

STATE OF MICHIGAN
COURT OF APPEALS

In re L M K STANK, Minor.

UNPUBLISHED
December 13, 2016

No. 332695
Ingham Circuit Court
Family Division
LC No. 15-000004-NA

Before: M. J. KELLY, P.J., and O'CONNELL and BECKERING, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating his parental rights to his minor child under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). For the reasons stated in this opinion, we affirm.¹

I. BASIC FACTS

The Department of Health and Human Services filed a petition requesting removal of the child from her parents' home and seeking jurisdiction over her. The petition asserted that there were two domestic violence incidents between her parents and that she had sustained an injury to her forehead that was inconsistent with the explanation offered by her mother. She was about 16 months old at the time. Following a jury trial, the trial court assumed jurisdiction over the child. Subsequently, the Department filed a supplemental petition seeking termination of respondent's parental rights to the child.

Respondent was provided with services, including domestic violence classes, parenting skills classes, parenting time, random drug screens, a substance abuse assessment, and a psychological assessment. A caseworker assigned to the case testified that respondent was not consistent in his participation with parenting time, and that when he was present, he did not really interact with the child during parenting time visits, choosing instead to take pictures on his phone. She also testified that respondent had failed to take responsibility for the domestic violence between him and the child's mother. She testified that the domestic violence was ongoing and recounted one instance where the child's mother had a black eye. There was also

¹ The trial court also terminated the parental rights of the child's mother; however, she has not appealed that decision.

testimony that for several months during the case respondent was incarcerated because of domestic abuse, and that he also pleaded guilty to a second offense. It appears that respondent and the child's mother fully intended to continue their relationship. The caseworker reported that even though there was a no-contact order in place, respondent and the child's mother "would let service providers know they were participate [sic] in services to get their family back and they would ask services to be put in place so they could work together."

Additionally, the caseworker testified that respondent was not honest about his substance abuse. Although he reported no ongoing concerns, during the pendency of the case, he tested positive for cocaine on three occasions. There was also testimony that respondent failed to provide proof of a legal income source. He provided the caseworker with a copy of a check from a contractor, but when the caseworker contacted the contractor, she was told that he did not work there. Respondent also reported that he was selling medical marijuana and would soon receive his card showing that it was legal for him to do so; however, he never provided a copy of that card to his caseworker. Finally, there was also testimony that respondent refused to allow the caseworker to evaluate his home to determine whether it was safe and appropriate for the child.

II. STATUTORY GROUNDS

A. STANDARD OF REVIEW

Respondent argues that the trial court clearly erred by concluding that the statutory grounds for termination were established. A trial court's decision that a ground for termination of parental rights has been proved by clear and convincing evidence is reviewed for clear error. *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *Id.* at 296-297.

B. ANALYSIS

MCL 712A.19b(3)(g) provides that the court can 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." Here, the trial court held that termination on this ground was proper because respondent failed to participate in and benefit from the case service plan. Respondent argues that this was clear error, maintaining that he substantially complied with the case service plan and only tested positive on one occasion. Respondent also argues that the positive drug test was suspect, asserting that another test on the same day did not detect any illegal substances. However, the caseworker testified that respondent tested positive for cocaine three times. Additionally, although the caseworker testified that respondent had completed a "weekend program" related to domestic violence, she added that he did not complete the full domestic violence prevention program and did not benefit from the portion of the domestic violence services that he completed. In particular, she stated that the child's mother continued to report instances of domestic violence. Moreover, the caseworker testified that respondent did not allow her to perform a home assessment and did not provide proof of a legal income. Accordingly, on this record, the trial court did not clearly err in finding that respondent failed to

provide proper care and custody for his child and would be unable to do so within a reasonable time considering the child's young age.²

Affirmed.

/s/ Michael J. Kelly
/s/ Peter D. O'Connell
/s/ Jane M. Beckering

² Because we conclude that the trial court did not clearly err in finding termination proper under MCL 712A.19b(3)(g), we need not address respondent's challenges to the court's findings with respect to the remaining statutory grounds. See *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011) (explaining that only one ground for termination needs to be established to terminate parental rights).