

STATE OF MICHIGAN
COURT OF APPEALS

In re T. ERICKSON, Minor.

UNPUBLISHED
October 19, 2017

No. 336947
Gogebic Circuit Court
Family Division
LC No. 2012-000019-NA

Before: K. F. KELLY, P.J., and BECKERING and RIORDAN, JJ.

PER CURIAM.

Respondent¹ appeals as of right the trial court’s order terminating his parental rights to the minor child, TE, pursuant to MCL 712A.19b(3)(c)(i) (182 or more days have elapsed since issuance of an initial dispositional order, conditions that led to adjudication continue to exist, and no reasonable likelihood conditions will be rectified within a reasonable time), (g) (parent failed to provide proper care or custody and no reasonable expectation parent will provide proper care or custody within a reasonable time), and (j) (reasonable likelihood child will be harmed if returned home). We affirm.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Respondent and TE’s mother were living together with TE and mother’s child from another relationship, LK, in a trailer in the Upper Peninsula near the Wisconsin border. In or around November of 2011, respondent and mother got involved in the methamphetamine trade. Throughout November 2011, Child Protective Services (CPS) opened three investigations into respondent and mother, each alleging a combination of physical harm, neglect, domestic violence, and substance abuse. Those investigations were closed due to insufficient evidence, but alerted CPS to potential issues with TE’s well-being.

Respondent and mother’s relationship deteriorated throughout December of 2011, and by the beginning of 2012, respondent was in the trailer with mother only on an intermittent basis. TE never came with respondent after his visits. Respondent left the trailer permanently in mid-March 2012. Shortly after respondent left, mother sent the children to live with her father. The

¹ We refer to TE’s father as “respondent” in this opinion because the other respondents in the case before the trial court are not before this Court on appeal.

CPS investigations continued throughout early 2012, resulting in TE being officially removed from respondent's and mother's care on April 30, 2012. After mother's father became ill, a maternal aunt took custody of TE. Respondent was arrested on charges of maintaining and operating a methamphetamine laboratory on July 18, 2012. The trial court took jurisdiction over TE shortly thereafter, based on mother's plea. Respondent was not adjudicated.

In early 2013, respondent pleaded guilty to the crime charged, and was sentenced to prison time with an earliest release date of August 3, 2017. Over the course of a 10-day hearing that spanned nearly four months, the trial court heard testimony from a multitude of witnesses. On May 27, 2014, the trial court entered an order terminating respondent's parental rights to TE. This Court, on respondent's appeal, remanded the case to the trial court after the Michigan Supreme Court decided *In re Sanders*, 495 Mich 394; 852 NW2d 524 (2014). The trial court vacated the termination order because respondent had not been properly adjudicated.

On August 18, 2015, respondent pleaded no contest to the trial court's jurisdiction based on allegations of substance abuse, neglect, and domestic violence. The trial court subsequently terminated respondent's parental rights to TE on January 11, 2017, after a three-day termination hearing held in October of 2016. This appeal followed.

II. STATUTORY GROUNDS FOR TERMINATION

Respondent argues that the trial court clearly erred when it terminated his parental rights to TE pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We disagree.

A. STANDARD 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 White*, 303 Mich App 701, 709; 846 NW2d 61 (2014). A trial court's findings of fact are clearly erroneous if "we are definitely and firmly convinced that it made a mistake." *Id.* at 709-710. "To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been proved by clear and convincing evidence." *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011).

B. MCL 712A.19b(3)(c)(i)

Pursuant to MCL 712A.19b(3)(c)(i), a parent's rights may be terminated if "182 or more days have elapsed since the issuance of an initial dispositional order" and "[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."

It is undisputed that the initial dispositional order, after the trial court properly took jurisdiction over respondent, was entered on September 24, 2015. It is further undisputed that the termination date of January 11, 2017, was more than 182 days after that order. Therefore, the first part of analysis is fulfilled, because "182 or more days have elapsed since the issuance of an initial dispositional order." MCL 712A.19b(3)(c)(i).

Per MCL 712A.19b(3)(c)(i), “[t]he conditions that led to the adjudication continue[d] to exist” at the time of termination. “This statutory ground exists 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[.]” *In re White*, 303 Mich App at 710 (quotations omitted). Participation in and completion of certain portions of a service plan is not enough where a parent “fail[s] to demonstrate sufficient compliance with or benefit from those services specifically targeted to address the primary basis for the adjudication in th[e] matter[.]” *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012).

