462 Mich at 356-357. Once the petitioner establishes a single statutory ground for termination under MCL 712A.19b(3), the trial court must order termination if it finds that doing so is in the child's best interests. MCL 712A.19b(5); MCR 3.977(H)(3); *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009). "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The court must weigh all evidence in the record to determine whether termination of parental rights is in the child's best interests. *In re Trejo*, 462 Mich at 353. The court should consider the parent's capacity to care for the child and the child's "need for permanency, stability, and finality." *In re Olive/Metts Minors*, 297 Mich App 35, 42; 823 NW2d 144 (2012). Other considerations may include the respondent's amount of

meaningful contact with the child, the bond between the respondent and the child, and how the child is doing in the placement. *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004).

In this case, respondent mother did not visit the child for 11 months. At one point she planned to release her parental rights, and she did not make an effort to re-engage until late in the process. She did not appear on the first day of the termination hearing because she was upset by information in the termination report. The child was upset by visits with respondent mother, and contrary to her claims, respondent mother did not exhibit a lengthy period of stability. Meanwhile, the child was doing well with the foster family, was bonded with them, and they wanted to adopt the child. On this record, the trial court did not clearly err when it determined termination of respondent mother's parental rights was in the child's best interests.

Although respondent father does not challenge the trial court's best-interest findings, we find that the record supports the trial court's findings. Respondent father was incarcerated for the child's entire life, and they had never met. There was no bond. Respondent father would not be eligible for parole for over a year, the child had already spent the majority of her life in foster care, and there was no indication that respondent father would be able to care for her in the near future. The trial court did not clearly err when it determined that termination of respondent father's parental rights was in the child's best interests.

III. REUNIFICATION EFFORTS

Respondent father argues that he was not provided sufficient services. Our Supreme Court has explained that "[t]he state is not relieved of its duties to engage an absent parent merely because that parent is incarcerated." *In re Mason*, 486 Mich at 152. "Generally, when a child is removed from the parents' custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *In re HRC*, 286 Mich App 444, 462; 781 NW2d 105 (2009) (citation omitted). MCL 712A.19a(2) requires that "[r]easonable efforts to reunify the child and the family must be made in all cases," except under certain circumstances not applicable in the instant case.

In this case, reasonable efforts for reunification were made. The record evidences that respondent father received a case service plan, was visited by a case worker in prison, regularly communicated with the foster-care workers, and that the foster-care workers communicated with the prison. Additionally, the record supports that respondent father received services that addressed at least some barriers to reunification, specifically emotional stability and family relationships. Importantly, respondent father's parental rights were not terminated primarily because of his incarceration but because of his removal from a class in prison, his loss of prison employment, the delay of his parole eligibility, his lack of bond with the child, and the estimated length of time needed for his rehabilitation, if rehabilitation was possible.

Respondent father argues that he should have been allowed to participate in the case earlier. Although a paternity test indicated that respondent father was the biological father, this alone is not sufficient to establish a putative father as a "father" for purposes of termination proceedings. MCR 3.903(A)(7). In the instant case, respondent father was allowed to participate once he was established as the legal father. The record reflects there was a delay in conducting a paternity test and that it was through no fault of respondent father. However, the record also reflects that the trial court delayed changing the goal to adoption on the basis of that delay and to

allow respondent father more time to participate in services. Respondent was offered services for at least nine months before termination. Thus, respondent father's argument that he was denied services and a meaningful opportunity to participate fails.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Jane E. Markey

/s/ Jane M. Beckering