

STATE OF MICHIGAN
COURT OF APPEALS

In re HANCOCK, Minor.

UNPUBLISHED
December 19, 2017

No. 338466
Clinton Circuit Court
Family Division
LC No. 15-026029-NA

Before: MURPHY, P.J., and KELLY and SWARTZLE, JJ.

PER CURIAM.

Respondent-father (respondent) appeals as of right the trial court's order terminating his parental rights to his child, ZH, under MCL 712A.19b(3)(c)(i) (conditions that led to the adjudication continue to exist); MCL 712A.19b(3)(g) (failure to provide proper care and custody); and MCL 712A.19b(3)(j) (reasonable likelihood of harm if returned to respondent's home). We affirm.

I. BACKGROUND

In July 2015, ZH was taken into protective custody and placed in foster care after his mother was arrested for possession of crack cocaine.¹ At that time, respondent was incarcerated and had never met ZH. Respondent was serving a 3 to 15 year sentence for unarmed robbery and his earliest release date was February 2017. Upon the initiation of these proceedings, respondent signed an affidavit of parentage and began cooperating with the Department of Health and Human Services (DHHS). ZH, who was two years old when placed in foster care, was born with a variety of serious birth defects, collectively referred to as VATER Syndrome, meaning that ZH would be unlikely to ever have control of his bowels and would likely wear a colostomy bag for the remainder of his life. ZH required frequent appointments to address these special medical needs.

The trial court conducted dispositional review hearings from September 2015 until February 2017. In the first few hearings, the focus was on reunifying the family because respondent wanted a relationship with ZH. Although respondent did not often participate in the

¹ ZH's mother's parental rights were terminated on March 17, 2016. She is not a party to this appeal.

dispositional review hearings from prison, the DHHS caseworker reported that respondent participated in Family Team Meetings (FTMs) via phone and that he completed many classes while in prison. Over the course of the proceedings, respondent sent ZH a total of three letters.

Respondent requested that ZH be placed in the home of respondent's mother and stepfather (collectively, the grandparents). Child Protective Services (CPS), however, preliminarily deemed the home inappropriate because it was too small, the grandparents had various medical issues, and respondent's stepfather had a criminal history. The trial court ordered that ZH remain in foster care pending DHHS's home study of the proposed placement.

Two home studies—one by Muskegon County, where the grandparents lived, and one by Clinton County, where the trial court had jurisdiction over ZH—were conducted and produced inconsistent results, raising “red flags” for DHHS. Therefore, DHHS requested that the grandparents become licensed for foster care before DHHS would place ZH in their home. Early on, the grandparents visited ZH three times and were “beginning to develop a relationship” with ZH. This early progress eventually stalled, however, and the caseworker reported that respondent's stepfather seemed more focused on fighting DHHS regarding the foster-care licensing than putting ZH's best interests first.

In June 2016, the caseworker asked the court to authorize a petition to terminate respondent's parental rights because of slow progress. The trial court declined and afforded respondent additional time to get his affairs in order because respondent was cooperating with the court and DHHS, had been participating in many classes and courses in prison, and was expected to appear in front of the parole board that August to find out if he was eligible for an early release.

In September 2016, the caseworker again asked the trial court to authorize a petition to terminate respondent's parental rights. During the previous reporting period, while respondent continued to participate in FTMs and take various courses, the grandparents were not cooperating with DHHS. They stopped contacting the licensing-service provider and had not visited with ZH for four months. Respondent also did not go in front of the parole board as he had hoped. Nevertheless, the trial court still felt that termination was premature.

In November 2016, at the next dispositional review hearing, the court learned that respondent had been charged with possession of a weapon in prison after a pair of sharpened scissors was found under his bunk. Respondent, however, denied that the scissors were his and planned to appeal. The caseworker asked the court again to authorize the termination of respondent's parental rights, but the trial court declined in favor of waiting to see if the weapons charge would be successfully appealed or if the charge would impact respondent's potential early release.

At the final dispositional review hearing in February 2017, the trial court was informed that respondent had lost his appeal on the weapons charge and was denied parole. As a result, respondent's parole reconsideration date was pushed back to February 2018. The caseworker reported that the grandparents were still not cooperating on their foster-care licensing and had not visited ZH since the previous May. At that time, the trial court authorized DHHS to file a petition to terminate respondent's parental rights.

At the termination hearing, the trial court found clear and convincing evidence to terminate respondent's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j). The trial court noted that the conditions that led to the adjudication, respondent's incarceration and inability to provide for proper care and custody of ZH by identifying an appropriate caregiver, continued to exist. The court noted that the grandparents were still in the initial licensing stage after more than a year and a half, and that there were new allegations of serious domestic violence between the grandparents. Therefore, they were not able to provide proper care and custody of ZH in respondent's absence. Furthermore, the court found there was a reasonable likelihood of harm to ZH if returned to respondent's care because he did not have definite plans for housing or employment, did not have a relationship with ZH, and it would take a substantial amount of time to learn how to address ZH's medical needs. Based upon these concerns, the trial court found that termination was in ZH's best interests and terminated respondent's parental rights. Respondent now appeals.