The trial court took jurisdiction over respondent pursuant to respondent’s involvement in the methamphetamine trade, domestic violence, and his neglect of TE. At the time of the hearing, respondent had been in prison or jail for more than four years. During that time, respondent completed 27 different courses at the prison, and maintained a membership in AA and NA.

Despite this course work, testimony at the hearing revealed that respondent has not benefitted from those services because he refused to accept any responsibilities for neither his nor TE’s issues. Abundant evidence at trial shows that respondent was involved in the methamphetamine trade. Officers involved in the investigation, respondent’s cohorts in the drug trade, mother, and a CPS worker all testified that respondent was involved in some way with the production, use, and sale of methamphetamine. Indeed, respondent tested positive for methamphetamine and was in prison after pleading guilty to a charge of operating and maintaining a methamphetamine laboratory. One cohort of respondent’s testified that respondent would smoke methamphetamine while TE was in the house with him. Additionally, mother testified that respondent was physically and verbally abusive and a CPS worker witnessed a physical tussle between the two. Maternal aunt, a CPS worker, two foster care workers, a behavioral analyst, and Dr. James Henry, an expert witness, testified that TE had a vast array of issues when coming into care, including malnourishment and neglect, which led to the development of issues with insecure attachment and potential development of reactive attachment disorder (RAD). Dr. Henry testified that TE’s issues caused by respondent’s neglect could last until TE was an adult.

Contrary to all of that evidence, respondent testified at trial that he was never involved with methamphetamine, never smoked it around TE, and that there was a conspiracy to set him up for the crime. Respondent explained away his positive drug test by saying he must have smoked marijuana out of a pipe that mother used to smoke methamphetamine. Respondent testified that it was only mother who was domestically violent in their relationship. Contrary to the testimony of various witnesses and medical professionals, respondent claimed that TE was perfectly healthy when the child left his custody, and any psychological issues were due to the Department of Health and Human Services’ (DHHS) decision to place TE with maternal aunt and uproot the child from its family. The trial court found respondent’s testimony to lack credibility, considering the evidence introduced at trial.

It was reasonable to infer, therefore, that the “services specifically targeted to address the primary basis for the adjudication in th[e] matter,” i.e., those relating to methamphetamine, domestic violence, and neglect, were the same services with which respondent failed to “demonstrate sufficient compliance [] or [any] benefit[s.]” *In re Frey*, 297 Mich App at 248.

After years of prison time and multitudes of completed courses, respondent consistently claimed that there had been nothing wrong with his actions before going to jail and prison, except that he had surrounded himself with the wrong people. Inherent in respondent's staunch denial of any wrongdoing is the inference that respondent sees no reason to change. Provided that respondent saw no reason to change, the trial court did not clearly err in determining that he had not changed. Stated differently, at the time of the termination hearing, "[t]he conditions that led to the adjudication continue[d] to exist[.]" MCL 712A.19b(3)(c)(i).

The last part of the analysis under subsection (c)(i) requires proof that "there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age." MCL 712A.19b(3)(c)(i). The foregoing analysis is equally as applicable to this final part of the analysis. After more than four years of being in jail or prison and 27 courses, respondent refused to acknowledge any wrongdoing, and therefore revealed his inability or refusal to make any changes. There is nothing in the record that would suggest that respondent would suddenly be open to self-reflection and have the ability to identify his mistakes and problems and be able to fix those issues. Rather, the record is rife with evidence that respondent would continue to deny the existence of any issues or problems. Therefore, it was not erroneous for the trial court to find that there was clear and convincing evidence that "there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age." MCL 712A.19b(3)(c)(i).

In sum, the trial court did not clearly err in finding that MCL 712A.19b(3)(c)(i) was a proper statutory ground for the termination of respondent's parental rights. See *In re Frey*, 297 Mich App at 248.

C. MCL 712A.19b(3)(g)

The trial court also found clear and convincing evidence to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(g). We affirm respondent's parental rights were properly terminated because the trial court found, by clear and convincing evidence, that "[t]he [respondent], without regard to intent, fail[ed] 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." MCL 712A.19b(3)(g). "[Respondent]'s failure to participate in and benefit from a service plan is evidence that [he] will not be able to provide a child proper care and custody." *In re White*, 303 Mich App at 710.

