

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* B. M. PARKER, Minor.

UNPUBLISHED  
October 18, 2016

No. 332038  
Monroe Circuit Court  
Family Division  
LC No. 14-023273-NA

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Before: GADOLA, P.J., and BORRELLO and STEPHENS, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating his parental rights to his minor daughter pursuant to MCL 712A.19b(3)(c)(i) (conditions leading to adjudication continue to exist), MCL 712A.19b(3)(g) (failure to provide care and custody), MCL 712A.19b(3)(h) (the parent is incarcerated and the child will be deprived of a normal home for a period exceeding 2 years), and MCL 712A.19b(3)(j) (reasonable likelihood of harm). We affirm the termination of respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g) and (j).

I. BACKGROUND

This case arose after the Department of Health and Human Services (DHHS) received reports that respondent's daughter was living with her paternal grandparents while respondent was incarcerated, and there were indications that the grandparents were inappropriate caretakers and that a registered sex offender was also living in the home. After the child was taken into protective custody, respondent was identified as the child's putative father, he agreed to submit to a DNA test, and he asserted having filed an affidavit of parentage. Respondent has a long history of criminal behavior, and he was incarcerated throughout the proceedings with an earliest release date of July 2017.

At the outset of the case, respondent asked the court to place his daughter with the paternal grandparents. DHHS opposed the request due to the grandparents' placement on the central registry for child abuse, the presence of a sex offender in the home, the cluttered interior of the home, and the grandparents' lack of financial resources, which were comprised solely of Social Security Disability (SSD) income. In addition, the grandparents had a history of unstable housing, which included several landlord-tenant eviction actions and blight convictions. The court ultimately concluded that placement with the paternal grandparents was inappropriate and instead placed the child in non-relative foster care.

Following an adjudication trial, the court took jurisdiction over the minor child and ordered respondent to comply with a case service plan. A caseworker communicated with the prison regarding possible services available to respondent, but discovered that he was ineligible for some services due to his security level status. The caseworker reported that respondent participated in team meetings by telephone before each hearing and participated in the hearings through video conferencing. DHHS also accommodated two 15 minute phone calls between respondent and the minor child each week, but a caseworker confirmed that respondent's visitation privileges were suspended due to his involvement in an altercation at prison. During the proceedings, respondent was also cited for being in an unauthorized area and possessing alcohol in his cell, which caused him to lose his prison job. Respondent's visitation privileges were eventually permanently suspended due to various and continuing disciplinary issues.

In January 2016, the trial court held a hearing on a petition to terminate respondent's parental rights. At the hearing, the prison substance abuse coordinator testified that respondent completed Phase I of a prison substance abuse program, but explained that respondent was ineligible for Phase II of the program because of his security level status for misconduct violations. Respondent testified that, during his current incarceration, he received misconduct citations for being in a location without authorization, possessing alcohol, possessing marijuana, threatening the child's mother, using the telephones without authorization, and failing to appear in line for a required medication. He acknowledged that he never sent financial support for his daughter from prison and that he only met the child one time in July 2013. Respondent agreed that DHHS provided financial assistance for his telephone calls with his daughter, conducted regular family team meetings, arranged for grandparent visitation with the child, and provided respondent with copies of reports and requested services on his behalf.

Respondent denied that there were problems with the grandparents' home, asserting that the home was a viable option until his release from prison, he had a job lined up after he was released, and he had a lead on an apartment. He denied any need for parenting education courses, counseling, or substance abuse treatment. Respondent noted that he was ineligible for several services identified in his case service plan due to his security level, and argued that DHHS failed to properly amend his case service plan to account for the unavailable services. Following trial, the court found that DHHS had expended reasonable reunification efforts, clear and convincing evidence established MCL 712A.19b(3)(c)(i), (g), (h), and (j), and termination was in the child's best interests due to the absence of a bond between respondent and the child, respondent's lack of parenting ability, the child's need for permanency and stability, the advantages of the foster home, the lack of appropriate relative care, and respondent's noncompliance with the case service plan.

