

STATE OF MICHIGAN
COURT OF APPEALS

In re L. I. M. GRIFFITH, Minor.

UNPUBLISHED
December 13, 2016

No. 333500
Calhoun Circuit Court
Family Division
LC No. 2014-000654-NA

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

PER CURIAM.

Respondent-father appeals as of right the trial court's order terminating his parental rights to his minor child under MCL 712A.19b(3)(c)(i) (the conditions leading to adjudication continue to exist), (c)(ii) (other conditions that would lead to adjudication exist), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood that child will be harmed if returned to the parent). We affirm.

I. FACTUAL BACKGROUND

The child was born during an ongoing case by the Department of Health and Human Services (DHHS) regarding respondent's parenting of another child. That child stated that respondent placed duct tape over his nose, mouth, and arms as a form of punishment. Respondent was also arrested for illegal marijuana production and was not compliant with services in that case.

After the trial court removed the child in this case from respondent's care and adjudicated respondent responsible on the basis of his criminal actions and drug use, DHHS offered respondent a variety of services, including drug screens, drug counseling, parental outreach counseling, and parenting classes. Respondent failed to participate in any service but parenting classes and, during the pendency of this case, engaged in domestic violence with the child's mother. After respondent was released from jail following pleading guilty to domestic violence, the child cried every time respondent attempted to pick her up, and respondent reacted to the child's discomfort with frustration. The child's mother voluntarily released parental rights to the child, stating that she wanted the child to remain with her foster family in order to protect the child from respondent.

At the termination hearing, the child's mother testified that she had dated respondent for three years and that he perpetrated domestic violence and engaged in drug use for the entire period. Respondent also appeared at her place of work during the child protective proceedings

and, when the mother gave him a ride home, he pulled her from her car, dragged her into a residence, and choked her nearly unconscious.

Jessica Wines, the child's foster-care caseworker, testified that respondent was diagnosed with a substance-abuse disorder but he attended substance abuse counseling only intermittently and failed to show improvement from counseling. Respondent also did not participate in DHHS's drug screens from September 2014 through October 2015. After October 2015, respondent tested positive for marijuana on half his drug screens. According to Wines, this showed that respondent did not benefit from substance abuse counseling. Wines believed that the child would be at a risk of harm from respondent because of his continued drug use, domestic violence, and failure to participate in services. Wines also testified that respondent was attentive and appropriate at parenting visits, but the child no longer appeared to be bonded with him after he missed visits.

The trial court found that respondent failed to comply with or benefit from services and specifically ignored services designed to address his substance abuse issues. The trial court found that respondent's failure to participate in parental outreach counseling was a "critical factor" because counseling could have provided respondent with the skills he needed to become a good parent. The trial court found respondent's drug use and criminal behaviors had continued throughout the proceedings, that his domestic violence would provide an additional ground for adjudication, and that there was no reasonable expectation that respondent would rectify these issues within a reasonable time.

Considering the child's best interests, the trial court found that she had a weak bond with respondent. However, she had a strong bond with her foster parents, and they were willing to adopt her. The trial court also found that respondent would not be able to provide the child with a safe and stable home. Accordingly, it found that termination was in the child's best interests.

II. STANDARDS OF REVIEW

This Court reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). We also review for clear error the trial court's determination regarding the children's best interests. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). A finding is clearly erroneous if, after reviewing the entire record, we are definitely and firmly convinced that the trial court made a mistake. *Mason*, 486 Mich at 152. We review de novo issues of constitutional law. *In re Sanders*, 495 Mich 394, 403-404; 852 NW2d 524 (2014).

III. CONSTITUTIONAL RIGHTS AND STATUTORY GROUNDS

Respondent contends that the trial court violated his constitutional right to parent his child and that statutory grounds did not support terminating his parental rights. We disagree.

The Due Process Clause of the Fourteenth Amendment of the United States Constitution protects "the interest of parents in the care, custody, and control of their children . . ." *Troxel v Granville*, 530 US 57, 65; 120 S Ct 2054; 147 L Ed 2d 49 (2000). Our statutes, court rules, and DHHS policies are in place to generally ensure that parents are provided with procedural due process when their children are removed from their home. *In re Rood*, 483 Mich 73, 93; 763

NW2d 587 (2009) (opinion by CORRIGAN, J.). But once the Department has established statutory grounds for termination, the state's interests in the children's safety overcome the parent's right to custody and control of his or her children. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000).

MCL 712A.19b(3)(c) provides that the trial court may terminate a parent's rights if either of the following exist:

(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.

These statutory grounds exist when the conditions that brought the children into foster care continue to exist despite "time to make changes and the opportunity to take advantage of a variety of services." See *In re Powers Minors*, 244 Mich App 111, 119; 624 NW2d 472 (2000).

MCL 712A.19b(3)(g) provides that the trial court may terminate a parent's 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.

And MCL 712A.19b(3)(j) provides that the trial court may terminate parental rights 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 trial court may properly consider the parent's mental health and substance abuse conditions when determining whether a parent can provide a child with proper care and custody and whether it is reasonably likely that the child will be harmed if returned to the parent's home. See *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008); *In re AH*, 245 Mich App 77, 87; 627 NW2d 33 (2001). A parent's failure to comply with his or her service plan is evidence that the parent will not be able to provide a child with proper care and custody and that the child may be harmed if returned to the parent's home. *White*, 303 Mich App at 710-711. The parent must both comply with *and* benefit from the service plan. *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012).

In this case, the child was in foster care because respondent was involved in drug use and criminality. DHHS offered respondent a variety of services to address his drug use, criminality,

and lack of parenting skills, but respondent refused to participate in or participated inconsistently in those services and continued to test positive for marijuana. Respondent also perpetrated domestic violence against the child's mother during the pendency of the case.

We are not definitely and firmly convinced that the trial court made a mistake when it found that statutory grounds supported terminating respondent's parental rights. DHHS offered respondent time and the opportunity to take advantage of services that would rectify the conditions that rendered him an unfit parent, but respondent did not take advantage of those services. Respondent's substance abuse was a factor that indicated that he was unable to provide the child with proper care or custody. And the trial court properly considered that respondent did not comply with or benefit from the service plan in determining whether the child would be at a risk of harm if placed in respondent's care. Finally, because the trial court did not err in finding that statutory grounds supported terminating respondent's parental rights, the state's interests in the child's safety overcame his constitutional liberty interests in parenting his children.

IV. BEST INTERESTS

Respondent contends that the trial court erred when determining the child's best interest because it did not consider any best interests factors and failed to consider the child's bond to respondent or the child's stability. We disagree.

The trial court should weigh all the evidence available to determine the children's best interests. *White*, 303 Mich App at 713. To determine whether termination of a parent's parental rights is in a child's best interests, 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." *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted).

Contrary to respondent's assertion that the trial court did not consider any best interest factors or testimony regarding the child's best interests, the trial court's ruling reflects that it considered respondent's bond to the child, the child's stability and finality, the advantages of the child's foster home, and the possibility of adoption. In explicitly considering the child's bond to respondent, the trial court found that the bond was weak. And in explicitly considering the child's stability, it found that the foster home offered more stability than respondent could provide. Accordingly, we reject respondent's assertions that the trial court's best interest findings were insufficient. After reviewing the record, we are not definitely and firmly convinced that the trial court made a mistake when it found that terminating respondent's parental rights was in the child's best interests.

We affirm.

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