STATE OF MICHIGAN

COURT OF APPEALS

In re I. D. LALONE, Minor.

UNPUBLISHED
February 23, 2017

No. 334128
Isabella Circuit Court
Family Division
LC No. 2013-000058-NA

Before: HOEKSTRA, P.J., and SAAD and RIORDAN, JJ.

PER CURIAM.

Respondent appeals the trial court's order that terminated his parental rights to his minor child under MCL 712A.19b(3)(c)(*i*) (failure to rectify conditions) and MCL 712A.19b(3)(g) (failure to provide proper care or custody). For the reasons provided below, we affirm.

This Court reviews for clear error a trial court's findings with respect to the termination of parental rights. MCR 3.977(K). A decision of the trial court 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." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

A trial court must terminate a respondent's parental rights if it finds that a statutory ground under MCL 712A.19b(3) has been established by clear and convincing evidence and that termination is in the child's best interests. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014).

Here, termination was based on a failure to rectify conditions, MCL 712A.19b(3)(c)(*i*), and a failure to provide proper care or custody, MCL 712A.19b(3)(g). Defendant, however, does not challenge that there was sufficient evidence to support the conclusion that these factors were established. Instead, he maintains that petitioner did not provide adequate services to him. See *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005) (stating that the lack of reasonable services "ultimately relates to the issue of sufficiency"). MCL 712A.19a(2) provides, in pertinent part, the following:

> Reasonable efforts to reunify the child and family must be made in all cases except if any of the following apply:
>
> > (a) There is a judicial determination that the parent has subjected the child to aggravated circumstances as provided in section 18(1) and (2) of the child protection law, 1975 PA 238, MCL 722.638.

(b) The parent has been convicted of 1 or more of the following:

(*i*) Murder of another child of the parent.

(*ii*) Voluntary manslaughter of another child of the parent.

(*iii*) Aiding or abetting in the murder of another child of the parent or voluntary manslaughter of another child of the parent, the attempted murder of the child or another child of the parent, or the conspiracy or solicitation to commit the murder of the child or another child of the parent.

(*iv*) A felony assault that results in serious bodily injury to the child or another child of the parent.

(c) The parent has had rights to the child's siblings involuntarily terminated.

(d) The parent is required by court order to register under the sex offenders registration act.

Because none of the exceptions applied in this case, petitioner was required to make reasonable efforts to reunify respondent with the child.

Contrary to respondent's claim on appeal that adequate services were not provided, the record shows that respondent was offered services but failed to participate. From December 2014 to October 26, 2015, respondent did not have contact with the minor child because he was incarcerated. However, during his incarceration he received a psychological evaluation and counseling, as well as information packets. After his release, respondent's service plan required him to have random drug screens, counseling sessions, and parenting classes. However, he resided in Arenac County, which was a considerable distance from Isabella County, where the minor child resided, and did not have a contract with petitioner.

Throughout this case, respondent argued that he was unable to participate in services because he did not have transportation. However, respondent did not contact petitioner to arrange for transportation despite being asked several times if he needed any help with services. Regardless, he was offered the use of gas cards but did not take advantage of them.

Respondent also argues that petitioner did not assist him in locating counseling services in his area that (1) had a contract with the State and (2) would not conflict with his work schedule. After his release from jail, he stopped attending counseling sessions even though his referral with the counselor was still valid. Respondent did not provide information about a counselor in his area until four months after his release from jail. Even after a referral was made, respondent attended only two out of the five scheduled sessions and was a "no call no show" for three scheduled appointments. When confronted about his non-participation in counseling services, respondent explained that he could not afford to pay for more services and that his work schedule prevented him from attending. However, testimony at trial showed that although the counseling service did not have a contract with the State, it offered a scaling-fee arrangement

based on the patient's income, and respondent's counselor had expressed an intention to work out a fee arrangement with him based on his income. Again, respondent failed to contact the counselor to work out an arrangement. Moreover, even if respondent's work schedule prevented him from attending the counseling sessions, he failed to reschedule the missed appointments despite the fact that reminder cards were sent out to him.

Respondent further argues that petitioner did not assist him in locating parenting classes that he did not have to pay for himself. Respondent did not start participating in parenting classes until four months after his release from jail and had attended only two sessions before he was discharged for non-participation in the eight-week course. He testified that he was unable to participate because of his work schedule. However, there is no evidence that he made reasonable efforts to re-enroll in classes that would work with his schedule. Respondent cannot blame petitioner for his failure to attend his parenting classes. Any failure was on the part of respondent himself.

