

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 21, 2010

In the Matter of J. R. JONES, Minor.

No. 298759
Ingham Circuit Court
Family Division
LC No. 09-002359-NA

Before: MARKEY, P.J., and WILDER and STEPHENS, JJ.

PER CURIAM.

Respondent father appeals as of right from the May 20, 2010, trial court order appointing a juvenile guardian to the minor child under MCL 712A.19a(7). We reverse and remand for further proceedings.

A trial court's decision regarding the best interests of the child is reviewed for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). Whether there were reasonable efforts to reunify the family is reviewed under the same standard. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A finding is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake has been made. *Id.* Regard is given to the special ability of the trial court to judge the credibility of the witnesses who appeared before it. *Id.*

On appeal, both petitioner and respondent have framed their arguments in terms of the Child Custody Act ("CCA"), specifically MCL 722.25(1). Respondent argues that the trial court failed to make specific findings with regard to the best interest factors of MCL 722.23 in order to overcome the statutory presumption in favor of parental custody found in MCL 722.25(1). Petitioner argues that there was clear and convincing evidence that the best interest factors under MCL 722.23 weighed in favor of the minor child being placed in her grandparents' care, not respondent's.

Although a family division court has the authority to consider numerous matters concerning the same family that fall within its jurisdiction, the court's exercise of jurisdiction must be consistent with the statutory scheme it is applying and the relevant court rules. *In re AP*, 283 Mich App 574, 593; 770 NW2d 403 (2009). In this case, respondent and petitioner have mischaracterized the trial court's decision to place the child under a guardianship as a determination made under the CCA. At the adjudication on March 22, 2010, the trial court

stated that it was proceeding with this case as an abuse and neglect file, and as such, respondent's parental rights could be terminated if he failed to participate in, and benefit from, services. At no time until after the appointment of the guardian did the trial court dismiss its jurisdiction over the child or indicate that it was considering a change of custody motion based on the CCA. Nor did the trial court address the parental presumption of MCL 722.25(1) or the best interests factors enumerated in MCL 722.23. Rather, the trial court's decision to appoint a guardian was based on MCL 712A.19(13), MCL 712A.19a(6) and (7) and MCR 3.976.

Although respondent mistakenly framed his argument in terms of the statutory scheme of the CCA, he did argue that there were no allegations of abuse or neglect against him and that petitioner failed to present evidence that respondent was unable to provide proper care and custody for the child. Based on respondent's psychological evaluation, petitioner did not believe that there were any services it could offer the child's mother that would help her to ever provide the child with proper care and custody. However, respondent's evaluation did not suggest that he would not be able to parent the child or that she would be harmed if placed in his care.

MCL 712A.19(13) does allow reasonable efforts to place a child with a legal guardian to be made concurrently with reasonable efforts to reunify the child with her family. Such "reasonable efforts to reunify the child and family must be made in *all* cases" except those involving aggravated circumstances not present in this case. MCL 712A.19a(2); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010); *Rood*, 483 Mich at 99-100. In the present case, petitioner failed to make reasonable efforts to reunify the child with respondent.

At the adjudication on March 22, 2010, the foster care worker told the trial court that she was waiting for the results of respondent's psychological evaluation and that she wanted to offer him services to determine whether reunification between him and the child could be achieved. At the dispositional hearing, the worker had received the evaluation, and decided to pursue termination of parental rights. In the psychological evaluation, the evaluator stated that respondent expressed a desire to obtain custody of his child. The evaluator opined that respondent's bipolar disorder would create significant difficulties handling the demands of a young child. However, the evaluator recommended parenting classes, individual therapy to help translate the skills learned in the parenting classes to everyday life and any other available programs related to parental support to overcome these difficulties. The evaluator noted that it was important for respondent to establish a consistent pattern of behavior over a long period of time.

None of these services were ever offered to respondent. The worker did refer him to parenting classes after he asked for them, but they were not scheduled to start until the week of the April 21 hearing. She had not referred respondent to individual therapy or any other parenting programs. Respondent had been offered visitation and the visits reportedly went very well. Accordingly, the trial court clearly erred in concluding that reasonable efforts had been made to reunify respondent with the child.

In addition, the trial court clearly erred in determining that it was in the best interests of the child to be placed in a guardianship with the maternal grandmother at this time. There was scant information concerning the relationship between respondent father and his daughter and its potential harm or benefit to his daughter. The court had an insufficient basis upon which to determine that custody with respondent was not in the child's best interests. While the trial

court's findings are entitled to great deference, they must be based upon record evidence. Therefore, the trial court clearly erred in placing the child in a guardianship at this time. As a result, we reverse the trial court's order granting a juvenile guardianship and remand to the family court for further evaluation and services.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Jane E. Markey

/s/ Kurtis T. Wilder

/s/ Cynthia Diane Stephens