

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of STEVEN ROBERT HINES,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

STEVEN LESLIE HINES,

Respondent-Appellant,

and

HEATHER ANN MILLER,

Respondent.

UNPUBLISHED

February 3, 2009

No. 286289

Macomb Circuit Court

Family Division

LC No. 2007-000229-NA

Before: Talbot, P.J., and Bandstra and Gleicher, JJ.

PER CURIAM.

Respondent Steven Leslie Hines appeals as of right from the order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i) [“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”].¹ We affirm.

I. Factual and Procedural History

The initial petition filed in this matter alleged that on March 22, 2007, the involved child’s mother used cocaine, passed out while a younger child was present in the home, and subsequently refused treatment. The petition further alleged that respondent had been

¹ Respondent contends that the trial court clearly erred in terminating his parental rights pursuant to MCL 712A.19b(3)(c)(i) and (ii), (g), and (j). After reviewing the trial court record, we find that the trial court relied solely on MCL 712A.19b(3)(c)(i). Thus, this is the only statutory basis we will consider on appeal.

incarcerated at the Mound Road Facility for seven years, and failed to provide either financial or emotional support for the child.

At the preliminary hearing conducted on March 23, 2007, respondent's attorney confirmed respondent's incarceration, but conveyed to the court respondent's interest in obtaining visitation with the minor child upon release from prison. Respondent's attorney also reported to the court that respondent was participating in parenting classes while incarcerated. At the time of this hearing, the minor child was approximately ten years of age and had interacted with respondent on only three occasions. Respondent attributed his lack of involvement and interaction with the minor child to interference and lack of cooperation on the part of the child's mother.

Due to his continuing incarceration, respondent failed to attend a pre-trial hearing conducted on April 30, 2007. Respondent remained in prison when review hearings were subsequently conducted on June 18, 2007 and September 13, 2007. Respondent's attorney continued to assert his client's interest in planning for his son, and asserted that respondent had not received a parent-agency agreement from the Department of Human Services (DHS). Respondent's attorney further indicated that respondent would attempt to procure a psychological evaluation while in prison. When respondent's attorney was unable to verify respondent's release date, the court set the case for a permanency planning hearing and dismissed respondent's counsel.

Respondent was released from prison and personally attended the December 12, 2007 permanency planning hearing. Tracey Rodriguez, a foster care worker, informed the court that respondent had entered into a parent agency agreement which required respondent to:

- (a) obtain and maintain emotional stability; (b) obtain appropriate parenting skills;
- (c) obtain and maintain a substance free lifestyle; (d) obtain and maintain a legal source of income; (e) keep regular contact with the DHS worker; (f) maintain a safe and suitable home environment; and (g) attend visitation.

Rodriguez represented that respondent had expressed awareness of the need to quickly demonstrate compliance with the plan, and recommended that the court afford respondent an opportunity to establish a relationship with the minor child. When queried by the court, respondent acknowledged that he had last seen his son "two and a half years ago." Respondent advised the court that he had been involved in parenting classes while in prison, but that the classes had initiated too late for him to obtain a certificate of completion. The guardian ad litem for the minor child recommended giving respondent a brief time period to demonstrate his "capability" to become involved in the parent agency agreement. The court continued the hearing until February 21, 2008 to permit respondent to avail himself of the offered services.

At the next hearing date, Rodriguez reported that despite respondent's verbal reassurances regarding his interest in participating in the parent agency agreement, respondent had failed to take any definitive action.² Specifically, respondent failed to (1) secure or schedule

² Respondent was arrested on January 13, 2008, for receiving a stolen vehicle and, therefore, was
(continued...)

a psychological evaluation; (2) arrange for participation in parenting classes; (3) complete either any drug screens or parenting assessments; (4) provide proof of employment, or (5) visit with the minor child despite transportation having been arranged by DHS.

Respondent and his counsel attended the May 28, 2008, termination hearing. Rodriguez opined that the child would be at risk of harm if placed in respondent's care, and that termination was in the child's best interests. The child's therapist, Nathaniel Spears, testified that he met with respondent on December 12, 2007 and had arranged for visitation with the minor child, but respondent failed to take advantage of any of these opportunities to see his son. Spears acknowledged that he had encountered problems communicating with respondent, and had lost contact with him. Spears indicated that the minor child did not have a bond with respondent and opined it was in the child's best interests to terminate respondent's parental rights. Petitioner offered into evidence certified copies of respondent's various criminal convictions, ranging from 1988 until 2008.

When asked about the testimony of Rodriguez and Spears, respondent opined it was in his son's best interests that he be afforded another opportunity, and indicated a willingness to work through a facilitator to establish a bond with his son. Respondent attributed his failure to visit the minor child to lack of prior opportunities due to interference caused by the child's biological mother. Respondent acknowledged that he had been incarcerated for five of the past eight years, but asserted he had attempted to maintain contact and a bond with his son. He contended that, in the past, he made some child support payments through the Friend of the Court, and obtained an order granting him parenting time every other weekend. According to respondent, the child's biological mother routinely denied him access to his son, the police indicated they were unable to enforce the parenting time order, and he lacked the funds to go to court to seek enforcement of his parenting time. While acknowledging his failure to comply with the parent agency agreement, respondent attributed his noncompliance to problems pertaining to transportation, his incarceration, and lack of knowledge regarding the services offered by DHS. Respondent averred that he had purchased a home on a land contract, but failed to produce any documentation verifying this purchase. Respondent also informed the court that he had secured employment after leaving jail but currently received worker's compensation due to an injury. Although respondent claimed income of \$2,500 per month, this testimony also remained unverified. Finally, respondent asserted that, despite his extensive criminal record, he had reformed, no longer associated with questionable individuals, and felt ready to both provide for his son and make him a priority in his life.

