STATE OF MICHIGAN

COURT OF APPEALS

In re D. M. BECKWITH, Minor.

UNPUBLISHED
October 19, 2017

No. 338029
Branch Circuit Court
Family Division
LC No. 14-005185-NA

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

PER CURIAM.

In this case, respondent-father appeals as of right the trial court's order terminating his parental rights to the minor child, DMB, under MCL 712A.19b(3)(d).[1] We affirm.

Petitioners are DMB's maternal grandfather and stepgrandmother. In April, May, and July 2014, Child Protective Services received complaints alleging potential abuse and neglect of DMB due to mother and father being homeless and for episodes of domestic violence. In September 2014, mother and father signed a limited guardianship placement plan in lieu of the Department of Health and Human Services filing an abuse and neglect petition, and they placed DMB with petitioners. A provision in the limited guardianship placement plan stated, "I understand that if I substantially fail without good cause to follow this plan, my parental rights may be terminated by the Court through proceedings under the Juvenile Code." Petitioners initiated the instant proceedings claiming that father substantially failed to comply with the requirements of the limited guardianship placement plan.

Father first argues that the trial court clearly erred in finding that clear and convincing evidence supported terminating his parental rights under MCL 712A.19b(3)(d).

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been met by clear and convincing evidence. MCL 712A.19b(3); *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). We review the trial court's determination for clear error. *Id*. "A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been

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

made." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). We give deference to the "trial court's special opportunity to judge the credibility of the witnesses." *Id.*

The trial court terminated father's parental rights to DMB under MCL 712A.19b(3)(d), which states:

> (3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
>
> * * *
>
> (d) The child's parent has placed the child in a limited guardianship under section 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5205, and has substantially failed, without good cause, to comply with a limited guardianship placement plan described in section 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5205, regarding the child to the extent that the noncompliance has resulted in a disruption of the parent-child relationship.

In *In re Utrera*, 281 Mich App 1, 22; 761 NW2d 253 (2008), we discussed the definition of "good cause," explaining:

> [T]his Court defines "good cause" as "a legally sufficient or substantial reason," and we adopt the same definition here. Termination is therefore appropriate pursuant to MCL 712A.19b(3)(d) if a respondent fails to substantially comply with a limited guardianship plan without a "legally sufficient or substantial reason," and this noncompliance results in a disruption of the parent-child relationship.

Moreover, if a respondent's asserted cause for noncompliance is the very condition that impairs his ability to care for the child, then it cannot constitute good cause. *Id*. at 23.

The first requirement of MCL 712A.19b(3)(d), that the parent placed the child in a limited guardianship, is undisputed. Father signed a limited guardianship placement plan making petitioners DMB's primary guardians in lieu of the Department of Health and Human Services filing a neglect and abuse petition. Therefore, the first requirement of MCL 712A.19b(3)(d) was met.

The record also supports the trial court's finding that father substantially failed to comply with the limited guardianship placement plan, which required father to have daily visitation with DMB; make daily telephone contact with DMB; arrange weekly outings with DMB; attend all of DMB's medical and dental appointments; arrange for transportation for outings, visitation, and appointments; and provide financial support for DMB for things such as food, clothing, counseling, and babysitting. Additionally, the limited guardianship placement plan was to continue in effect until father was able to provide a drug-free household, be gainfully employed, and establish his own residence.

We conclude that the evidence presented clearly and convincingly established that father substantially failed to comply with the limited guardianship placement plan. First, father failed to visit DMB seven days a week, as required by the limited guardianship placement plan. The evidence established that father only visited DMB one day a week. And once father was incarcerated, his visitation stopped altogether. Father admitted that, at the time of the termination trial, he had not visited DMB for about a year and a half.

Second, father failed to have telephone contact with DMB seven days a week, as required by the limited guardianship placement plan. Father admitted that he had telephone contact with DMB one day a week while he was incarcerated. But the evidence showed that father did not have daily contact with DMB prior to father's incarceration.

Third, father failed to arrange weekly outings with DMB, as required by the limited guardianship placement plan. Father only offered one example of an attempted outing—a request to take DMB to church—which did not occur. Regardless of the veracity of that statement, that was only one example of an attempted outing. The limited guardianship placement plan required *weekly* outings. Father has not presented evidence that he arranged, or tried to arrange, any other outings on a weekly basis. And, as discussed above, father had not seen or visited DMB since his incarceration in September 2015. Moreover, a petitioner testified that father did not arrange weekly outings for DMB.

Fourth, father failed to attend DMB's medical and dental appointments as required by the limited guardianship placement plan. Father claims that his lack of attendance was due to petitioners not notifying him of DMB's appointments until after the fact. However, father admitted that he did not usually call petitioners directly; rather, he had his mother contact petitioners on his behalf because it was "easier." He also did not present any evidence that he attempted to contact mother, who testified that she was kept apprised of DMB's appointments. And, again, father has been incarcerated since September 2015, and he was not able to attend any of DMB's medical or dental appointments during that time.

