

STATE OF MICHIGAN
COURT OF APPEALS

In re L. TILOT, Minor .

UNPUBLISHED
January 19, 2017

No. 333877
Delta Circuit Court
Family Division
LC No. 15-000146-NA

Before: MURPHY, P.J., and METER and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating his parental rights to his minor child under MCL 712A.19b(3)(c)(i) (continued existence of the conditions that led to adjudication), MCL 712A.19b(3)(g) (failure to provide proper care or custody), and MCL 712A.19b(3)(j) (reasonable likelihood of harm if child returned to parent). We affirm.

I. FACTS

Child Protective Services (CPS) removed the six-year-old child from her parents' custody after an explosion occurred in their garage while an individual was cooking methamphetamine. During removal, CPS observed a medical bag containing empty oil bottles and syringes in the house, noting that it was within the reach of the child. A dental examination revealed that the child suffered from severe tooth decay and abscesses, and it appeared that she had never had any dental work completed. The child also suffered from aphthous of the mouth, which is a virus related to herpes. In addition to her dental issues, the child had a severely extended stomach, a blockage, and was leaking stool. Her foster mother testified that she was not potty trained and would uncontrollably defecate and urinate in her pants. The child was also diagnosed with oppositional defiant disorder, reactive attachment disorder, and post-traumatic stress disorder, and was described as having the emotional maturity of a three- or four-year-old child.

After removal, respondent and the child's mother continued to test positive for drug use. Although respondent had not tested positive since January of 2016, he continued to live with the mother, who was still using drugs, up until about one month before the hearing on the petition. At that point, respondent moved into a one-bedroom apartment with his mother that would not have been suitable for the child. Moreover, respondent did not seem to appreciate that the child

had been severely neglected while in his care and had not taken note of her improved physical and emotional well-being following removal and the care given her by the foster parents. Also, his bond with the child appeared to be more the bond of a friend than a parent¹.

II. GOVERNING LEGAL PRINCIPLES

Respondent argues that the trial court clearly erred in finding that the statutory grounds for termination of his parental rights were established by clear and convincing evidence and in finding that termination of parental rights was in the child's best interests. If a trial court finds that a single statutory ground for termination has been established by clear and convincing evidence and that it has been proved by a preponderance of the evidence that termination of parental rights is in the best interests of a child, the court is mandated to terminate a respondent's parental rights to that child. MCL 712A.19b(3) and (5); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013); *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). "This Court reviews for clear error the trial court's ruling that a statutory ground for termination has been established and its ruling that termination is in the children's best interests." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011); see also MCR 3.977(K). "A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). In applying the clear error standard in parental termination cases, "regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

III. ANALYSIS

MCL 712A.19b(3) provides in pertinent part:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The parent was a respondent in a proceeding under this chapter, 182 or more days have elapsed since the issuance of an initial disposition 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.

* * *

¹ The mother's rights were also terminated but she is not part of this appeal.

(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.

* * *

(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.

A. CONDITIONS LEADING TO ADJUDICATION

The conditions that led to adjudication included parental drug addiction, improper housing, given, among other issues, that the home was being used as a meth lab, and parental neglect. Apart from the issues related to bowel and urinary control, there was testimony that the child had to undergo oral surgery and that six teeth were capped, several were filled, and "one or two" had to be removed. Although respondent may have been making progress with his own addiction problems, he made no effort to part ways with the child's mother, who remained addicted, until well after the petition for termination was filed and only about a month before the termination hearing. Given the testimony that they had been together for 14 years and that defendant did not leave until shortly before the termination hearing, there was no clear error in the trial court's finding that respondent would likely continue contact and that the child would thus have contact with the mother if returned to respondent's care. Moreover, respondent's proposed housing with his mother was not acceptable, where he indicated that the child would sleep on the couch and he would sleep on the floor, and where his mother had stated that she was distancing herself from the child because of a cancer diagnosis. Moreover, respondent admitted being aware of the child's medical and dental issues but offered no cogent explanation for why he failed to address them. Where respondent did not appear to appreciate the fact or gravity of his neglect and did not recognize that the child had improved, it was likely that neglect would resume if she were returned to his care. Because issues with parental drug problems and exposure to drugs continued, and because defendant still could not provide proper housing and had apparently learned nothing that would preclude future neglect, there was no clear error in the conclusion that the conditions that led to the adjudication continued to exist and that there was no reasonable likelihood that they would be rectified within a reasonable time.

B. PROPER CARE AND CUSTODY

Respondent failed to provide proper care and custody as evidenced by the fact that he was living with the mother and the child in a house where drugs were present, accessible, and manufactured, and the child was neglected. Moreover, there was no reasonable expectation that respondent could provide proper care where he had not obtained an appropriate home for the minor child throughout the duration of the case. Similarly, it could not be expected that he would provide proper care where he did not seem to appreciate the severity of the problems with the care that he had been providing and, therefore, would not likely understand what proper care entails. Accordingly, the court did not clearly err in concluding that MCL 712A.19b(3)(g) was established by clear and convincing evidence.

C. LIKELIHOOD OF HARM

Termination under this statutory ground is appropriate if the evidence established that a respondent is not in a position to “safeguard the children from injury.” *In re Van Dalen*, 293 Mich App 120, 141; 809 NW2d 412 (2011). We cannot over emphasize the danger posed to the child’s health and well-being by the methamphetamine operation that caused the explosion, as well as by the child’s exposure to syringes and drug paraphernalia. Although there were some evidence that respondent was complying with his substance abuse treatment services and had no recent positive drug tests, respondent continued to associate with the mother, who was testing positive for drugs. Respondent claimed that they had separated about a month before the termination hearing because of her drug use but acknowledged that he loved her and, having been together for 14 years, that it was hard being separated from her. The child’s mother testified that in the 14 years together, she and respondent had used drugs nearly the entire time. Given the likelihood that the child would be exposed to the mother given respondent’s continued association, his failure to appreciate that she was in need of dental and medical care and that these problems had been addressed, his failure to recognize her special needs, and his apparent failure to appreciate the commitment needed to care for this child, the trial did not clearly err in concluding that MCL 712A.19b(3)(j) had been established.

D. BEST INTERESTS OF THE CHILD

With respect to a trial court’s best-interest determination, we place our focus on the child rather than the parent. *In re Moss*, 301 Mich App at 87. The trial court may consider such factors as “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).

Although respondent presented evidence of a bond between him and the minor child, it was characterized as being more the bond of a friend and not necessarily parental. In any event, the trial court recognized the bond but determined that the child required a loving family that could take care of her special needs. The trial court found that respondent failed to establish a fit and drug-free home for the minor child, which would have helped to provide for her emotional and physical well-being. Also, as indicated by the trial court, the minor child had flourished in her foster home medically, educationally, behaviorally, and emotionally. The trial court properly recognized that the minor child “needs as much stability and love and care as she can get, and she’s not going to get it in any other way but through termination.” Therefore, termination of respondent’s parental rights was in the child’s best interest and there was no clear error in the determination that termination of parental rights was a necessary step in allowing the child to have the safety, permanence, and stability to which she was entitled.

Affirmed.

/s/ William B. Murphy
/s/ Patrick M. Meter
/s/ Amy Ronayne Krause