Plainly, from the foregoing analysis regarding respondent's conduct when TE was not in maternal aunt's custody, there is abundant evidence that respondent "fail[ed] to provide proper care or custody for [TE]" when he was not in prison. MCL 712A.19b(3)(g). Additionally, respondent testified that he knew mother had issues with methamphetamine and that the trailer was in disarray in March of 2012. Despite that knowledge, respondent made the conscious choice to leave the trailer and abandon TE to the care of someone respondent described as having a chronic issue with methamphetamine. For the same reasons discussed in the analysis for subsection (c)(i), there was "no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." MCL 712A.19b(3)(g).

The trial court did not clearly err in finding that MCL 712A.19b(3)(g) was a proper statutory ground for the termination of respondent's parental rights.

D. MCL 712A.19b(3)(j)

The trial court also found that MCL 712A.19b(3)(j) was a statutory ground for termination of respondent's parental rights. That decision by the trial court was not clearly erroneous as there was clear and convincing evidence that "[t]here [was] a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if [] returned to the home of the parent." MCL 712A.19b(3)(j). "[A] parent's failure to comply with the terms and conditions of his or her service plan is evidence that the child[ren] will be harmed if returned to the parent's home." *In re White*, 303 Mich App at 711.

In analyzing subsections (c)(i) and (g), there was plainly clear and convincing evidence supporting that respondent's behavior while TE was in his care in late 2011 and early 2012 caused TE harm. Indeed, TE entered care malnourished, neglected, and with psychological issues that could last until adulthood. In addition to that, there was testimony from Dr. Henry that TE's psychological issues arose specifically from the neglectful and inattentive parenting provided by respondent. Dr. Henry stated that, in his professional opinion, any contact between respondent and TE, let alone the possibility of TE's return to respondent's home, would cause serious and long-lasting psychological impairments with TE. Furthermore, the record supports the conclusion by Dr. Henry, because TE regressed in behavior when being reintroduced to mother. Therefore, not only was there evidence that respondent's prior parenting of TE caused her harm and he had shown no ability to change behaviors that led to that harm, there also was testimony that the simple fact of reintroduction of respondent into TE's life would cause her significant psychological harm.

In sum, the trial court did not clearly err in finding that MCL 712A.19b(3)(j) was a proper statutory ground for the termination of respondent's parental rights.²

III. BEST INTERESTS

² Respondent argues that this Court is bound to reverse the termination of his rights pursuant to *In re Pops*, 315 Mich App 590; 890 NW2d 902 (2016). However, because we find *Pops* to be factually distinguishable from the instant case, we disagree. Unlike the respondent-father in *Pops*, the trial court in the instant case properly determined that respondent had not benefitted from his case service plan and that respondent was not involved in the placement of TE with a suitable relative. Respondent had already left the trailer when mother decided to release TE to her father's care. Respondent's alleged acquiescence to mother's placement of TE and decision to visit TE while the child was with mother's father, does not change the fact that respondent had nothing to do with mother's decision to relinquish care of TE to her father. Instead, respondent chose to leave TE in mother's care, when his own testimony established that she had a chronic issue with methamphetamine at the time. Hence, the law established by *Pops* is inapplicable.

Respondent argues that the trial court clearly erred in determining that it was in TE's best interests to terminate respondent's parental rights. Again, we disagree.

A. STANDARD OF REVIEW AND APPLICABLE LAW

This Court reviews a trial court's determination regarding best interests for clear error. *In re White*, 303 Mich App at 713. "A trial court's decision is clearly erroneous '[i]f 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.'" *In re Olive/Metts Minors*, 297 Mich App 35, 41; 823 NW2d 144 (2012), quoting *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989) (citations and quotation marks omitted).

"Once a statutory basis for termination has been shown by clear and convincing evidence, the court must determine whether termination is in the child's best interests." *In re LaFrance Minors*, 306 Mich App 713, 732-733; 858 NW2d 143 (2014), citing MCL 712A.19b(5). "[T]he focus at the best-interest stage has always been on the child, not the parent." *In re Payne/Pumphrey/Fortson Minors*, 311 Mich App 49, 63; 874 NW2d 205 (2015), quoting *In re Moss*, 301 Mich App 76, 87; 836 NW2d 182 (2013). "Best interests are determined on the basis of the preponderance of the evidence." *LaFrance Minors*, 306 Mich App at 733.