Fifth, father also failed to arrange for transportation to DMB's appointments, visitation, and outings. The evidence demonstrated that father required help from his mother to get transportation. Father testified that upon his release from prison, his primary method of transportation would be his bicycle. Although father was able to arrange transportation one day a week for DMB to visit at father's mother's house, the evidence does not support that father arranged transportation for other reasons or at other points in time.

Sixth, the evidence demonstrated that father failed to provide financial support for DMB for such things as food, clothing, counseling, or babysitting. Father testified that he bought food, diapers, and toys for DMB while DMB was at father's mother's house. The record does not indicate whether DMB ever took those items with him back to petitioners' house. Father testified that whenever he would ask petitioners if they needed any money or "anything else" that they would refuse to take money or decline that DMB needed anything. Mother testified to the same effect. Also, one of petitioners confirmed that he would refuse money from mother and father. Moreover, father testified that although he had a job while he was incarcerated, that job did not pay enough to support DMB. Father also testified that he did not have a job lined up for after his release from prison.

Lastly, the evidence supports the trial court's conclusion that father failed to provide a drug-free household, obtain gainful employment, or establish his own residence, as required by the limited guardianship placement plan. Although the record indicated that father was sober, it did not indicate the he had a household to keep drug-free. Along the same lines, the evidence did not indicate that father established his own residence. Father also testified that, although he had a low-paying job while he was incarcerated, he did not have employment secured for after his release from prison.

We conclude that the evidence demonstrated that father substantially failed to comply with the requirements of the limited guardianship placement plan. The next inquiry, therefore, is whether there was good cause for father's substantially failing to comply with the requirements of the limited guardianship placement plan. Father argues that his incarceration was good cause for his failure.

Father cites *In re Mason*, 486 Mich 142, 160; 782 NW2d 747 (2010), for the proposition that "[t]he mere present inability to personally care for one's children as a result of incarceration does not constitute grounds for termination." Although father's citation to *In re Mason* is accurate for the quotation, his reliance on *In re Mason* is misplaced. *In re Mason* dealt with the trial court's failure to properly include the father in the termination proceedings due to the father's incarceration. The Supreme Court stated, "[T]he [trial court's] ultimate decision in the case was replete with clear factual errors and errors of law that essentially resulted in the termination of [the father's] parental rights *solely* because of his incarceration." *Id*. (emphasis added).

Here, father's substantial failure to comply with the requirements of the limited guardianship placement plan was not due *solely* to his incarceration. Father had a year to comply with the limited guardianship placement plan before he was incarcerated. During that time, as discussed above, father substantially failed to visit DMB seven days a week, have daily telephone contact with DMB, arrange weekly outings with DMB, attend DMB's medical and dental appointments, arrange for transportation, provide financial support for DMB, obtain a drug-free household, become gainfully employed, or obtain a residence of his own.

Even if father's incarceration was the sole reason for his substantial failure to comply with the limited guardianship placement plan, that reason is not good cause. We have stated previously that if a respondent's asserted cause for noncompliance is the very condition that impairs his ability to care for the child, then it cannot constitute good cause. *In re Utrera*, 281 Mich App at 23. Father's asserted cause for noncompliance was his incarceration, but as discussed above, father's incarceration was a condition that impaired his ability to care for DMB. Therefore, it cannot constitute good cause. Father arguably had good cause for his substantial failure to provide financial support for DMB and communicate with DMB because petitioners refused financial support from father and would not allow father's mother to take DMB for visitation, which was when father had his once-a-week telephone contact with DMB. However, we conclude that good cause for father's failure to comply with only two out of at least nine requirements of the limited guardianship placement plan does not equate to compliance that was considerable or of real worth.

We conclude that the trial court did not err in finding that the evidence demonstrated that father substantially failed, without good cause, to comply with the requirements of the limited guardianship placement plan, and that such failure resulted in a disruption of the parent-child relationship. We are not "left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App at 459. And accordingly, we hold that the trial court did not clearly err in finding that clear and convincing evidence supported terminating father's parental rights under MCL 712A.19b(3)(d).

Father next argues that the trial court clearly erred in finding that termination of his parental rights was in DMB's best interests.

The trial court must find by a preponderance of the evidence that termination was in the child's best interests. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The trial court's findings of fact are reviewed for clear error. *In re HRC*, 286 Mich App at 459. "A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *Id*.

"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 and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). In determining a child's best interests, the trial court may consider the child's bond to his parent; the parent's parenting ability; the child's need for permanency, stability, and finality; and the suitability of alternative homes. *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012).

Although the trial court's oral opinion containing its findings of fact related to its best-interest analysis was fairly cursory, we nevertheless reject father's argument that the evidence was insufficient to support a best-interest finding. When making its best-interest determination, the trial court considered DMB's need for permanency and stability. The trial court found that DMB's need for permanency and stability was best met by the petitioners. The record supports this conclusion, and both parents seemed to recognize how well petitioners were taking care of DMB, and their current ability to do so. A good portion of the case focused on the care provided by petitioners, which no one seriously contested.

Affirmed.

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