STATE OF MICHIGAN

COURT OF APPEALS

In re HORST-OLSON, Minors.

UNPUBLISHED
June 13, 2017

No. 335954
Delta Circuit Court
Family Division
LC Nos. 14-000852-NA;
15-000143-NA

Before: O'BRIEN, P.J., and HOEKSTRA and BOONSTRA, JJ.

PER CURIAM.

Respondent-father appeals by right the trial court's order terminating his parental rights to his two minor children under MCL 712A.19b(3)(c)(*i*) (conditions leading to adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood the children will be harmed if returned to the parent).[1] We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

In the initial petition, petitioner alleged that during a domestic dispute with respondent-father in August 2014, respondent-mother dropped the older child, then an infant, from hip height while the child was in a car seat. That same night she struck respondent-father twice across his face.[2] Petitioner alleged that respondent-father could not provide the child with proper care and custody because he failed to protect the child from respondent-mother, and because of his continuing substance abuse problem. During the adjudication phase of these proceedings, both parents pleaded responsible to the factual allegations set forth in the petition. The trial court initially placed the child with respondent-father. However, the child was removed from respondent-father's home approximately two months later after respondent-father continued to have contact with respondent-mother despite a no-contact order, continued to drink alcohol, and was arrested for retail fraud. During the pendency of the case, respondents had a second child; the trial court took jurisdiction over the child and removed her from respondents' care under the

[1] The trial court also terminated respondent-mother's parental rights. Respondent-mother is not a party to this appeal.

[2] Respondent-mother was charged with fourth-degree child abuse and domestic violence.

doctrine of anticipatory neglect.[3] Both children were placed with maternal relatives. Following the birth of the second child, respondent-father made progress in substance abuse counseling, ended his relationship with respondent-mother, and obtained a personal protection order against her. The trial court eventually returned both children to respondent-father's care.

However, in August 2016, two years after the older child was first removed and one year after the younger child was removed, respondent-father informed his caseworker that he was again in a relationship with respondent-mother. A few days later he was arrested for domestic violence following a fight with respondent-mother. Respondent-father had been drinking at the time and, according to the supplemental petition filed by petitioner in August 2016, police officers "observed track marks on his arms indicating intravenous drug use." The supplemental petition alleged that respondent-father's home was "unfit because of criminality, drunkenness, and drug abuse." The trial court again removed the children from respondent-father's care and petitioner sought to terminate both respondents' parental rights.

At the termination hearing, respondent-father made a plea of admission to the allegations in the supplemental petition. Respondent-father's counsel questioned respondent-father regarding the factual basis for his plea; in response, respondent-father admitted that he was not able to provide proper care and custody for his children, there was a likelihood of harm if they were returned to him, and he had a history of domestic violence with respondent-mother but intended to stay with her nonetheless. The trial court ensured that respondent-father understood that he was giving up his rights to have petitioner prove the allegations by clear and convincing evidence, and specifically asked respondent-father whether he understood the consequences of his plea, including "that this plea will be used in evidence in a proceeding to termination your parental rights[.]" Respondent-father responded in the affirmative and stated that his plea was freely and voluntarily made. The trial court found that statutory grounds had been established to terminate respondent-father's parental rights.

Respondent-father also conceded that termination of his parental rights was in the children's best interests. "My client has made it very clear what his position is on this," his counsel stated at a best-interest hearing. "We would concur that it is in the children's best interest in this phase to terminate his parental rights." After considering the children's placement with a maternal relative, the court concluded that termination was nonetheless in their best interests. The court found that the children's "best chance for permanency would be adoption," and that "there is no reasonable expectation that this would be permanent and these children can't be in limbo and continue to wait."

This appeal followed.

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[3] "The doctrine of anticipatory neglect recognizes that '[h]ow a parent treats one child is certainly probative of how that parent may treat other children.' " *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001), quoting *In re LaFlure*, 48 Mich App 377, 392; 210 NW2d 482 (1973).

II. ANALYSIS

Respondent-father contends that the trial court clearly erred by finding that statutory grounds to terminate his parental rights were proven by clear and convincing evidence, and by finding that termination was in the children's best interests. Respondent-father has waived these issues for appellate review.

"[A] respondent can consent to termination of his parental rights under the juvenile code, in which case the judge need not announce a statutory basis for it." *In re Toler*, 193 Mich App 474, 477; 484 NW2d 672 (1992). Further, a respondent may make a plea of admission to the allegations in a petition at any time after its filing. MCR 3.971(A). Before accepting the plea, the trial court must inform the respondent on the record of the allegations in the petition, the rights the respondent forfeits by entering such a plea, and the fact that, if respondent is a parent, the plea can later be used as evidence to support the termination of the respondent's parental rights. MCR 3.917(B). The trial court is also obligated to satisfy itself that the plea of admission is knowingly, understandingly, and voluntarily made and that there is a factual basis for the plea. MCR 3.917(C). That is precisely what happened here.

Respondent-father makes no argument on appeal that his plea of admission was not knowingly, understandably, or voluntarily made, or that it lacked a factual basis for the trial court to accept it. Nor did he at any point raise such an issue before the trial court. Instead, respondent-father challenges the evidence presented to the trial court regarding statutory grounds for termination and the best interests of the children. A respondent may not stipulate that a statutory basis for termination exists and that termination is in his children's best interests and then claim error on appeal by arguing that the evidence was insufficient to establish these stipulations; doing so would "permit respondent to harbor error as an appellate parachute." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). Therefore, we conclude that respondent-father has waived his challenge to the termination of his parental rights and forfeited further appellate review. *Walters v Nadell*, 481 Mich 377, 384 n 14; 751 NW2d 431 (2008); *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000).

Affirmed.

/s/ Colleen A. O'Brien
/s/ Joel P. Hoekstra
/s/ Mark T. Boonstra