In considering the issue of whether termination is in the best interest of the minor child, the trial court is permitted to consider "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, [] the advantages of a foster home over the parent's home . . . the length of time the child was in care, the likelihood that the child could be returned to her parents' home within the foreseeable future, if at all, and compliance with the case service plan." *Payne/Pumphrey/Fortson Minors*, 311 Mich App at 63-64 (internal citations and quotations omitted). "In assessing whether termination of parental rights is in a child's best interests, the trial court should weigh all evidence available to it." *Id.* at 63.

B. ANALYSIS

Respondent argues that the trial court erroneously relied solely on the fact that TE did not have contact with respondent for a long period of time due to his incarceration and that TE would be better off living with her maternal aunt than with respondent. The trial court's consideration of those facts was not improper.

Indeed, in *In re Foster*, 285 Mich App 630, 635; 776 NW2d 415 (2009), this Court held that "while it is inappropriate for a court to consider the advantages of a foster home in deciding whether a statutory ground for termination has been established, such considerations are appropriate in a best-interests determination." As such, the trial court did not err when it reasoned that it would be preferable for TE to live with her maternal aunt instead of respondent. *Id.*

With regard to his lack of contact due to incarceration argument, respondent posits that a majority of that separation occurred when his constitutional rights were being violated due to a lack of adjudication, and therefore, the estrangement from TE caused by that separation should not have been used against him in determining TE's best interests. Respondent is correct that he was not properly adjudicated pursuant to *Sanders*, 495 Mich at 422, until August 18, 2015, but

provides no support for his allegation that the trial court could not take into account his lack of contact with TE during that time. First, respondent's improper adjudication was only tangentially related to his lack of contact with TE, as respondent still would have been in prison. Second, the constitutional right relied upon by respondent, the same right relied upon by the Michigan Supreme Court in *Sanders*, was extinguished after the trial court found statutory grounds for termination. See *Foster*, 285 Mich App at 634-635. Lastly, this Court has clearly and consistently held that, during the best interests stage of a termination proceeding, the trial court should consider all of the evidence available to it. See *Payne/Pumphrey/Fortson Minors*, 311 Mich App at 63. As such, the trial court properly took into consideration the fact that respondent had not had contact with TE for more than four years at the time of termination. See *id.*

Next, it is abundantly clear that the trial court did not clearly err in deciding that a preponderance of the evidence supported that TE's best interests favored termination. TE was malnourished, neglected, and psychologically harmed when she left respondent's care. Those issues were caused by respondent's inattentive and neglectful parenting, resulting in a 10-months-old TE developing long-lasting problems with feeling a secure attachment with adults. The extent of the harm to TE was exhibited throughout the proceedings. Initially when the child came into her maternal aunt's care it refused to engage emotionally with anyone. Then the child was evaluated by the behavioral analyst and declared to have a high risk of developing RAD. Then the child regressed into clingy and insecure behavior while being reintroduced to mother. Finally, Dr. Henry's evaluation revealed that TE needed immediate permanence to develop a secure bond with maternal aunt. Despite all of this, respondent has shown no ability to acknowledge and assess TE's issues in a manner that would suggest that TE would not suffer immediate harm upon even being reintroduced to respondent. Indeed, Dr. Henry testified that any reintroduction to respondent before TE had the desired permanence attainable only through adoption by maternal aunt, would cause TE significant psychological issues. Respondent's testimony reveals the fundamental disconnect he has between his interests and TE's interests. Specifically, he focuses on the chances he feels *he* deserves, i.e., the chance to form a relationship with TE and to be a parent for TE. The best interests determination, however, focuses on the child, not the parent. *Payne/Pumphrey/Fortson Minors*, 311 Mich App at 63.

In sum, the record is clear: the trial court properly determined that it was in TE's best interests to terminate respondent's parental rights and allow TE to continue to develop a more secure bond with maternal aunt through the process of adoption. See *LaFrance Minors*, 306 Mich App at 733.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Jane M. Beckering

/s/ Michael J. Riordan