## II. STATUTORY GROUNDS FOR TERMINATION

Respondent first argues that there was insufficient evidence to support the termination of his parental rights under MCL 712A.19b(3)(c)(i), (g), (h) and (j). "This Court reviews for clear error a trial court's factual findings following a termination hearing." *In re Gonzales/Martinez*, 310 Mich App 426, 430; 871 NW2d 868 (2015). "A finding 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." *Id.* (quotation marks and citation omitted).

To terminate parental rights, DHHS must establish by clear and convincing evidence the existence of at least one statutory ground for termination found in MCL 712A.19b(3). *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003). Pursuant to MCL 712A.19b(3)(c)(i), termination of parental rights is appropriate if 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” finds that “[t]he 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.”

In this case, the trial court properly terminated respondent’s parental rights under MCL 712A.19b(3)(c)(i), in part, on the basis of respondent’s prolonged history of criminality and his current incarceration. Respondent’s earliest release date was July 2017, and there were concerns that respondent’s multiple misconduct violations while in prison could further extend that release date. Respondent’s inability to constrain his behavior in prison did not bode well for his ability to rectify the conditions that led to the adjudication, and restricted his eligibility to participate in services that could have met the requirements of his case service plan. The trial court expressed a reasonable doubt that respondent could sufficiently provide for the minor child immediately after his release from prison based on the absence of a suitable home and income. Further, respondent’s continued insistence that the child be placed with the paternal grandparents demonstrated poor parental judgment considering the evidence of the grandparents’ history of unstable housing, lack of financial resources, deficiencies in their residential environment, prior exposure of the minor child to a sex offender, and inclusion on the DHHS central registry. Respondent’s remaining minimum 16-month period of incarceration, paired with the lack of a demonstrable means to provide for the minor child’s care during this time, far exceeds the statutorily required 182-day period. MCL 712A.19b(3)(c)(i). Under these facts, the trial court did not clearly err by terminating respondent’s parental rights under this statutory ground.

Termination is appropriate under MCL 712A.19b(3)(g), 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.” Respondent contends that he provided proper care and custody for the minor child by advocating for her placement with the paternal grandparents and executing a power of attorney allowing them to act on her behalf after her birth. Although an incarcerated parent may achieve proper care and custody of a child by placing the child with a relative, *In re Mason*, 486 Mich 142, 161 n 11; 782 NW2d 747 (2010), respondent’s argument lacks merit for two reasons. First, respondent’s authority to effectuate a power of attorney to the paternal grandparents was questionable because, at the time he executed the document, he had not established legal paternity over the child. Second, the court concluded that the paternal grandparents’ home was inappropriate, and respondent did not identify any other viable relative placement. Specifically, the grandparents demonstrated a long history of unstable housing. At the time of the termination hearing, they were living with the grandmother’s mother and the grandparents’ incomes alone were insufficient to maintain the costs associated with the property. Concerns were also raised regarding blight citations and the cluttered interior of the property, which suggested that the home would be a hazardous environment for a child. Further, at the start of the proceedings, the paternal grandparents were listed on the DHHS central registry. Evidence also revealed that the grandparents allowed an identified sex offender to live in their

home while they were caring for respondent's daughter, but they denied that his presence posed any threat to the child, calling into question their judgment.

Respondent's daughter was 14 months old when she was taken into protective custody, and she had been in foster care for nearly two years at the time the trial court terminated respondent's parental rights. Respondent's earliest release date from prison was 16 months away, and respondent failed to provide any financial support for the child during his incarceration, despite having a prison job during at least part of that time. Considering the circumstances, it was highly unlikely that respondent would be able to provide proper care and custody for the child in a reasonable time considering the child's age. Therefore, the trial court did not clearly err by terminating respondent's parental rights under MCL 712A.19b(3)(g).

Termination of parental rights is permissible under MCL 712A.19b(3)(h) if

[t]he parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years, and the parent has not provided for the child's proper care and custody, 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.

