Court of Appeals, State of Michigan

ORDER

In Re G Smith Minor

Docket No. 299300

LC No. 09-053614-NA

Mark J. Cavanagh
Presiding Judge

Cynthia Diane Stephens

Amy Ronayne Krause
Judges

The Court, on its own motion, orders that the February 15, 2011, opinion is hereby AMENDED. The opinion released as an unpublished per curiam opinion is amended to be a per curiam opinion for publication.

The Clerk's Office is directed to provide a copy of this order to the Reporter's Office along with a copy of the per curiam opinion.

In all other respects, the February 15, 2011, opinion remains unchanged and the filing deadline for any additional relief shall run from that date.

A true copy entered and certified by Larry S. Royster, Chief Clerk, on

MAR 01 2011
Date

Chief Clerk

STATE OF MICHIGAN

COURT OF APPEALS

FOR PUBLICATION
February 15, 2011
9:15 a.m.

In the Matter of G. SMITH, Minor.

No. 299300
Kent Circuit Court
Family Division
LC No. 09-053614-NA

Before: CAVANAGH, P.J., and STEPHENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(g), (j), and (l). We affirm.

Respondent argues that the trial court's order terminating his parental rights is not supported by clear and convincing evidence, but he does not directly challenge the trial court's determination that grounds for termination were established under MCL 712A.19b(3)(g), (j), and (l). Relying on *In re Mason*, 486 Mich 142; 782 NW2d 747 (2010), he contends that termination was improper because he was incarcerated and petitioner did not provide him with services for reunification. We agree and have found that petitioner failed to meet its statutory duty to facilitate reunification between respondent and his child. Our Supreme Court has held "the state is not relieved of its duties to engage an absent parent merely because that parent is incarcerated." *Id.* at 152; 752. Unfortunately for respondent, petitioner, the Department of Human Services (DHS) misunderstood the extent of its obligation to an incarcerated father and determined it was under no duty to facilitate reunification.

Petitioner removed Respondent's son, the minor child, from the care of his mother on October 13, 2009. The child's mother identified respondent as the child's father. Petitioner learned that respondent was being held at Kent County Jail, awaiting sentencing, but no employee of the agency visited respondent at any time during proceedings regarding his child's care. Petitioner chose to communicate with respondent solely through letters, despite acknowledging that there were no barriers to face to face contact. Petitioner never believed that reunification was an option. Petitioner's initial correspondence with respondent clearly states the case manager's belief that respondent's incarceration renders "working on a treatment plan" with DHS "not possible." The case manager testified that she would not provide respondent with services. As a result, there was never a parent-agency agreement proposed for respondent.

Petitioner believed termination to be the only option in this case and recommended to respondent that he voluntarily release his rights before he was even given these rights as the child's legal father. Petitioner repeatedly asked respondent to terminate his rights from the time of their initial communication, even though respondent gave no indication that he wished to do so. Petitioner refused to make efforts that did not involve termination, and the case manager focused the majority of her correspondence with respondent on his waiving of his rights. Even after establishing that Respondent wished to parent his son, little was done to provide services to facilitate this. Respondent informed petitioner that he had completed a number of substance abuse goals and that his attorney had proof of his progress, but petitioner chose to ignore this information rather than use it in forming a plan for respondent. The record clearly shows that petitioner made no attempt to allow for respondent's reunification with his child and instead focused efforts solely on termination.

Nonetheless, petitioner's apathetic approach to respondent's right to services does not require reversal. Pursuant to MCL 712A.19a(2)(c), the prior involuntary termination of parental rights to a child's sibling is a circumstance under which reasonable efforts to reunify the child and family need not be made. It is undisputed that the child's sister was previously the subject of a child protective proceeding and that respondent's parental rights to the child's sibling were involuntarily terminated. "'Reasonable efforts to reunify the child and family must be made in *all* cases' except those involving aggravated circumstances not present in this case." *Mason*, 486 Mich at 152 (emphasis in original). We find it incongruous that having one's rights to another child terminated is treated the same as murdering another child, both resulting in a blanket grant of authority to petitioner to abdicate responsibility for so much as a token effort, irrespective of whether a parent might someday reform his or her life. However, the Legislature may make policy choices that seem, from our perspective, unwise. *People v McIntire*, 461 Mich 147, 159; 599 NW2d 102 (1999). Therefore, the trial court did not clearly err in finding that § 19b(3)(l) was established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCR 3.977(K).

Further, given the absence of any bond between respondent and the child, the trial court did not clearly err in finding that termination of respondent's parental rights was in the child's best interests. MCL 712A.19b(5).

Affirmed.

/s/Mark J. Cavanagh
/s/ Cynthia Diane Stephens
/s/ Amy Ronayne Krause