STATE OF MICHIGAN

COURT OF APPEALS

In re DESCHAINE, Minors.

UNPUBLISHED
December 9, 2014

No. 322007
Delta Circuit Court
Family Division
LC No. 13-000750-NA

Before: MARKEY, P.J., and SAWYER and OWENS, JJ.

PER CURIAM.

Respondent appeals of right an order terminating his parental rights to his two children, DD and MD, based on MCL 712A.19b(3)(c)(*i*) (conditions that led to adjudication continue to exist), MCL 712A.19b(3)(g) (failure to provide proper care and custody), MCL 712A.19b(3)(j) (reasonable likelihood of harm), and MCL 712A.19b(3)(*l*) (rights to another child were terminated by similar law of another state).[1] We affirm.

This case began when public safety officers were called to a motel on April 2, 2013. Upon arrival, the officers found respondent outside in 12-degree weather holding DD, who was only wearing a diaper. Respondent, who was incoherent and under the influence of drugs, dropped DD on the pavement and then fell on top of the child. The officers discovered respondent's other child, MD, in a motel room with the children's mother. There were pill bottles, crushed pills, needles, box cutters, and razor blades all within reach of MD. Respondent pleaded no contest to the allegations in the petition, and the court assumed jurisdiction of DD and MD.

While the parents made some initial progress, by December 2013 they had both fallen back into old behaviors. The trial court found them both in contempt for failing to follow court orders that required that they maintain employment, maintain stable housing, and refrain from using drugs and alcohol.

At the termination hearing on April 4, 2014, evidence was presented that respondent had not visited his children since January 10, 2014. Respondent had been in prison at one point in

[1] The parental rights of the children's mother were also terminated. She is not a party to this appeal.

the middle of February, and at that time admitted that he had been using drugs. Respondent did not attend any meetings or counseling sessions and refused to provide any information about his current residence to social workers. The children were staying with their maternal grandparents at the time of the termination hearing.

At the beginning of the termination hearing, petitioner entered into evidence an order from a tribal court showing that it had terminated respondent's parental rights to another child back in 2011. The tribal court order stated as follows:

> 11. The termination of parental rights is in the best interest of the child, and grounds for involuntary termination under section 2.2202 of the children's code are found beyond a reasonable doubt, as follows:
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> * * *
>
> d. [**x**]The child's [ ] mother [**x**] father was a respondent in the child welfare case, 12 or more months have elapsed since issuance of an initial disposition order, the conditions which led to the initial adjudication continue to exist, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child. Evidence establishes that this ground also applies.

The court concluded that the cited statutory grounds for termination had been established, and that termination was in the best interests of the children. Respondent argues that the court erred in reaching both of these conclusions. This Court reviews an order terminating parental rights under the clearly erroneous standard. MCR 3.977(K). A decision of the trial court is clearly erroneous if "the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

Petitioner bears the burden of proving the existence of at least one of the Legislature's enumerated specific conditions to terminate a parent's rights to his child by clear and convincing evidence. *Id*. at 210. Only one statutory ground is necessary to support terminating parental rights. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000). "[R]egard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). To overturn the trial court, this Court must find that its decision was "more than just maybe or probably wrong." *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999).

MCL 712A.19b(3)(c)(*i*) provides as follows:

> The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence . . .
>
> * * *
>
> (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 either of 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.

The trial court found that the conditions that initially led to the adjudication were the parents' drug abuse, homelessness, and unemployment. There was uncontested evidence presented that respondent had used drugs in February 2014, approximately ten months after the police were first dispatched to the motel. Additionally, as of the termination hearing, respondent continued to refuse to provide social workers with his address. Respondent also failed to participate in counseling. Respondent's continued use of drugs and failure to maintain suitable housing show that the conditions that led to adjudication continue to exist. The fact that respondent did not engage in counseling, attend parenting time sessions, or even attend the termination hearing all indicate that he will not be able to rectify those conditions any time soon.

MCL 712A.19b(3)(g) provides as follows:

> The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence . . .
>
> * * *
>
> (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.