As explained in *Mason*, 486 Mich at 161:

The combination of the first two criteria—that a parent's imprisonment deprives a child of a normal home for more than two years *and* the parent has not provided for proper care and custody—permits a parent to provide for a child's care and custody *although the parent is in prison*; he need not personally care for the child. The third necessary condition is forward-looking; it asks whether a parent "will be able to" provide proper care and custody within a reasonable time. Thus, a parent's past failure to provide care because of his incarceration also is not decisive. [Footnotes omitted.]

In this case, it is undisputed that respondent's earliest release date from prison was July 2017, and that the minor child had been in foster care since June 2014. Placement of the child with relatives was either not available or deemed inappropriate due to concerns with the identified environments. At the time the trial court terminated respondent's parental rights, he faced an additional minimum period of 16-months imprisonment. A caseworker testified that it would require at least an additional six months to achieve reunification following respondent's release from prison.

In accordance with *In re Perry*, 193 Mich App 648, 650; 484 NW2d 768 (1992), the two-year period identified in MCL 712A.19b(3)(h) is prospective and starts at the time of the termination hearing and includes the remaining period of incarceration plus any additional time deemed necessary to provide the child with a suitable home following a parent's release from prison. Although there is no guarantee that respondent will be released at the earliest possible date, it is possible that respondent could be released from prison and attain the necessary stability to meet the statutory two-year period. Although, as discussed in conjunction with the termination of respondent's rights under MCL 712A.19b(c)(i) and (g), it was established that

respondent failed to provide for the proper care and custody of the minor child and that there was no reasonable expectation that he would be capable of providing proper care and custody within a reasonable time considering the child's age, to terminate parental rights under MCL 712A.19b(3)(h), all three elements must be established. *Mason*, 486 Mich at 161. Because a possibility existed that respondent would be able to provide the minor child with a "normal home" within the identified two-year time period, the trial court erred by terminating respondent's parental rights under this subsection.

Finally, a trial court may terminate parental rights 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." Respondent has a prolonged history of criminal behavior spanning from the time he was a juvenile into adulthood. Despite his incarceration, respondent's criminal propensities continued unabated while in prison, demonstrating questionable judgment and an inability to constrain his behavior. Further, respondent continued to assert that placement of the minor child with the paternal grandparents was appropriate, despite their history of unstable housing, the detrimental conditions of their home environment, and the child's exposure to an identified sex offender. Evidence at the termination hearing also revealed that respondent had a history of substance abuse, mental health issues, and a defiant and threatening demeanor, but he denied the need for intervention or therapy. Given these factual determinations, the trial court did not clearly err by concluding that termination was appropriate under MCL 712A.19b(3)(j).

In sum, the trial court did not clearly err by terminating respondent's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j), but improperly terminated his rights under MCL 712A.19b(3)(h). However, because "[o]nly one statutory ground for termination need be established," sufficient evidence existed to support the trial court's termination order. *In re Olive/Metts*, 297 Mich App 35, 41; 823 NW2d 144 (2012).

### III. REASONABLE REUNIFICATION EFFORTS

Next, respondent contends that DHHS failed to exert sufficient efforts to attain reunification. Specifically, respondent argues that he complied with the aspects of his case service plan that were available to him in prison, but that DHHS failed to modify his plan when it discovered that he was not eligible for certain other services, which led to his predictable failure to meet the goals identified by DHHS.

"In general, petitioner must make reasonable efforts to rectify conditions and reunify families." *In re TK*, 306 Mich App 698, 710-711; 859 NW2d 208 (2014) (citation omitted). Whether reasonable services were offered pertains to the sufficiency of the evidence. *In re Fried*, 266 Mich App 535, 541-543; 702 NW2d 192 (2005). Generally, DHHS must attempt to rectify the conditions that precipitated a child's removal by adopting a case service plan. *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008). Specifically,

MCL 712A.18f(3)(c) requires that the case service plan identify the efforts to be made by the agency to return "the child to *his or her home*." (Emphasis added.) MCL 712A.18f(3)(d) requires that the case service plan contain a "[s]chedule of services to be provided *to the parent*, child, and if the child is to be placed in

foster care, the foster parent, to facilitate the child's return *to his or her home* or to facilitate the child's permanent placement.” (Emphasis added.) MCL 712A.19(7) addresses the court's ability to order services as part of the case service plan. Lastly, MCL 712A.19b(5) states that, upon finding grounds for termination, there will be no “additional efforts for reunification of the child with *the parent*. . . .” (Emphasis added.) [*Id.* at 18-19.]

