

STATE OF MICHIGAN
COURT OF APPEALS

In re REYNA, Minors.

UNPUBLISHED
October 22, 2015

No. 326306
Van Buren Circuit Court
Family Division
LC No. 13-017622-NA

Before: TALBOT, C.J., and BECKERING and GADOLA, JJ.

PER CURIAM.

Respondent-father appeals as of right from an order terminating his parental rights to his minor children—GR and AR—under MCL 712A.19b(3)(a)(i) (desertion), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood of harm).¹ We affirm.

I. BACKGROUND

In March 2013, the Department of Health and Human Services (DHHS) filed a petition asking the court to take protective custody of GR and AR. The petition alleged that respondent-father was on parole for possessing methamphetamine and operating a methamphetamine laboratory, and that he previously released his parental rights to a child in another county. Shortly after the petition was filed, respondent-father absconded from his parole and was incarcerated for resisting and obstructing a police officer causing injury during his subsequent arrest. Thereafter, the trial court issued an order taking protective custody of the children.

In September 2014, the DHHS filed a petition asking the court to take jurisdiction over the children with respect to respondent-father and to terminate his parental rights. The petition alleged that respondent-father’s earliest release date was November 11, 2015, with a maximum release date of August 3, 2036. A second petition, dated October 20, 2014, stated that termination was appropriate under MCL 712A.19b(3)(a)(ii), (g), (j), and (m).² The court held

¹ The children’s mother voluntarily relinquished her parental rights in December 2014.

² MCL 712A.19b(3)(m) provides that termination is appropriate if a “parent’s rights to another child were voluntarily terminated following the initiation of proceedings under section 2(b) of this chapter or a similar law of another state and the proceeding involved abuse that included” one or more exacerbating factors under MCL 712A.19b(3)(m)(i)-(ix). At the termination

hearings on the petitions on December 16, 18, and 29, 2014. During the first day of testimony, the trial court found that sufficient evidence existed to take jurisdiction over the children with respect to respondent-father, and agreed to immediately proceed with the termination hearing. Following two additional days of testimony, the trial court determined that clear and convincing evidence supported terminating respondent-father's parental rights under MCL 712A.19b(3)(a)(ii), (g), and (j), and that termination was in GR's and AR's best interests.

II. STANDARD OF REVIEW

To terminate parental rights, a trial court must find that at least one of the statutory grounds in MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Fried*, 266 Mich App 535, 540-541; 702 NW2d 192 (2005). "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). A preponderance of the evidence standard applies to a best-interest determination. *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013). We review for clear error a trial court's decision that a statutory ground for termination has been proven by clear and convincing evidence, and that termination is in a child's best interests. *In re Fried*, 266 Mich App at 541. "A circuit court's decision to terminate parental rights is clearly erroneous if, although there is evidence to support it, 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).

III. STATUTORY GROUNDS

Respondent-father first argues that the lower court erred in finding that clear and convincing evidence supported terminating his parental rights under MCL 712A.19b(3)(a)(ii), which provides that a trial court may terminate parental rights if "[t]he child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period." Respondent-father admitted at the termination hearing that he did not contact or support AR or GR for "[a] couple months, a few months" at the beginning of his current term of incarceration. The caseworker testified that respondent-father did not attempt to contact his children during the first three or four months he was in prison, and he did not provide any information regarding possible relative placements for the children. She said after several months respondent-father began writing letters to GR and AR when the court ordered him to do so, but then he did not comply with the order to write two letters each month.

Respondent-father argues that he sent AR, GR, and the caseworker several letters in the six months before the termination hearing; however, this does not negate respondent-father's admission that he did not attempt to contact or support his children in any way for several months at the beginning of his incarceration. Respondent-father argues that his lack of contact and support was involuntary because he was in prison, but he offers no evidence or argument demonstrating that he was incapable of communicating with his children or providing them

hearing, the attorney for petitioner admitted that none of the relevant exacerbating factors were present in this case, and the trial court agreed to omit this statutory ground from consideration.

token support from his prison employment during the relevant period. In fact, respondent-father had the ability to communicate with his children while in prison, which he did at a later time. Under these circumstances, the trial court did not clearly err in finding that respondent-father deserted AR and GR under MCL 712A.19b(3)(a)(ii).

Respondent-father next argues that the trial court clearly erred in finding that termination was warranted under MCL 712A.19b(3)(g) and (j). MCL 712A.19b(3)(g) provides that a trial court may terminate parental rights if “[t]he 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.” Termination is proper under MCL 712A.19b(3)(j) if “[t]here 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.” The harm contemplated under MCL 712A.19b(3)(j) includes both physical and emotional harm. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011).

