

STATE OF MICHIGAN
COURT OF APPEALS

In re KRUPA, Minors.

UNPUBLISHED
March 13, 2018

No. 339865
Grand Traverse Circuit Court
Family Division
LC No. 16-004130-NA

Before: O'CONNELL, P.J., and HOEKSTRA and SWARTZLE, JJ.

PER CURIAM.

Respondent appeals as of right an opinion and order terminating his parental rights to his minor children, AK and JK. His rights were terminated to AK under MCL 712A.19b(3)(c)(i)¹ (conditions of adjudication continue to exist) and to both AK and JK under MCL 712A.19b(3)(g) (failure to provide proper care or custody) and MCL 712A.19b(3)(j) (reasonable likelihood of harm). We affirm.

AK was placed in foster care after Child Protective Services received information that respondent and AK's mother were using and selling drugs and maintaining a "drug house."² Respondent entered a plea to the allegations contained in the petition and was incarcerated for the first four months that the case-services plan was in place. After his release, respondent partially completed the requirements of the case-services plan by completing a psychological evaluation and a substance abuse assessment, by attending two parenting classes and a few parenting visits, and by submitting to six of 37 required drug tests, four of which were positive for a number of illegal substances. Thereafter, from July 2016 until November 2016, respondent discontinued services and stopped visiting AK because he was avoiding an outstanding warrant.

In November 2016, respondent was arrested and incarcerated. Petitioner subsequently filed a supplemental petition requesting termination of respondent's parental rights to AK.

¹ The trial court mistakenly stated that respondent's parental rights were being terminated "pursuant to MCL 712A.19b(3)(a)," but based on the court's analysis, it is clear that the court was referring to MCL 712A.19b(3)(c)(i).

² At the time of the termination trial, the children's mother was still working toward reunification.

While the petition was pending, respondent pleaded guilty to delivery and manufacture of a controlled substance, MCL 333.7401(2)(a)(iv). Respondent was sentenced in February 2016 to 1-1/2 to 20 years in prison. JK was born in March 2016 and, two days after JK's birth, petitioner filed a petition requesting termination of respondent's parental rights to JK. Following an adjudication and a termination trial, respondent's parental rights to both AK and JK were terminated.

II. ANALYSIS

The Trial Court Properly Assumed Jurisdiction. Respondent first argues that the trial court erred in assuming jurisdiction over JK. "We review the trial court's decision to exercise jurisdiction for clear error in light of the court's findings of fact." *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). "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." *Id.* at 296-297.

MCL 712A.2 provides the circumstances under which the court may exercise jurisdiction over a child, stating in relevant part that a trial court may take jurisdiction over a child found within the county:

(1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship.

* * *

(2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in. [MCL 712A.2(b)(1), (2).]

Respondent was in prison at the time JK was born and will remain in prison until at least May 2018. Respondent argues that jurisdiction was improper because his imprisonment rendered him unable to provide a home for JK. In fact, respondent notes that he has never even met JK.

Imprisonment, however, does not relieve a parent of his obligation to provide for the care and custody of his child. Although jurisdiction may be improper when an incarcerated parent can provide proper care and custody by placing children with relatives, *In re Systma*, 197 Mich App 453, 455; 495 NW2d 804 (1992), respondent did not place JK in the care of relatives, nor did he arrange for any alternative care for him during the tenure of his prison term. JK was placed in a non-relative foster home at petitioner's behest, not because of any arrangement that respondent made for him. Respondent's failure to procure a proper placement for JK, either personally or through the services offered by petitioner, see *In re Mason*, 486 Mich 142, 163-

164; 782 NW2d 747 (2010), for the duration of respondent's incarceration is a failure to provide for JK's care and custody that justifies the trial court's assumption of jurisdiction over the child.

Respondent also asserts that the trial court's exercise of jurisdiction was erroneous because the testimony presented at the adjudication only related to his failure to comply with the parent-agency agreement in AK's case. A child may come within the trial court's jurisdiction, however, based on the parent's treatment of another child. *In re Gazella*, 264 Mich App 668, 680-681; 692 NW2d 708 (2005), superseded by statute in part on other grounds by MCL 712A.19b(5). Here, respondent had an ongoing termination case for AK, who was removed from respondent's home because of frequent drug use by respondent and others present there. Although respondent was offered services, he failed to comply with and benefit from his case-services plan. Respondent completed only six of 37 required drug tests, and four of those tests were positive for illegal substances. Under a theory of anticipatory neglect, it was not erroneous for the trial court to find that respondent would also be an unfit parent to JK because of his unaddressed addiction issues. *Id.* The trial court did not clearly err in exercising jurisdiction over JK under MCL 712A.2(b)(1) and (2).