In this case, DHHS provided respondent with a case service plan and with monetary assistance to allow him to contact his daughter through telephone calls and letters. Evidence also revealed that caseworkers contacted the Michigan Department of Corrections (MDOC) on multiple occasions in an attempt to identify services that would be available to respondent while he was in prison. Caseworkers also investigated possible relative placements for the child, and conducted telephone team meetings with respondent before each court hearing.

The record revealed that respondent complied with some portions of his case service plan by participating in Phase I of a substance abuse program in prison, attending limited Alcoholics Anonymous (AA) meetings, and maintaining contact with DHHS and his daughter throughout the proceedings. Although DHHS could identify services that would contribute to the goal of reunification, it was not ultimately in control of the availability of those services. Respondent was deemed ineligible for several services due to his high security level, which arose because of his ongoing misconduct violations and for which he must take some responsibility. In addition, respondent declined to participate in some services for which he was eligible, such as AA on an ongoing basis, because he believed they were unnecessary. “While [DHHS] has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered.” *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). Under the circumstances, we are not convinced that DHHS failed to provide reasonable efforts to reunify respondent with his minor child.<sup>1</sup>

#### IV. BEST INTERESTS

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<sup>1</sup> On this point, respondent suggests that his case is similar to that of *Mason*, 486 Mich 142, in which the Michigan Supreme Court held that an incarcerated father's parental rights were improperly terminated when the state failed to facilitate his participation in the proceedings, ensure that he had a meaningful opportunity to comply with a case service plan, and consider the effect of the children's placement with relatives. Unlike the father in *Mason*, respondent was not denied the opportunity to participate in a case service plan or the proceedings. The court properly addressed the possible placement of respondent's daughter with relatives, and considered more than merely respondent's incarceration status when rendering its termination decision. Specifically, the trial court considered respondent's long history of criminality, his inability to constrain himself from negative and criminal behaviors even while in prison, his history of mental health and substance abuse issues, and his demonstrated lack of parental judgment. Accordingly, *Mason* does not dictate a different outcome in this case.

Finally, respondent contends that termination of his parental rights was contrary to the best interests of the minor child. We review a trial court's best-interest determination for clear error. *Olive/Metts*, 297 Mich App at 40. "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 best-interest determination must be supported by a preponderance of the evidence. *In re LaFrance*, 306 Mich App 713, 733; 858 NW2d 143 (2014). In rendering such a determination, 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," as well as "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, 713-714; 846 NW2d 61 (2014) (quotation marks and citations omitted).

In this case, the trial court properly determined that termination of respondent's parental rights was in the child's best interests. Respondent was incarcerated when the child was born and his physical contact with her was limited to one occurrence in prison. Respondent's visitation rights were limited because of his ongoing misconduct in prison. Accordingly, his contacts with the child were limited to telephone conversations and letters. By respondent's earliest release date, the child would have already spent three years in foster care. The absence of any meaningful bond between the child and respondent was evidenced by the foster father's testimony that the child responded to contact by respondent with the same demeanor that she exhibited when she was engaged by strangers. A caseworker testified that, although the content of respondent's letters to the child had improved, his letters initially contained inappropriate material. The caseworker further opined that the child was doing well in foster care, she had no demonstrated health or developmental concerns, and her foster family had expressed an interest in adopting her. Considering the minimal bond, if any, respondent shared with his daughter, in addition to the length of time that she had been in foster care, the anticipated continued need for foster care due to respondent's incarceration, and the child's need for stability, permanency, and finality, the trial court did not clearly err by concluding that termination of respondent's parental rights was in the child's best interests.

We affirm the termination of respondent's parental rights in accordance with MCL 712A.19b(3)(c)(i), (g) and (j).

/s/ Michael F. Gadola  
/s/ Stephen L. Borrello  
/s/ Cynthia Diane Stephens