STATE OF MICHIGAN

COURT OF APPEALS

In re L N GILBERT, Minor.

UNPUBLISHED
March 8, 2016

No. 328911
Muskegon Circuit Court
Family Division
LC No. 05-034246-NA

Before: METER, P.J., and BOONSTRA and RIORDAN, JJ.

PER CURIAM.

Respondent, the legal father of the minor child, appeals by right the order of the trial court terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(c), (g), and (j). We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

The child was removed from his mother's care at the time of birth. Petitioner, Muskegon County Department of Human Services, filed a petition with the trial court requesting the removal based on the fact that the child's mother[1] had two previous children removed from her care, and the child tested positive for cocaine and marijuana at birth. The petition alleged that respondent was homeless, had an extensive criminal history including a criminal sexual conduct (CSC) conviction that required registration as a sex offender, and had admitted that he was not able to care for the child. The trial court found probable cause to remove the child and place him in foster care, and authorized the petition.

The child's mother pleaded to the allegations in the petition on January 30, 2014. The trial court took jurisdiction over the child and entered an order of adjudication regarding both parents under the "one parent doctrine." The matter then proceeded directly to disposition. Both parents were ultimately granted supervised parenting time and ordered to comply with a case service plan developed by petitioner. However, following our Supreme Court's abolishment of the one parent doctrine in *In re Sanders*, 495 Mich 394; 852 NW2d 254 (2014), the trial court

[1] The child's mother was a respondent in these proceedings until she voluntarily released her rights at the start of the termination hearing on July 30, 2015 (termination hearing transcript, 7/30/15, 6-8). She is not a party to this appeal.

granted petitioner's motion to supplement its petition and to seek adjudication of respondent's parental rights.

Petitioner subsequently filed a supplemental petition with the trial court, alleging that the child was substantially at risk of harm if returned to respondent, and that respondent was unable to provide proper care or custody of the child due to homelessness and criminality. The petition alleged that respondent was residing at Muskegon Rescue Mission, that he was unemployed, that he had admitted to a Child Protective Services (CPS) investigator that he could not care for the child, that he had an extensive criminal history including the CSC conviction necessitating sex offender registration, and that during parenting time he often brought no supplies and left the infant child unattended.

Respondent pleaded to the majority of the allegations in the petition, admitting that he was homeless, unemployed, and unable to care for the child, as well as admitting to his criminal record and sex offender status. The child's lawyer guardian ad litem (LGAL) stated her concerns about respondent's parenting time with the child, testifying that respondent had left the child alone on the changing table and on a couch, and had fallen asleep during parenting times. The trial court ordered that reunification efforts be made and that the child's foster care placement continue.

Respondent completed a parenting class called "Dads on Duty" through Bethany Christian Services. Respondent completed a psychological evaluation that indicated he had impulse control issues, tended to be intolerant and insensitive, did not have appropriate expectations of children relative to their developmental stage, demonstrated poor awareness, and might view a child as an object of adult gratification. Respondent generally attended his parenting times, although he missed two times in the month of July 2014.

At a review hearing on January 26, 2015, the trial court was informed that respondent was incarcerated on a felony charge of failing to register as a sex offender. Respondent had been living in a homeless shelter and was unemployed. Respondent had tested positive for THC, the active ingredient in marijuana.

In April of 2015, petitioner requested that termination proceedings commence. Petitioner informed the trial court that respondent was still homeless and unemployed and had made no progress since the beginning of the case. The LGAL agreed that termination was warranted. The trial court ordered petitioner to file a petition to terminate respondent's parental rights.

Respondent was again incarcerated on June 8, 2015 for failure to register as a sex offender, and was to serve an eight-month jail sentence. On July 30, 2015, the termination hearing was held; respondent was present for the hearing. Respondent admitted that he had not completed the psychological counseling recommended by his case service plan, but stated that this was due to an insurance issue that by then had been rectified. Respondent admitted to unemployment but stated that he felt he could obtain employment on his release from jail in November of 2015. Respondent admitted to being homeless for the entire length of the case but stated that he would be able to find housing if he could locate housing that was not near a park or school, as required by his sex offender registration. Respondent stated his belief that service providers were not willing to help him because of his CSC conviction. Regarding employment,

respondent stated that he had worked for a temporary job agency for four or five days during the previous year, but that he had been unable to find anything permanent despite being a "certified cook by trade."

