STATE OF MICHIGAN

COURT OF APPEALS

In re MCCRARY, Minors.

UNPUBLISHED
January 23, 2018

No. 338581
Washtenaw Circuit Court
Family Division
LC Nos. 17-000013-NA
17-000014-NA

Before: MURPHY, P.J., and SAWYER and BECKERING, JJ.

PER CURIAM.

This is a termination case initiated by the minor children's maternal grandmother as guardian and petitioner in her effort to adopt the children. Respondent-father appeals as of right the trial court's order terminating his parental rights to the children, JSM and JDM, under MCL 712A.19b(3)(g) and (f). We affirm.

The Department of Health and Human Services (DHHS) originally became involved in father's life in 2011 when it initiated child protective proceedings against him, alleging that he was unable to care for JSM.[1] The trial court took jurisdiction over JSM on October 7, 2011. JSM was placed in foster care. The goal at that time was reunification. When JDM was born in 2012, he was added to the case, the trial court took jurisdiction over him, and he was placed in foster care with JSM.

A foster-care worker developed a case service plan for father. The main components of the case service plan were a psychological evaluation, parenting classes, substance abuse assessment, drug screens, and employment and housing requirements. The foster-care worker testified that father did not comply with or benefit from his case service plan on nearly all of the requirements.

Back in 2011, at the DHHS's request, a clinical psychologist performed a physchological evaluation on father. The psychologist stated that he usually meets with a subject four times when conducting a psychological evaluation, but he only met with father twice by father's choice. The psychologist testified that father's choice to only meet twice indicated a lack of

[1] JDM was not yet born.

motivation to care for his child. The psychologist stated that he had "concerns about [father's] capacity to really understand all that he was confronted with . . . ." He noted that father "seemed distracted, quite self-absorbed, preoccupied, [and] not especially focused on the task at hand . . . ." The psychologist also testified that father admitted to being a crack dealer in the past. He stated that, based on his observations and the documents provided by the DHHS, father was "unlikely to change."

In May 2013, the DHHS changed the goal from reunification to termination and adoption. Because of father's noncompliance and lack of benefit from the case service plan, the DHHS filed a petition to terminate father's parental rights to both children. However, at that point, the children's maternal grandmother stepped forward and said that she was willing and able to provide care for both children. As a result, the trial court created a guardianship and named the grandmother guardian of both children. The petition to terminate father's parental rights was withdrawn. Then, in February 2017, the grandmother filed a petition to terminate father's parental rights so that she could adopt both children.

At the termination hearing, the grandmother testified that the trial court had set up a visitation schedule where father was supposed to visit the children every third Friday of the month. She stated that father initially stuck to that schedule, but then he began "slacking off." She stated that the visits became every other month, and then dwindled down to just being sporadic. She testified that father missed scheduled visits about seven to eight times a year. She also asserted that, when father was around, he was not attentive to the children. The grandmother testified that father only called the children once or twice a month and spoke to them for a couple of minutes, despite her opinion that the children were capable of holding a conversation. The grandmother also detailed multiple instances where she felt threatened or harassed by father. She further indicated that father never paid any money for the children's support.

Father testified at the termination hearing. He confirmed that he did not provide financial support for the children, claiming that he did not want to take the "route" of child support and that he was never ordered to pay child support. However, father confirmed that he worked, at least for a time, at Sam's Club making $300 to $400 per week. He also stated that he applied for social security disability after being shot twice. He claimed that he did not visit the children once a month because the grandmother kept them from him. The grandmother denied ever keeping the children from visiting or speaking with father.

On appeal, father first argues that the trial court erred in taking jurisdiction over the children under MCL 712A.2(b)(6). We disagree.

"To properly exercise jurisdiction, the trial court must find that a statutory basis for jurisdiction exists. Jurisdiction must be established by a preponderance of the evidence." *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004) (citations omitted). We review the trial court's decision to exercise jurisdiction over the children for clear error in light of the court's findings of fact. *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 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 assumed jurisdiction over the children under MCL 712A.2(b)(6), which provides a family court with authority and jurisdiction when:

> (6) [T]he juvenile has a guardian under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8206, and the juvenile's parent meets both of the following criteria:
>
> (A) The parent, having the ability to support or assist in supporting the juvenile, has failed or neglected, without good cause, to provide regular and substantial support for the juvenile for 2 years or more before the filing of the petition . . . .
>
> (B) The parent, having the ability to visit, contact, or communicate with the juvenile, has regularly and substantially failed or neglected, without good cause, to do so for 2 years or more before the filing of the petition.

First, father does not dispute the trial court's findings regarding subsection (A). Therefore, only the requirements of subsection (B) are at issue on appeal.

The evidence presented at the hearing demonstrated that father initially visited according to the schedule, but his visits dwindled to every other month and eventually became random and sporadic. In fact, father admitted that he "seldom" visited his children. Even when father did visit, he was distracted and inattentive. Father missed multiple scheduled visits with the children each year. The evidence also demonstrated that father called the children once or twice a month, but he only spoke to the children for a couple minutes.

Father argues that he had good cause for not seeing the children, claiming that the grandmother prevented him from doing so. The trial court specifically found father's assertion in this regard not to be credible. The trial court stated, "And I do not believe that she is—has ever exhibited that she's trying to do anything other than give him the opportunity to be a responsible father." The trial court also noted, "The visitation history, there are reasons, there have been excuses, there have been explanations. None of them I find credible, none of them I find helpful."

Therefore, giving deference to the trial court's assessment of witness credibility, we are not left with a definite and firm conviction that a mistake was made. Accordingly, we hold that the trial court did not clearly err in finding that a preponderance of the evidence supported the exercise of jurisdiction over the children.