At the conclusion of the hearing, the trial court ordered termination of respondent's parental rights. The trial court found, "by clear and convincing evidence, that the conditions that led to the adjudication continue to exist and there's no reasonable likelihood the conditions will be rectified within a reasonable time, considering the age of the child." Specifically, the trial court stated, in relevant part:

Now, with respect to the father, the petition, the initial petition states that
the father of Steven has been incarcerated, I think he was [at] the Mound Road

(...continued)

not present for this hearing but was represented by counsel.

facility, since March of 2000, or approximately March of 2000, and that he has not provided financial or emotional support. That was strictly the allegation against the father. There was no allegation that he was using drugs or anything like that, primarily it was that he wasn't around for Steven, at the time. I do believe that those conditions continue to exist today only because I know that you were just let out of jail about a week and a half ago. So, during the course of these proceedings, during the last almost 18 months, 14 months, something like that, that Steven's been in care, there has been a significant period of time that the father has not been available to parent because he's been incarcerated. So, I do feel that the conditions that brought the child into care continue to exist today and with regards to whether I feel there's a reasonable likelihood that these conditions can be rectified, you know, I just don't know at this point. I have to say that the last eight years are probably, for the reasonable mind, indicative of what's likely to happen in the future. He says no. He says that he's, you know, he wants to turn his life around. But, you know, I've got to go, right now, with what I think is likely to happen and, based on past history, I do not feel that it's likely to be rectified in the reasonable future.

The court then addressed the child's best interests and determined that termination was appropriate.

II. Standard of Review

Termination of parental rights is appropriate where petitioner proves by clear and convincing evidence at least one ground for termination. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). Once this has occurred, the trial court shall terminate parental rights unless it finds that the termination is clearly not in the best interests of the child.³ *Id.* at 353 (footnote added). This Court reviews the trial court's findings under the clearly erroneous standard. *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999).

III. Analysis

The initial petition alleged that respondent was incarcerated and had not provided financial or emotional support for his child over a prolonged time period. Respondent had been incarcerated for five years out of the past eight and, in the past, demonstrated minimal interest in the minor child. Notably, during the course of these proceedings, respondent was arrested for engaging in criminal activity, seriously calling into question his contention that he had reformed in his behavior and would be able to remain out of the prison system for a sufficient duration to consistently parent his son.

³ MCL 712A.19b(5) has been amended, effective July 11, 2008, to require that the trial court make an affirmative finding that termination of a parent's parental rights is in the best interest of the child. 2008 PA 199. The amended statute does not affect the instant case because the termination order was entered on May 29, 2008.

Respondent acknowledged at the permanency planning hearing that he had not seen his son for approximately two and a half years. Although respondent attributed this lack of contact to interference by the child's natural mother, the evidence demonstrated that following respondent's release from prison and despite the proffered assistance of DHS, respondent still failed to emotionally support his child or exercise his right to visitation. Even after the DHS made transportation arrangements allowing respondent to visit with the child, respondent disregarded the opportunity to spend time with the child. Notably, respondent attributed his lack of contact with the minor child to extraneous forces, and assumed no responsibility for his own role in the failure to maintain contact or establish a bond with the minor child.

The child's therapist opined that respondent and the child had not bonded and testified that the child expressed that he was not "comfortable" around respondent. Further, respondent failed to demonstrate any measure of compliance with the parent agency agreement. He failed to secure a psychological evaluation, neglected to schedule or participate in parenting classes, never provided sufficient verification of employment or a stable home environment for the child. This evidence supports the trial court's finding that the conditions that led to adjudication, i.e., respondent's failure to financially and emotionally support his child, continued to exist and that there reasonable likelihood existed that the conditions would be rectified within a reasonable time considering the child's age.

Further, we are struck by respondent's assertions regarding his desire to have a relationship with his son and his singular lack of focus on the best interests of the child. Although respondent argues that he maintained a very strong desire to create a bond with his son, his behavior calls into serious question his sincerity, given his repeated failures to take advantage of the proffered opportunities for visitation. In addition, the child's therapist testified that the child exhibited considerable anxiety with regard to possible visitation with respondent. The foster care worker testified that the child was doing well in his current placement, and was "adjusted" and doing well in school. This testimony implied that contact with respondent would be unwelcome by the child and unnecessarily disruptive. The opinions of the therapist and the foster care worker amply support the trial court's finding that termination of respondent's parental rights served the child's best interests.

Affirmed.

/s/ Michael J. Talbot
/s/ Richard A. Bandstra
/s/ Elizabeth L. Gleicher