The foster care case worker testified that respondent had attended parenting time regularly but that she had several concerns regarding his parenting, including his having provided the child with a plastic bag (to play with), having given the child iced tea in a baby bottle, and having left the child alone on the changing table and couch while he left the room. The worker testified consistently with respondent's own testimony regarding his unemployment and homelessness.

The trial court found by clear and convincing evidence that the statutory grounds for termination found in MCL 712A.19b(3)(c), (g), and (j) had been established, and further that termination of respondent's parental rights was in the child's best interests. The trial court entered an order terminating respondent's parental rights. This appeal followed.

II. STATUTORY GROUNDS FOR TERMINATION

Respondent first argues that the trial court erred in finding that statutory grounds for termination had been proven by clear and convincing evidence. We disagree. We review the trial court's factual findings in a termination proceeding for error. MCR 3.977(K). Further, both the trial court's decision that a ground for termination has been proven by clear and convincing evidence and the court's determination of the child's best interests are reviewed for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). "A finding 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 Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). In termination proceedings, we must give regard to the trial court's special opportunity to judge the credibility of witnesses. MCR 2.613(C); MCR 3.902(A); MCR 3.977(K).

Here, the trial court found that the following statutory grounds in MCL 712A.19(b)(3) were proven 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.
>
> (*ii*) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

> (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.
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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.

With regard to (c)(*i*), the conditions that led to adjudication were respondent's homelessness, unemployment, and criminality. More than 182 days had elapsed since the issuance of the initial dispositional order following respondent's adjudication. The trial court heard evidence that respondent had not made any progress toward obtaining stable housing, and had only held temporary employment for four or five days during the entire length of the case. Further, respondent had been incarcerated twice and was incarcerated at the time of the termination hearing. While respondent is correct that our Supreme Court has cautioned that "[t]he mere present inability to personally care for one's children as a result of incarceration does not constitute grounds for termination[,]" *In re Mason*, 486 Mich 142, 160; 782 NW2d 747 (2010), here there was substantially more evidence in support of the statutory ground for termination found in (c)(*i*) than the mere fact of respondent's incarceration at the time of the hearing. Respondent essentially failed to make any progress, during the entire pendency of the case, on the issues that had led to his incarceration, including his homelessness and unemployment. The trial court thus did not err in concluding that statutory grounds for termination had been proven pursuant to MCL 712A.19b(3)(c)(*i*).

Only one ground for termination need be proven for a trial court to terminate a respondent's parental rights. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). We therefore do not need to address the trial court's findings under subsections (g) and (j). However, we note that although respondent was consistent in attending parenting time, and did complete a parenting class, the record indicates that he did not comply with the requirement that he attend psychological counseling. Additionally, he failed to sufficiently benefit from the services offered. *In re Gazella*, 264 Mich App 668, 677; 692 NW2d 708 (2005), superseded in part on other grounds as stated in *In re Hansen*, 285 Mich App 158, 163; 774 NW2d 698 (2009), vacated on other grounds 486 Mich 1037 (2010). The evidence offered at the termination hearing indicated that he had left the child alone on the changing table or couch, offered the child a plastic bag (a choking hazard) to play with, and gave the child iced tea in a baby bottle to drink. This evidence, in addition to the fact of respondent's continued homelessness, unemployment, and criminality, provides ample support for the trial court's finding that respondent would be unable to provide proper care or custody for the child, and there was a reasonable likelihood that the child would be harmed if returned to respondent's care.

III. BEST-INTEREST DETERMINATION

Respondent also argues that the trial court erred in determining that termination of his parental rights was in the child's best interests. We disagree. In determining whether termination of parental rights is in a child's best interest, the court should

> consider a wide variety of factors that may include 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. 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 history with the child, the children's well-being while in care, and the possibility of adoption. [*In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014) (quotation marks and citation omitted).]

The trial court's finding that termination is in the child's best interests must be supported by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013).

Here, the trial court noted that there was no evidence that the child was bonded to respondent. The child had never lived with respondent or interacted with him outside of supervised parenting time visits. Further, the record was replete with evidence that respondent lacked the ability to adequately parent the child. Although the record does indicate that there was no current plan for adoption of the child, and that respondent had a good visitation history with the child, on balance we do not find clear error in the trial court's determination.

Affirmed.

/s/ Patrick M. Meter
/s/ Mark T. Boonstra
/s/ Michael J. Riordan