Statutory Grounds Supported Termination. Next, respondent argues that the trial court erred in finding that the statutory grounds for termination were sufficiently proven by petitioner. We review a trial court's findings that a ground for termination has been established under the clearly erroneous standard. MCR 3.977(K).

MCL 712A.19b provides:

(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:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial disposition order, and the court, by clear and convincing evidence, finds[:]

(i) The 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.

* * *

(g) The 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.

* * *

(j) There 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.

The trial court did not clearly err in finding that MCL 712A.19b(3)(c)(i) was proven by clear and convincing evidence with regard to AK.³ AK came into care in January 2016 because of allegations that respondent was using and selling drugs and maintaining a "drug house." By the termination trial in May 2017, respondent still had not taken any steps toward overcoming his drug addiction and was incarcerated for selling drugs. He had not participated in any substance-abuse counseling and had missed 31 drug tests. Respondent was not to be released from prison until May 2018 at the earliest and failed to acknowledge that his drug addiction caused him to be an ineffective parent. Indeed, respondent refused substance-abuse services while incarcerated. The trial court did not err in concluding that, after 182 days, respondent had failed to rectify the conditions that led to adjudication and that he would be unable to do so within any reasonable time.

The trial court also did not clearly err in finding that clear and convincing evidence supporting termination of respondent's parental rights to both children under MCL 712A.19b(3)(g). Respondent's drug problems garnered him a prison sentence of 1-1/2 to 20 years with an earliest release date of May 2018. Respondent was unable to provide for the children's care during his incarceration. Moreover, respondent failed to comply with his case-services plan or take advantage of substance-abuse services offered in prison. We agree with the trial court that respondent's failure to address—or even acknowledge—his drug problem renders it unlikely that respondent will ever be able to provide proper care and custody for the children.

Similarly, respondent's failure to address his drug problem creates a reasonable likelihood that the children will be harmed if returned to respondent's care. Accordingly, clear and convincing evidence also supports termination of respondent's parental rights to both children under MCL 712A.19b(3)(j).

Respondent Did Not Take Advantage of the Services Offered by Petitioner. Respondent argues that petitioner failed to provide him with services to help him secure reunification with his children. We review this unpreserved issue for plain error affecting respondent's substantial rights. *In re Ultrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

"[W]hen 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 535, 542; 702 NW2d 192 (2005). Petitioner has the "responsibility to expend reasonable efforts to provide services to secure reunification." *Frey*, 297 Mich App at 248. An absence of reasonable efforts to provide services aimed at reunification may render termination premature. *In re Mason*, 486 Mich 142, 152; 782 NW2d

³ JK was not yet 182 days old at the time of termination trial.

747 (2010). Parents have “a commensurate responsibility . . . to participate in the services that are offered.” *Frey*, 297 Mich App at 248.

Respondent argues that *In re Mason*, 486 Mich 142, and *In re Rood*, 483 Mich 73; 763 NW2d 587 (2009), support his assertion that termination of his parental rights was erroneous because he was not provided services. In *Mason*, 486 Mich at 159, the respondent was incarcerated for the entire duration of the case services plan and the petitioner did not offer him services, or afford him an opportunity to comply with a case services plan. Our Supreme Court held that termination of the respondent’s parental rights was erroneous based solely on the respondent’s incarceration, and explained that “[t]he state is not relieved of its duties to engage an absent parent merely because that parent is incarcerated.” *Id.* at 152, 159-160. Similarly, in *Rood*, 483 Mich at 118-119, the incarcerated respondent’s parental rights were erroneously terminated after the petitioner failed to notify him of proceedings or allow him to participate in any services.

The circumstances of *Mason* and *Rood* are markedly different from this case. Here, respondent was not incarcerated for the entire duration of the case services plan and he did participate in some services. Respondent’s case manager testified that, after respondent was released from jail in April 2016, respondent was referred for individual and group substance abuse and mental health counseling, parenting classes, and weekly drug screening. Before going “missing” in July 2016, respondent completed a psychological evaluation, a substance-abuse assessment and two parenting classes, and submitted to six drug tests. Respondent then stopped participating in services and completely disappeared until he was arrested in November 2016.

