

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

August 12, 2010

No. 296156

Bay Circuit Court

Family Division

LC No. 08-009919-NA

In the Matter of J. A. SCHALK, Minor.

Before: M.J. KELLY, P.J., and MARKEY and OWENS, JJ.

PER CURIAM.

Respondent father appeals by right the trial court's order terminating his parental rights to the minor child under MCL 712A.19b(3)(c)(ii) and (g). We affirm.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been proved by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). The trial court must also find clear and convincing evidence that termination of respondent's parental rights was in the child's best interests. MCL 712A.19b(5). This Court reviews a trial court's factual findings in an order terminating parental rights for clear error. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A finding of fact is clearly erroneous, if although there is evidence to support it, the reviewing court is left with the definite and firm conviction that a mistake has been made. *Id.*

The only conditions contained in the petition pertaining to respondent were his criminal history and his refusal of services until a paternity test confirmed that J. A. Schalk was his biological son. Since respondent's probation was discharged upon his completion of services and the paternity test indicated that respondent's was J. A. Schalk's biological father, respondent had rectified the conditions contained in the petition that referred to him.

But, the child was not returned to respondent's care, and respondent, on January 23, 2009, signed a parent-agency agreement that he was provided. Sandra Wood, the foster care worker, was concerned about respondent's admitted history of substance abuse; respondent was attending substance abuse counseling and anger management classes to comply with the terms of his probation order. Wood recommended a psychological evaluation to determine respondent's emotional stability, parenting classes to assist him with parenting skills, random drug screens, and substance abuse counseling.

At the review hearing on January 26, 2009, the trial court ordered respondent to comply with the parent-agency agreement and ordered visitation even though the paternity test had not yet been completed. Review hearings were held on January 26, April 13, July 13, and October 5, 2009, and January 4, 2010. Respondent's progress and compliance with the parent-agency agreement was discussed at each of these review hearings. Respondent had adequate notice that he had to submit to random weekly drug testing, visit with J. A. Schalk, attend parenting classes, and provide adequate housing for his child. At first, respondent substantially complied with the parent-agency agreement. However, after June 1, 2009, respondent stopped complying. Respondent did not have another visit with his child after May 20, 2009. He did not submit to another drug screen after June 1, 2009, until the morning of the termination hearing, and that screen was positive for cocaine. Respondent admitted to using crack cocaine twice after May 2009. Respondent also admitted that if he knew that he could have just visited without submitting to drug screens, he would have attended those visits. In addition, respondent's home was unsafe and inappropriate for a child.

Respondent received ample opportunity to rectify these conditions. The trial court also adequately warned respondent that he needed to rectify the conditions because the mother's parental rights were probably going to be terminated, and as such, respondent was the child's only hope at living with a biological parent. Nonetheless, there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering the child's age. Respondent did not have a meaningful relationship with the child since he had not seen or spoken to him in eight months. Respondent missed many of J. A. Schalk's developmental milestones and failed to inquire about him when he spoke to the foster care worker. Respondent was living in a temporary residence and was in danger of losing his permanent residence to Saginaw County for back taxes. Respondent's transportation issues had not been rectified, as he still did not have a license or a working vehicle to participate in services if he were given more time. This evidence combined with the six months of missed drug screens and respondent's admission that he had smoked crack cocaine twice since he ceased visiting his son supported the trial court's conclusion that clear and convincing evidence existed to support termination of respondent's parental rights pursuant to MCL 712A.19b(3)(c)(ii).

Respondent also failed to provide proper care or custody for the child, and there was no reasonable expectation that he would be able to provide proper care and custody within a reasonable time considering the child's age. At the beginning of case, respondent was unsure if he were the child's biological father because of comments that the mother had made and respondent wanted to know the results of the paternity test before he began participating in services. J. A. Schalk was removed from his parents' custody before he even left the hospital. Accordingly, respondent never had care and custody of the child. However, respondent's failure to completely comply with his parent/agency agreement demonstrated his failure and inability to provide proper care and custody. "[A] parent's failure to comply with the parent-agency agreement is evidence of a parent's failure to provide proper care and custody for the child." *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). Respondent's initial compliance ended after June 1, 2009. For the last seven months of the case, respondent did not see or speak with his son or submit to any drug screens. Respondent's house remained uninhabitable, and he moved into a temporary residence just two weeks before the termination hearing. Respondent's failure to comply with the parent-agency agreement established his failure to provide proper care and custody for the child. *Id.*

There was no reasonable expectation that respondent would be able to provide proper care and custody in a reasonable time considering the child's age. Respondent's lack of motivation for visitation and drug screens corresponded very closely with his discharge from probation, supporting the trial court's conclusion that even if respondent was given more time to comply, he lacked the motivation to do so. E. Welch, respondent's daughter, further supported this conclusion when she testified that respondent had not been consistently involved in her life. She had not seen him recently and she had not seen him regularly since October 2009. How a parent treats one child is certainly probative of how that parent may treat another child. *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001). Respondent's failure to visit with J. A. Schalk or show much interest in his well-being was very similar to his "hands off" relationship with his daughter. Respondent also failed to acknowledge the child's first birthday with a call or a card.

Although respondent testified at the termination hearing that he was willing to do anything that the trial court ordered if he were given more time, there was no evidence to support respondent's assertion. There had been no change in respondent's circumstances between June 1, 2009, when he stopped complying with the parent/agency agreement, and the termination hearing. In fact, respondent's situation had only become more tenuous. He was not financially able to pay for the necessary repairs on his home. He was behind in his property tax payments and had one month before the county planned to sell his home. Respondent owed \$4,600 to pay for the fines to have his license reinstated and respondent's car was still not working. As such, respondent's transportation problems continued. Even after the child's mother released her parental rights in October 2009, and respondent knew that he was J. A. Schalk's only chance at living with a biological parent, he still failed to visit his son with or drop random screens. Considering this evidence, the trial court did not clearly err in concluding that clear and convincing evidence supported the termination of respondent's parental rights pursuant to MCL 712A.19b(3)(g).

Furthermore, there was clear and convincing evidence that termination was in the child's best interests. MCL 712A.19b(5). Although respondent testified that he loved his son and did not want his parental rights terminated, there was no evidence that respondent had the motivation or the ability to provide proper care and custody for him. Respondent had not seen his child in eight months. During that time, J. A. Schalk grew from an infant to a toddler without any involvement with respondent. There could be no bond or meaningful relationship between respondent and the child anymore. Although respondent stated that he loved his child very much, he did not seem to feel that a father/child relationship involved constant, daily interaction and active participation.

Respondent's continued struggle with substance abuse and inadequate housing further hindered his ability to provide for his son. Considering that nothing in respondent's situation had changed to indicate that he would begin to earnestly work toward reunification with his child, the trial court properly concluded that termination of respondent's parental rights was in the child's best interests.

We affirm.

/s/ Michael J. Kelly
/s/ Brian K. Zahra
/s/ Elizabeth L. Gleicher