STATE OF MICHIGAN

COURT OF APPEALS

In re J. M. C. GOSSMAN, Minor.

UNPUBLISHED
December 19, 2017

No. 335895
St. Clair Circuit Court
Family Division
LC No. 15-000410-NA

Before: TALBOT, C.J., and BORRELLO and RIORDAN, JJ.

PER CURIAM.

Respondent-father appeals by right the trial court order terminating his parental rights to the minor child, JG, under MCL 712A.19b(3)(c)(*i*), (g), and (j).[1] For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

Child protective proceedings were initiated against father based on an October 29, 2015 petition alleging that he and JG's mother had been operating and maintaining a methamphetamine lab at their residence for approximately one year and that JG was living in that home during this time. It was also alleged that JG had been removed from his mother at birth due to substance related issues and that JG had been placed with father. The petition further alleged that due to exposure to methamphetamine, it was contrary to JG's wellbeing to remain in the parental home. At the preliminary hearing, Department of Health and Human Services (DHHS) worker Hillary Ayan indicated that both father and mother had been arrested, that JG had been exposed to methamphetamine fumes in the home, that JG had access to the methamphetamine because the methamphetamine lab was out in the open, and that JG had tested negative for methamphetamine after being removed.

The trial court took jurisdiction over JG at a November 12, 2015 hearing after father pleaded no contest to the allegations in the petition. Although father was incarcerated at this time, he was present at the hearing. At the hearing, a foster care worker recommended that

[1] The trial court terminated the parental rights of the child's mother in an earlier order, which this Court affirmed. *In re J M C Gossman*, unpublished opinion per curiam of the Court of Appeals, issued October 11, 2016 (Docket No. 332521).

father complete mental health counseling, substance abuse counseling, and a psychological and substance abuse assessment. The foster care worker also recommended suspending parenting time as long as father was incarcerated.

During the course of the subsequent review hearings, which father attended, a new foster care worker reported that father was incarcerated but had completed a drug and alcohol class. Father was initially unable to get a psychological evaluation while incarcerated. However, he subsequently completed a psychological evaluation although the report of the results had not been received by the agency. Father participated in parenting classes and was signed up for phase two of the substance abuse program, Thinking for a Change, and working toward his GED, although father was not eligible for phase two of the substance abuse program until he was closer to his release date. Father maintained communication with the agency through letters while he was incarcerated. During the review hearings, the foster care worker reiterated the requirements of father's treatment plan, and father agreed with the treatment plan recommendations.

At the permanency planning hearing on October 3, 2016, which father attended via video, the new caseworker, Tabitha Appledorn, reported that father had not provided verification of the services from prison, although his prison case manager had confirmed his completion of parenting classes. The report on father's psychological evaluation still had not yet been received. The trial court authorized a petition to terminate father's parental rights.

The termination hearing was held on November 9, 2016. Probation officer James Brown testified that he had prepared father's presentence investigation report in father's criminal case. Father had pleaded guilty on February 16, 2016, to operating and maintaining a methamphetamine lab, as well as delivery and manufacture of a controlled substance. He was sentenced on March 14, 2016, to 30 months to 20 years' imprisonment. According to Brown, father told him that he had been involved in making methamphetamine due to his drug addiction and that he had a problem with drugs. Father had also reported his past difficulties with alcohol.

Jennifer Vasilovski, the assistant director of the foster care program at Family and Community Services, testified that her agency became involved on the day of JG's removal and that father had been incarcerated for the duration of the case. Vasilovski further testified that father had been offered services through the prison system and that he had participated in substance abuse programs, mental health programs, Thinking for a Change, parenting classes, AA and NA, and job learning programs. According to Vasilovski, father had provided some documentation for his participation. However, Vasilovski also testified that father's case manager at the Chippewa Correctional Facility had reported that father declined the opportunity to participate in mental health services, group therapy, AA, NA, and Thinking for a Change class when these services were offered. According to Vasilovski, there had also been "another fire" in father's home during April 2015 that was caused by manufacturing methamphetamine and that caused mother to incur severe burns that required her to be hospitalized for a lengthy period of time. Vasilovski found it very concerning that, despite being aware that the methamphetamine fire caused serious injuries to his wife, father continued to manufacture the substance with minor children in the home.

Father testified during the termination hearing that he had a methamphetamine problem, which was why he manufactured it. Father explained that he did not produce methamphetamine

in his home, but he did it "back in the woods" on the property. Father indicated that JG was never around the methamphetamine production. According to father, the only reason that the police found "one-pots" in his home was because his friend had asked to manufacture some methamphetamine together. Father went out to the woods to get the supplies and, at the time he was supposed to meet his friend, the Drug Task Force kicked his door in. Father later learned that his friend was working for the Task Force. At the termination hearing, father claimed that he was sober and had changed his attitude about drugs and drug usage since his incarceration. Father testified that he had taken every class that was available to him in prison, including NA and AA.

The trial court terminated father's parental rights after finding that termination was proper under MCL 712A.19b(3)(c)(*i*), (g), and (j), and that termination was in the minor child's best interests. This appeal followed.

II. STATUTORY GROUNDS

Father first argues that the trial court erred by concluding that there were statutory grounds to support terminating his parental rights. "In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). We review for clear error a trial court's determination that a statutory ground for termination has been established. *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003). "A circuit court's decision to terminate parental rights is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *Id*. at 209-210. "Appellate courts are obliged to defer to a trial court's factual findings at termination proceedings if those findings do not constitute clear error," *In re Rood*, 483 Mich 73, 90; 763 NW2d 587 (2009), and this Court "give[s] deference to the trial court's special opportunity to judge the credibility of the witnesses," *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

The trial court may terminate parental rights under MCL 712A.19b(3)(c)(*i*) if "[t]he 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, by clear and convincing evidence, finds . . . [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." We have affirmed termination under MCL 712A.19b(3)(c)(*i*) based on a finding that "the totality of the evidence amply supports that [respondent] had not accomplished any meaningful change in the conditions existing by the time of the adjudication." *In re Williams*, 286 Mich App 253, 272, 278; 779 NW2d 286 (2009).