Again the uncontested evidence at the termination hearing was that respondent would not provide an address to social workers. At one point in the proceedings respondent pleaded guilty to civil contempt for failing to follow the case-service plan, which included requirements for him to maintain adequate housing and employment. Respondent's failure to engage with social workers, his admitted drug use in February 2014, and his failure to even appear at the termination hearing are all strong indicators that respondent will not rectify this situation in a reasonable time. The trial court's finding on this statutory ground is not clearly erroneous.

MCL 712A.19b(3)(j) provides as follows:

> The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence . . .
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> * * *
>
> (j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

This case arose because respondent had taken one child outside in 12-degree weather with nothing but a diaper on and dropped that child while in such an intoxicated state that he could not remember events that occurred for the next two days. Respondent's other child was found in a motel room surrounded by needles, box cutters, and pills. This is obviously a situation that could lead to severe physical harm to the children. Respondent showed no indication of improving or correcting that behavior. Respondent refused to communicate and provide his address to social workers, admitted he continued to use drugs, and failed to attend the termination hearing. It is also uncontested that respondent had not attended a parenting-time session between January 10, 2014, and the termination hearing on April 4, 2014. The trial court's finding that if returned to respondent the children would be subject to both physical and emotional harm is supported by clear and convincing evidence. See *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011).

MCL 712A.19b(3)(*l*) provides as follows:

> The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence . . .
>
> * * *
>
> (*l*) The parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state.

Respondent first argues that there was no identifying witness or other way to prove that the "Donald Paul Deschaine" in the tribal order is the same "Donald Paul Deschaine" that is the respondent in this case. However, such an authentication is not required because the rules of evidence, except those regarding privilege, do not apply. MCR 3.977(H)(2).

Respondent also argues that there was not sufficient evidence in the record to show that the law under which respondent's parental rights were terminated in tribal court was similar to the law of Michigan. However, respondent does not cite any caselaw supporting his claim that a copy of the foreign law or expert witness is required. "An appellant may not state a position without citing authority and expect this Court to search for grounds to support the claim." *Prentis Family Foundation v Barbara Ann Karamanos Cancer Institute*, 266 Mich App 39, 56; 698 NW2d 900 (2005).

The trial court in this case concluded that the tribal law was similar enough to Michigan law to justify finding MCL 712A.19b(3)(*l*) as grounds to terminate respondent's parental rights. The tribal court order's stated reasons for termination mirrors MCL 712A.19b(3)(c)(*i*) as well as MCL 712A19b(5) in that it states a finding that termination is in the best interests of the child in issue. The trial court did not commit clear error when it determined that based on the evidence presented to it that respondent's parental rights had been terminated as a result of proceedings of a similar law in tribal court.

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). The trial court must find by a preponderance of the evidence that

termination is in the best interests of the children. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). The children's bond to the parent, the parent's parenting ability, and the children's need for permanency, stability, and finality are all factors for the court to consider in deciding whether termination is in the best interests of the children. *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). A child's placement with relatives is a factor that the trial court is required to consider. *In re Mason*, 486 Mich 142, 163-164; 782 NW2d 747 (2010), and a child's "placement with relatives weighs against termination," *In re Olive/Metts Minors*, 297 Mich App at 43. Additionally, the trial court "may also consider a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation with the child, the children's well-being while in care, and the possibility of adoption." *In re White*, 303 Mich App at 713-714.

In the present case the trial court recognized that the children were staying with their maternal grandparents. And while noting that this is a factor that weighs against termination, here the court found that, given the grandparents' stated reservations, there were no assurances that they would be able to keep the children on a long-term basis. The evidence established that respondent had not complied with his case-service plan. It was uncontested that respondent had not visited his children since January 2014 despite opportunities to do so. He did not have a home and admitted to using drugs at least once.

Respondent argues that termination was not in the best interests of the children because petitioner lacked a permanency plan for the children and the children were still in the physical custody of their maternal grandmother. However, the record shows that petitioner was looking at both relatives and nonrelatives and that the children were likely to be adopted. Therefore, a permanent plan for the children was being established, even if the specifics were still being worked out. The court's finding that termination was supported by a preponderance of the evidence was not clearly erroneous.

Affirmed.

/s/ Jane E. Markey
/s/ David H. Sawyer
/s/ Donald S. Owens