Father next argues that the trial court clearly erred in finding that clear and convincing evidence supported terminating his parental rights to the children under MCL 712A.19b(3)(g). He also maintains that a preponderance of evidence did not exist to support the finding that termination was in the best interests of the children.

If a trial court finds that a single statutory ground for termination has been established by clear and convincing evidence and that it has been proved by a preponderance of the evidence that termination of parental rights is in the best interests of a child, the court is mandated to

terminate a respondent's parental rights to that child. MCL 712A.19b(3) and (5); *In re Beck*, 488 Mich 6, 10-11; 793 NW2d 562 (2010); *In re Moss,* 301 Mich App 76, 90; 836 NW2d 182 (2013); *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). "This Court reviews for clear error the trial court's ruling that a statutory ground for termination has been established and its ruling that termination is in the children's best interests." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011); see also MCR 3.977(K). In applying the clear error standard in parental termination cases, "regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The trial court must "state on the record or in writing its findings of fact and conclusions of law[,] [and] [b]rief, definite, and pertinent findings and conclusions on contested matters are sufficient." MCR 3.977(I)(1).

MCL 712A.19b(3)(g) provides for termination when "[t]he parent, without regard to intent, fails 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."

Relying heavily on the principle that placement with a relative weighs against termination, father argues that the children were safely placed with the grandmother by way of the guardianship and doing well, and therefore there was no reason to terminate his parental rights under MCL 712A.19b(3)(g). Our Supreme Court has stated that a child's placement with a relative weighs against termination. *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). In support of that principle, the *Mason* Court cited MCL 712A.19a(6)(a), *id.*, which provision is now found in subsection (8)(a), 2016 PA 497, and which states:

> (8) If the court determines at a permanency planning hearing that a child should not be returned to his or her parent, the court may order the agency to initiate proceedings to terminate parental rights. Except as otherwise provided in this subsection, if the child has been in foster care under the responsibility of the state for 15 of the most recent 22 months, the court shall order the agency to initiate proceedings to terminate parental rights. The court is not required to order the agency to initiate proceedings to terminate parental rights if 1 or more of the following apply:
>
> (a) The child is being cared for by relatives.

The Court in *Mason* observed that the statutory language "expressly establishes that, although grounds allowing the initiation of termination proceedings are present, initiation of termination proceedings is not required when the children are 'being cared for by relatives.' " *Mason*, 486 Mich at 164. Therefore, placement with a relative is "an explicit factor to consider in determining whether termination was in the children's best interests[.]" *Id.*

First, as indicated in *Mason*, placement with relatives pertains to the best-interest issue, not the statutory grounds for termination. Second, as reflected above, MCL 712A.19a(6)(a), now (8)(a), is couched in terms of the agency, i.e., DHHS, initiating termination proceedings. The instant case, however, entails a guardian commencing termination proceedings, as authorized by MCL 712A.19b(1). Thus, we question whether the principle that placement with a relative

weighs against termination is applicable in the context of an action in which a guardian pursues termination. Because a guardian is often a relative, applying the principle to guardian-initiated termination proceedings would seem counterintuitive. We shall further touch on this subject below when examining the question whether termination of father's parental rights was in the children's best interests.

With respect to evidentiary support for MCL 712A.19b(3)(g), father does not really present a relevant argument on the matter. Regardless, the evidence that father, who had a criminal past and lived a self-absorbed lifestyle, failed to take any real interest in his children, failed to financially support them, substantially failed to visit or communicate with them, historically failed to comply with or benefit from service plans, failed to inquire about or participate in medical appointments and school functions relative to the children, had parental shortcomings that were longstanding and not situational, and engaged in threatening and stalking-type behaviors in regard to the grandmother, all gave support to the trial court's finding that MCL 712A.19b(3)(g) was proven by clear and convincing evidence. There was no clear error.[2]

With respect to the children's best interests, a trial court may consider such factors as a "child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). "The trial court may also consider a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption." *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014).

Here, the trial court expressly considered the children's bond to the parent, the parent's parenting ability, the children's need for permanency, stability, and finality, the suitability of alternative homes, and the children's placement with a relative. The trial court found that the children recognized father as such, but that they did not ask for him or miss him when he was not around. More importantly, the trial discussed how father's bond to the children seemed to come from feelings that the children were his property, rather than feelings that they were his responsibility. The trial court determined that such feelings were not conducive to a healthy parent-child bond. In fact, in his brief on appeal, father admits that the children were more heavily bonded to the grandmother than to him.

The trial court found that father was, at least temporarily, employed. Despite his employment, father refused to provide any financial support for the children. Additionally, the trial court took note of father's pattern of behavior of only visiting or communicating with the children when it was convenient for him. The trial court also found that the grandmother, not father, provided the permanency, stability, and finality in the children's lives. The trial court observed that the grandmother provided just so, despite father's offensive, threatening, and

[2] In light of our ruling regarding MCL 712A.19b(3)(g), it is unnecessary to address MCL 712A.19b(3)(f).

demeaning behavior. Moreover, despite father's argument on appeal, the grandmother did express a desire to adopt both children.

Lastly, the trial court noted that the grandmother "has been there, has been a rock . . . ." The trial court stated that no one could dispute that the children were thriving in the grandmother's home and that she was doing a "great job" parenting the children, despite father's "interference" and "other motives." Additionally, assuming that placement with the grandmother weighed in favor of not terminating father's parental rights because of her "relative" status, which we question for the reasons discussed earlier, the remainder of the best-interest factors weighed more heavily in favor of termination. The trial court did not clearly err in ruling that there was a preponderance of evidence showing that termination of father's parental rights was in the children's best interests.

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Jane M. Beckering