In this case, the condition that led to father's adjudication was his operation and maintenance of a methamphetamine lab at his residence for a period of approximately one year while JG lived at the residence. There was evidence that father had participated to some extent in services directed at substance abuse, and father claimed that substance abuse was no longer an issue for him. However, it was clear from father's testimony that he still failed to appreciate the danger of the situation he had created for JG by manufacturing methamphetamine on his property. Father referred to his actions merely as "a couple bad choices." But his choices could

have had catastrophic effects on JG. For example, there was evidence that father had manufactured methamphetamine because he was addicted to it and that father continued to manufacture methamphetamine at the residence despite having caused a fire that resulted in severe burns to mother, which required hospitalization. Also, father seemed to think that his activities were somehow less dangerous if confined to the back woods and that the methamphetamine and manufacturing supplies were only found in his house under excusable circumstances. At the time of the termination hearing, JG was five years old and had been out of his parents' care for over a year. More than 182 days had elapsed since the initial dispositional order was issued. The totality of the evidence "amply supports" that there was no meaningful change in the conditions that led to adjudication, *In re Williams*, 286 Mich App at 272, and based on the record evidence, the trial court did not clearly err by concluding that the conditions that led to the adjudication continued to exist and that there was no reasonable likelihood that those conditions would be rectified within a reasonable time considering the child's age. MCL 712A.19b(3)(c)(*i*); *In re JK*, 468 Mich at 209. Because there was at least one statutory ground supporting termination, we need not consider the additional grounds relied upon by the trial court. *In re HRC*, 286 Mich App at 461.

To the extent that father argues that the DHHS failed to make reasonable efforts to rectify the conditions that led to the child's removal and to reunify the child with father, this argument is without merit. At the time of the child's removal, and throughout this case, father was imprisoned. Father contends that the DHHS crafted a service plan that he could not have possibly complied with while incarcerated and that the court erroneously based its decision on the fact that he failed to take advantage of all available services. The record evidence belies his argument.

"In general, petitioner must make reasonable efforts to rectify conditions, to reunify families, and to avoid termination of parental rights." *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008). "The state is not relieved of its duties to engage an absent parent merely because that parent is incarcerated." *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). Although the DHHS cannot refer an incarcerated parent to social service agencies for services, it must still provide a case service plan. *Id*. at 156. In determining whether the DHHS fulfilled its duties to an incarcerated parent under the court rules and statutes, this Court considers whether the parent was "afforded a meaningful and adequate opportunity to participate." *Id*. at 152. "While the DHS 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). This includes the requirement that the respondent "sufficiently benefited from the services provided." *Id*.

Upon review, we find that the record shows that the DHHS complied with the requirements of *Mason*. Father was present at the hearings, knew what was going on with the case, was in contact with the caseworker, and was provided with a case service plan. In addition, there was communication between the agency and father's prison caseworkers. We find that the DHHS made reasonable efforts for reunification and that father was "afforded a meaningful and adequate opportunity to participate" to the extent it was possible while father was incarcerated. *In re Mason*, 486 Mich at 152. Although father's precise level of participation in the services offered was not clear from the testimony, there was nonetheless evidence that father participated

in services to some degree, maintained contact with the DHHS workers, and called and spoke with JG frequently. Father also wrote letters to JG and found a job in the prison. However, as previously discussed, father failed to sufficiently benefit from services. *In re Frey*, 297 Mich App at 248.

III. BEST INTERESTS

Next, father argues that the trial court erred by finding that termination was in the minor child's best interests. "Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). We review a trial court's best-interests determination for clear error. *In re JK*, 468 Mich at 209.

The child, not the parent, is the focus at the best-interest stage. *In re Moss*, 301 Mich App at 87. "In deciding whether termination is in the child's best interests, the court may consider 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 at 41-42 (citations omitted). The trial court may also consider the length of time that a child was placed in foster care or with relatives and the likelihood that the child could be returned to the parents' home in the foreseeable future, considering the child's need for "a permanent, safe, and stable home." *In re Frey*, 297 Mich App at 248-249. In addition, the trial court may consider whether a child is thriving in foster care and whether the foster parents wish to adopt the child. *In re VanDalen*, 293 Mich App at 141.

In this case, in finding that termination was in JG's best interests, the trial court recognized that five-year-old JG needed permanence and stability and that JG needed to be free of uncertainty about what would happen to him as he grew older. The trial court also noted that there was testimony indicating that there was a bond between father and JG but that father had exposed JG to dangerous conditions in order to satisfy his drug addiction. The trial court accordingly indicated that JG required the permanence of adoption to meet his needs. There was testimony that JG had been placed with his paternal grandparents and that the grandparents would be considered for an adoptive placement. There was further testimony that JG was happy in his grandparents' home. Although, as father argues, the trial court is not required to order the initiation of proceedings to terminate parental rights when a minor child is placed with relatives, see MCL 712A.19a(8)(a), the statute also does not require the trial court to refrain from proceeding to termination merely because the minor child is placed with a relative. Based on the record evidence, the trial court did not clearly err by finding that termination was in the minor child's best interests. *In re JK*, 468 Mich at 209.

Affirmed.

/s/ Michael J. Talbot
/s/ Stephen L. Borrello
/s/ Michael J. Riordan