II. ANALYSIS

Respondent argues that the trial court erred in finding that DHHS established multiple statutory grounds for termination by clear and convincing evidence. We review for clear error the trial court's findings that grounds for termination had been established by clear and convincing evidence. MCR 3.977(K). A finding is clearly erroneous if we are left with "a definite and firm conviction that a mistake has been made." *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 812 (1993). Respondent does not challenge the trial court's finding that termination of respondent's parental rights was in ZH's best interests.

Termination Was Appropriate Under MCL 712A.19b(3)(c)(i) and (g). The trial court found it appropriate to terminate respondent's parental rights under MCL 712A.19b(3)(c)(i) and (g) because respondent was incarcerated and unable to identify an appropriate caregiver for ZH. Termination is appropriate under MCL 712A.19b(3)(c)(i) when the conditions that led to adjudication continue to exist and there is no reasonable likelihood that the conditions will be remedied within a reasonable time considering the child's age. Termination is appropriate under MCL 712A.19b(3)(g) when the parent fails to provide proper care or custody for the child and there is no reasonable likelihood that the parent will be able to do so within a reasonable time considering the child's age. Because the condition that led to the adjudication was respondent's failure to provide proper care and custody because of respondent's incarceration, we find it is appropriate to address these provisions together. See *In re Mason*, 486 Mich 142, 164-165; 782 NW2d 747 (2010).

Respondent argues that the trial court erred because it did not properly evaluate whether he could care for ZH in the future and improperly based the termination on the basis of his incarceration. We disagree.

"The mere present inability to personally care for one's children as a result of incarceration does not constitute grounds for termination" of parental rights. *In re Mason*, 486 Mich at 160. Incarcerated persons can provide proper care and custody through placement with a relative. *Id.* at 161 n 11. Therefore, as long as placement with a relative provides children with adequate care, termination is inappropriate. *In re Pops*, 315 Mich App 590, 595; 890 NW2d 902 (2016)

Here, termination of respondent's rights was not based on respondent's incarceration, but on respondent's inability to find ZH an appropriate caregiver during that incarceration. Although respondent hoped that his mother could take care of ZH, respondent's mother was an inappropriate caregiver. Respondent's mother failed to become licensed by DHHS, "medical, mental health, and domestic violence concerns" were present in her home, and she did not have reliable transportation or a stable residence at the time of the termination hearing. Moreover, respondent's mother had only visited ZH three times since the adjudication.

Additionally, respondent had "absolutely no relationship" with ZH and would require significant time to learn how to address ZH's serious medical needs. ZH had been in foster care since July 2015 and, even if respondent received parole in February 2018, respondent would need to secure housing, employment, and reliable transportation before respondent could begin to take care of ZH. Given these circumstances, the trial court did not clearly err in determining that respondent was unable to provide proper custody for ZH, that respondent remained unable to provide proper care and custody for ZH at the time of the termination hearing, and that there was no reasonable expectation that he could do so within a reasonable time given ZH's age and medical needs. Accordingly, the trial court's did not clearly err in finding that there was sufficient evidence to terminate respondent's parental rights under MCL 712A.19b(3)(c)(i) and (g).

Termination Was Also Appropriate Under MCL 712A.19b(3)(j). The trial court also found that clear and convincing evidence supported termination of respondent's parental rights under MCL 712A.19b(3)(j). Under MCL 712A.19b(3)(j), a court may terminate parental rights if it is shown by clear and convincing evidence that "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent."

Respondent argues that there was no evidence that ZH would be harmed if returned to his home, and that there was no evidence that respondent has ever or would ever harm a child. Respondent, however, focuses on whether he would intentionally harm the child, while the trial court focused on whether a lack of resources would harm ZH because of his special medical needs. While we agree with respondent that there is no evidence that he would intentionally harm the child, we agree with the trial court that a reasonable likelihood exists that the child would be nonetheless harmed if placed in respondent's care.

First, there was no home for ZH to be placed in because respondent did not have concrete housing plans and was still unsure when he would even be released from prison. Second, because of ZH's medical concerns, ZH required extra care and frequent medical appointments and surgeries. Respondent did not have a well-defined plan for employment or reliable transportation to pay for or transport ZH to these appointments. To the extent that respondent would need to care for ZH at home, respondent would require significant time to learn how to attend to ZH's medical needs. Respondent suggested that his mother could care for ZH while respondent addressed these deficiencies; however, respondent's mother was unfit to care for ZH and respondent did not suggest an alternative caregiver. Accordingly, we conclude that the trial court's finding that there was a reasonable likelihood of harm to ZH if the boy were to be placed in respondent's care was not clear error.

For these reasons we find that the trial court did not clearly err in terminating respondent's parental rights under MCL 712A.19b(3)(c)(i), (g), or (j).

Affirmed.

/s/ William B. Murphy

/s/ Michael J. Kelly

/s/ Brock A. Swartzle