Respondent also contends that petitioner did not assist him in finding drug testing centers that did not conflict with his work schedule. However, after respondent's release from jail, he indicated that he was unable to participate in drug screens because he had transportation issues and did not indicate a willingness to participate until January 2016. A referral was then made on January 29, 2016, but respondent missed more than half of the scheduled drug screens, again blaming his non-participation on his work schedule. Of the 76 drug screens offered to respondent, he had 33 negative screens and was a "no call, no show" for 43 other screens. Moreover, respondent's contention that he missed the drug screens because of his work was refuted at trial. Respondent testified that he worked Monday through Friday from 6:00 a.m. to 6:00 p.m. The drug screen center was open on Monday, Wednesday, and Thursday from 8:00 a.m. to 7:00 p.m., on Tuesday from 8:00 a.m. to 8:00 p.m., and on Friday from 8:00 a.m. to 6:00 p.m. Respondent failed to explain why he was unable to do his drug screens on the days when the center was open after his work hours. Moreover, respondent's employment began in March 2016, and he worked for four months before he was terminated. Notably, respondent also missed his drug screens during the period he was unemployed.

Respondent further claims that petitioner failed to provide him adequate services in light of his problem securing transportation in order to attend his parenting visits. However, respondent failed to make reasonable efforts and cancelled a majority of the visits. Respondent had his first parenting visit on October 26, 2016, the day he was released from jail. Thereafter, the caseworker attempted to get respondent to attend parenting visits on numerous occasions, but he kept cancelling scheduled visits. He cancelled parenting visits on November 2, November 9, and November 13, 2015. During the period, he was offered gas cards but failed to show up to collect them. He did not respond to the caseworker's texts on November 22 and 30, which asked if respondent would be attending parenting visits. Further, respondent showed up for a visit on November 23, but only after the caseworker texted him and threatened to cancel his visits. The caseworker cancelled a visit on November 30 when respondent did not respond to her texts, and he did not show up for his January 22, 2016 parenting visit. Respondent did not see the minor child again until March 2016. Although respondent attended all of his visits in March, he cancelled all his scheduled visits in April and only started participating in and being consistent with his parenting visits after the petition to terminate his parental rights was filed.

Moreover, because respondent expressed that he was having transportation problems, the caseworker set up phone visits for Mondays between 1:00 and 2:00 p.m. But respondent did not participate in any of the phone visits. Respondent claimed that he did not have minutes on his phone to call and did not ask petitioner for assistance with phone minutes because "it was like not a necessity." Thus, petitioner cannot be faulted for failing to address respondent's alleged "lack of minutes" when respondent failed to notify petitioner of the purported problem.

Respondent also argues that petitioner failed to provide counseling services for himself and the minor child in order to rectify their difficult relationship. Testimony at trial established that due to respondent's absence in the child's life, the child avoided contact with him during parenting visits and refused to be left alone with him. Despite respondent's efforts to engage the child on some occasions, the child avoided him and turned to others for help. Respondent acted appropriately during parenting visits and did not do anything to provoke the reactions from the child. We note that MCL 712A.13a(13) provides, in pertinent part:

> If the court determines that parenting time, even if supervised, may be harmful to the juvenile's life, physical health, or mental well-being, the court may suspend parenting time until the risk of harm no longer exists. The court may order the juvenile to have a psychological evaluation or counseling, or both, to determine the appropriateness and conditions of parenting.

Respondent contends that this provision mandated counseling for the child. However, the language of the statute clearly is discretionary. See *Walters v Nadell*, 481 Mich 377, 383; 751, NW2d 431 (2008).

We note that during an April 15, 2016 hearing, the caseworker asked the court to suspend respondent's parenting visits because the child was experiencing anxiety during the visits. The court declined to do so and noted that it was not unusual for children to act strangely toward parents that they have not seen in a long time; the court recommended that the child's counselor observe parenting time between respondent and the child. However, the caseworker did not set up counseling for the child and respondent because of respondent's inconsistent participation in services.

Respondent cannot fault petitioner for his long absence from his child and the lack of a bond with her because his criminal activities led to his frequent incarceration. Respondent claimed that he was overwhelmed with the services already offered. It is doubtful that he would have participated in or benefitted from an additional service. When a respondent fails to sufficiently participate in services that were, in fact, provided by petitioner, he is not entitled to claim that petitioner was required to provide additional services. Importantly, while petitioner "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). While it may have been beneficial to have had the counselor observe visits, that respondent failed to take advantage of or benefit sufficiently from the services that were offered was not the fault of petitioner or the court. The trial court properly found that parents should be held accountable with regard to participation in services and that petitioner "cannot take parents by the hand and lead them to all the services."

Therefore, we hold that the trial court did not clearly err when it found that reasonable efforts were made by petitioner. We also find that the trial court did not clearly err when it found that respondent failed to rectify conditions, MCL 712A.19b(3)(c)(*i*), and was unable to provide proper care or custody, MCL 712A.19b(3)(g), which necessitated the termination of respondent's parental rights.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Henry William Saad
/s/ Michael J. Riordan