Respondent-father admitted that he did not provide any support for AR and GR while he was in prison, despite the fact that he had a job making \$27 a month. The caseworker testified that respondent-father did not provide information regarding appropriate relative placements for the children while he was in prison. Testimony at the termination hearing also revealed that respondent-father had never consistently supported AR and GR, he refused to care for the children when he was using drugs or was out with women, he had a long history of substance abuse, which included convictions for possessing methamphetamine and operating a methamphetamine laboratory, and he had a long history of lawlessness, which included convictions for resisting and obstructing a police officer, driving without a license, attempting to commit a larceny, failing to pay child support, and illegally possessing a taser, which occurred while he was caring for a child. Respondent-father had been in prison or jail multiple times throughout the children’s lives. His earliest release date from his current term of incarceration was November 11, 2015. The children were seven and eight years old at the time of the termination hearing, they had been in protective custody for nearly two years, and they had not seen respondent-father during that time.

Respondent-father argues that the trial court’s findings under subdivision (g) were clearly erroneous because his new wife had a home and she was a potential placement for the children. However, respondent-father’s wife testified that she did not have the ability to care for AR and GR in addition to her own two children because she was currently unemployed. The trial court did not err in this regard. Respondent-father also argues that there was no evidence under subdivision (j) that he had ever or would ever psychologically or physically harm his children. Considering the young ages of AR and GR and how long it had been since they had seen respondent-father, that respondent-father failed to provide safe and stable housing, he had a history of failing to care for the children when he was using drugs, and he chose to participate in criminal activity even while he was caring for children in the past, the trial court did not clearly err in finding that there was a reasonable likelihood the children would be harmed if returned to respondent-father’s care.

IV. BEST INTERESTS

Respondent-father argues that terminating his parental rights was not in AR's and GR's best interests. In assessing whether termination is in a child's best interests, a trial court should consider all evidence available in the record. *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000). Courts may consider factors including "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App 35, 42; 823 NW2d 144 (2012) (citations omitted).

At the best-interest hearing, the caseworker testified that AR and GR did not have a significant bond with respondent-father. She said GR became upset after he received one of respondent-father's letters, he did not like to talk about respondent-father, and he could not remember respondent-father's name on one occasion. Respondent-father himself admitted that he was only fifty percent sure GR was his son. The caseworker said AR was confused about who her father was. At the time of the hearing, the children were seven and eight years old, and they had not seen respondent-father in approximately two years. The caseworker testified that both children were in need of permanency and stability.

Respondent-father argues that terminating his parental rights would not provide stability for the children because their foster care placement was not an adoptive home. He argues that his new wife could provide a more stable environment for the children. Yet, at the best-interest hearing, respondent-father's wife admitted that she could not care for AR and GR because she was unemployed. The children's mother also testified that respondent-father's wife had a history of drug addiction. Respondent-father has not demonstrated an ability to act as a stable parent. To the contrary, during AR's and GR's lives, respondent-father exhibited consistent patterns of drug abuse, criminal activity, and violence. Testimony at the best-interest hearing revealed that respondent-father would often refuse to care of AR and GR and would try to pass his responsibility off onto others. Under these circumstances, the trial court did not clearly err in finding that termination was in AR's and GR's best interests.

V. DUE PROCESS

Lastly, respondent-father argues that the trial court violated his due process rights. Specifically, he argues that the trial court improperly relied on the non-expert testimony of the caseworker to find that GR and AR would likely be psychologically harmed for purposes of MCL 712A.19b(3)(j) if they were returned to his care. He also argues that the trial court's findings under the other statutory grounds shocked the conscience. Because respondent-father did not raise a constitutional due process claim below, we review this issue for plain error affecting substantial rights. *In re Williams*, 286 Mich App 253, 274; 779 NW2d 286 (2009).

"[P]arents have a significant interest in the companionship, care, custody, and management of their children[,] [which] has been characterized as an element of 'liberty' to be protected by due process." *In re Brock*, 442 Mich 101, 109; 499 NW2d 752 (1993). However, once a petitioner presents clear and convincing evidence establishing a basis for termination under MCL 712A.19b(3), a respondent's liberty interest in controlling a child's care and custody gives way to the state's interest in protecting the child. *In re Trejo*, 462 Mich at 355-356.

As discussed above, clear and convincing evidence supported the trial court's findings under MCL 712A.19b(3)(a)(ii), (g), and (j). Moreover, a review of the record indicates that the trial court's conclusions regarding the likelihood of harm under MCL 712A.19b(3)(j) were based on the amount of time that had passed since AR and GR had seen respondent-father, and respondent-father's consistent displays of substance abuse, irresponsibility, criminal activity, and instability. The court's opinion was not based on improper speculation by the caseworker about the children's psychological states. Further, respondent-father's general assertion, without more, that the trial court's other findings shocked the conscience does not warrant appellate review. See *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959) ("It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims . . ."). Accordingly, we reject respondent-father's constitutional due process argument and conclude that the trial court properly and permissibly terminated his parental rights to AR and GR.

Affirmed.

/s/ Michael J. Talbot
/s/ Jane M. Beckering
/s/ Michael F. Gadola