STATE OF MICHIGAN

COURT OF APPEALS

In re A. DEGRAVES, Minor.

UNPUBLISHED
October 17, 2017

No. 337782
Delta Circuit Court
Family Division
LC No. 15-000127-NA

Before: MURRAY, P.J., and SAWYER and MARKEY, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating his parental rights to the minor child, AD, pursuant to MCL 712A.19b(3)(c)(*i*), (g), and (j). We affirm.

AD was removed in May 2015 based on allegations of substance abuse and improper supervision. Respondent waived the issue of probable cause and admitted that "I have a drug addiction that needs to be taken care of." Respondent's initial compliance with the case service plan was unsatisfactory and he was found in contempt of court for his failure to comply with the case service plan. At a September 2015 hearing, respondent told the trial court that he was "going to make arrangements to go to rehab," clarifying that he was seeking "inpatient treatment" for "drinking." Respondent successfully completed his treatment program and as of March 2016, the trial court found respondent "to be in substantial compliance of the case services plan."

However, in July 2016, petitioner informed the court that "alcohol containers and drug paraphernalia [were] found underneath [respondent's] bed in the search of the home by the foster care worker," and that respondent was failing to maintain contact with the caseworker. By October 2016, respondent had ceased all communication with the caseworkers. At his termination hearing, respondent explained why he had stopped participating in the case service plan: "[F]irst I relapsed. And then I let the drugs and alcohol get to my head and I let it beat me." A caseworker testified at a December 2016 hearing that she had recently made contact with respondent during his lunch break from work and that respondent had declined to take a drug screen. The worker said that respondent later sent her a text message indicating that he wished to voluntarily terminate his parental rights. A supplemental petition to terminate respondent's parental rights was filed and the trial court authorized alternate service after it was established that respondent's whereabouts were unknown. Respondent was then arrested on a bench warrant in January 2017 and was in jail, "sitting off" fines from the district court, at the time of the March 2017 termination hearing. The trial court found clear and convincing evidence

to terminate respondent's parental rights based on three statutory grounds and then determined that termination of rights was in AD's best interests.

We review the trial court's factual findings on the statutory grounds and the child's best interests for clear error. MCR 3.977(K); *In re Utrera*, 281 Mich App 1, 15; 761 NW2d 253 (2008). Whether reasonable efforts toward reunification were made is also reviewed for clear error. *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

Respondent argues that the trial court clearly erred by finding clear and convincing evidence to terminate his parental rights under MCL 712A.19b(3)(c)(*i*), (g), and (j), but fails to explain how the evidence was inadequate to support those findings. Instead, respondent argues that petitioner "did not afford [him] the proper services for him to work towards reunification with his child." "In general, when a child is removed from the parents' custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *In re Fried*, 266 Mich App at 541. Additionally, MCL 712A.19a(2) provides that "[r]easonable efforts to reunify the child and family must be made in all cases" unless a stated exception applies. "[T]here 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).

The caseworker testified that substance abuse counseling, random drug testing, and "treatment information to go to rehab" were offered to respondent. When respondent was asked at the termination hearing whether there were "any services that you were not offered that you believe would have been helpful in this case," he answered, "No." Respondent now maintains that petitioner should have allowed "him to attend rehabilitation for a second time after his relapse." Respondent made the determination that he wanted to enter inpatient treatment for a second time while he was in jail and able to achieve "a clear head again." At that point, the petition to terminate his parental rights had been filed. Petitioner "is not required to provide reunification services when termination of parental rights is the agency's goal." *In re HRC*, 286 Mich App 444, 463; 761 NW2d 105 (2009).

Respondent asserts that "[t]he progress that [he] made seemed to stop or stall when the new workers came on to the case." But the record indicates that respondent's most recent period of noncompliance with the case service plan began *before* the "new workers" were assigned to the case. More importantly, respondent was unequivocal that he stopped participating in services and communicating with the workers because he "relapsed." Thus, he did not carry his responsibility to participate in the services that were offered. *In re Frey*, 297 Mich App at 248. For those reasons, the trial court did not clearly err in finding that reasonable efforts were made to reunify respondent with his child. *In re Fried*, 266 Mich App at 542-543.

Although respondent does not challenge the specific findings supporting any of the statutory grounds, we note that the trial court's findings were not clearly erroneous. Respondent admitted that it had been 182 days since the initial dispositional order and that his substance abuse, one of the conditions which led to the adjudication, was ongoing. Hence, with respect to

MCL 712A.19b(3)(c)(*i*), the only question is whether the trial court clearly erred in finding that "there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age." Respondent notes that he made "substantial progress" under the case service plan. Indeed, after respondent successfully completed inpatient treatment, the court found that he was in substantial compliance with the case service plan as of March 2016. But respondent apparently began relapsing as early as July 2016. And, by October 2016, respondent had ceased all participation in the case service plan and communication with the caseworkers. Respondent only recommenced participation following his arrest in January 2017. At the time of the March 2017 termination hearing, it had been almost 21 months since the order of disposition. Respondent, who was incarcerated at the time of the termination hearing, said that he did not know how long his proposed inpatient treatment would last and that he would not be able to obtain housing or employment until he completed treatment. Under those circumstances, and considering that AD was three years old, the trial court did not clearly err in finding it unlikely that respondent would be able to rectify his substance abuse problem in a reasonable amount of time. For the same reasons, the trial court did not clearly err in terminating respondent's parental rights under MCL 712A.19b(3)(g) and (j).

We also find no clear error in the trial court's determination that termination of respondent's parental rights was in AD's best interests. "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights . . . ." MCL 712A.19b(5). Respondent points to the caseworker's testimony that he interacts well with AD "when he is not using substances" and that there was a parental bond "[w]hen he is parenting her." But the trial court acknowledged the testimony that respondent "would make a very good and fit father were he substances free," but reasoned that respondent "has had nineteen months to do that and he hasn't accomplished it." The court also found that AD was in need of permanency. Respondent fails to explain how the trial court's findings were erroneous.

Respondent's suggestion that petitioner prevented him from developing his relationship with AD is misplaced. After a petition to terminate his parental rights was filed, it was presumptively in AD's best interests to suspend respondent's visitation. See *In re Laster*, 303 Mich App 485, 489; 845 NW2d 540 (2013). Further, respondent admitted that he was not visiting the child "regularly" even before the termination petition was filed. Respondent agreed that he was not visiting his daughter "because [he was] using drugs." For those reasons, and "giving due regard to the trial court's special opportunity to observe the witnesses," *In re BZ*, 264 Mich App at 296-297, the trial court did not clearly err in determining that termination of respondent's parental rights was in the child's best interests.

Affirmed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Jane E. Markey