The record makes clear that petitioner fulfilled its statutory duty to create a case-services plan and made reasonable efforts to help respondent reunify with his daughter. *Frey*, 297 Mich App at 248. It was respondent who did not fulfill his corresponding duty to participate in the services offered. *Id.* The termination of respondent’s parental rights was not based solely on his incarceration, nor did petitioner fail to give respondent an opportunity to participate in services.

Respondent notes that he stopped participating in services because he feared being arrested on an outstanding warrant. Yet, respondent’s fugitive status does not excuse him from engaging in the case services plan. Respondent also argues that the children’s mother was provided more services despite her similar level of compliance in the case-services plan. The trial court recognized petitioner’s seemingly disparate treatment of respondent and the children’s mother, explaining that both parents suffered from long-term substance abuse, refused to participate in services, were “missing in action” for months, and were arrested and incarcerated. The children’s mother, however, was only briefly incarcerated on a misdemeanor charge. In contrast, respondent is serving a minimum prison term of one and a half years for delivery of controlled substances, with an earliest release date in May 2018. Moreover, there was testimony that the children’s mother had been doing “fairly well” with her parent-agency agreement since her arrest in November, whereas respondent had only partially participated in services between April 2016 and November 2016, and had failed to take advantage of substance-abuse classes available to him in jail.

In *Mason*, the petitioner erroneously “focused on its attempts to reunify the children with [the respondent-mother] and, in doing so, disregarded [the respondent-father’s] statutory right to

be provided services.” 486 Mich at 159. Here, petitioner offered respondent various services that he chose not to pursue in order to avoid arrest. Accordingly, unlike *Mason*, there was not an “absence of reasonable efforts,” and petitioner did not focus solely on the children’s mother in constructing the case-services plan. *Id.* at 152. Respondent’s arguments to the contrary are without merit.

Termination Was in the Children’s Best Interests. Finally, respondent argues that termination of his parental rights was not in AK or JK’s best interests. We disagree. We review a trial court’s decision regarding a child’s best interests for clear error. *In re Laster*, 303 Mich App 485, 496; 845 NW2d 540 (2013).

“If the court finds that there are grounds for termination of parental rights and that termination is in the child’s best interests, the trial court shall order termination of parental rights.” MCL 712A.19b(5). In determining a child’s best interests, the court considers a variety of factors, including “the child’s bond to the parent, the parent’s parenting ability, the child’s need for permanence, stability, and finality, and the advantage of a foster home over the parent’s home.” *In re White*, 303 Mich App at 713 (internal citation and quotation notation omitted). Other factors a court may consider are “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.” *Id.* at 714. The child, not the parent, is the focus of the best-interest analysis. *In re Moss*, 301 Mich App 76, 87-88; 836 NW2d 182 (2013).

The trial court acknowledged that respondent and AK had a close relationship, but found that respondent had exposed AK to drugs and criminality. It recognized that AK struggled emotionally and behaviorally when placed in foster care and that her struggles worsened when her parents disappeared for five months. After AK was placed in a pre-adoptive foster care home, she had a sense of stability and had better school attendance, excelled academically, developed a sense of independence, and saw an improvement to her dental health. Focusing solely on JK, it found that respondent and JK did not have a bond and that JK’s placement in a pre-adoptive foster home was a “tremendous advantage” over a hypothetical home that respondent might be able to provide some day. The trial court also found that it was in the best interests of both children that they remain together.

At the time of the termination trial, respondent was incarcerated and would be for at least the next year. He had never addressed his substance abuse issues and failed to even recognize that his drug addiction negatively affected his parenting ability. He had not seen AK in almost a year and had never met JK. It is clear that the trial court considered a variety of factors, including respondent’s bond to the children, their need for permanence, stability, and finality, the advantage of their current placement in a foster home, and respondent’s non-compliance with the case-services plan. *In re White*, 303 Mich App at 713. The trial court did not clearly err in determining that ample evidence demonstrated that termination of respondent’s parental rights was in AK’s and JK’s best interests. *In re BZ*, 264 Mich App at 296-297.

Affirmed.

/s/ Peter D. O'Connell
/s/ Joel P. Hoekstra
/s/ Brock A. Swartzle