

STATE OF MICHIGAN
COURT OF APPEALS

In re A. J. STEIN, Minor.

UNPUBLISHED
March 13, 2018

No. 339880
Gogebic Circuit Court
Family Division
LC No. 2015-000011-NA

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

PER CURIAM.

Respondent, the father of the minor child, appeals as of right an order terminating his parental rights under MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (g) (failure to provide proper care or custody), and (j) (likelihood of harm). We affirm.

I. BACKGROUND

The minor child was born in November 2014. In March 2015, the child's mother reported a domestic violence incident to local law enforcement. She and respondent were arguing while sitting in the front seat of a parked car; the child was asleep in a car seat in the back. Respondent pushed the child's mother against a car window, head butted her, pulled her by the hair, and bit her forehead. The child's mother did not want the child growing up around this type of behavior. The child's mother later met with a caseworker from the Department of Health and Human Services (DHHS) and agreed to participate in services to address her substance abuse, to help her leave the abusive relationship, and to improve her parenting skills.¹ In the meantime, the DHHS caseworker was not able to get in touch with respondent. Respondent testified that he went into hiding because he did not want to go to jail.

In August 2015, respondent was arrested for the domestic violence incident and other charges related to an attempt to flee the police. A DHHS caseworker visited respondent in jail twice to update him about the child protective proceedings. She tried to interview respondent, but he refused because he had pending criminal charges, although he told the caseworker that he

¹ After a brief relapse, the child's mother made sufficient progress that DHHS returned the child to her custody in February 2017.

was willing to do whatever was necessary to get his child back. Counseling services and parenting classes were not available to respondent while he was in jail.

Respondent was released from jail in February 2016. The day after his release, he started using drugs again. After that, respondent hid from everyone because he had used methamphetamine and he knew he would not pass a drug test. Respondent was arrested again in May 2016 for several charges, including possession of methamphetamine. Respondent was sentenced in January 2017 to a term of 28 months to 15 years' imprisonment. Respondent's earliest anticipated release date is in September 2018.

The caseworker visited him once right after he went back to jail, and a new caseworker met with him once in jail several months later. The new caseworker testified that she looked into what services were available in jail, such as parenting classes, but none were available. After respondent was transferred to prison, the caseworker contacted the prison and learned that respondent could participate in counseling for mental health and substance abuse and could attend classes for parenting skills, domestic violence, and anger management. As a new inmate, these classes were not immediately available to respondent, and he was put on a waiting list.

DHHS filed a termination petition in October 2016. The DHHS caseworker believed that termination was the best course of action because of respondent's failure to participate or engage with the agency. Respondent did not meet with a caseworker again after that filing, although the caseworker sent him letters on a monthly basis updating him about the case. The caseworker testified that respondent did not participate in any services that she knew of. At the time of the termination hearing, respondent may have begun some counseling while in prison and was going to start taking a substance abuse course. Respondent knew that he would need to complete the recommended counseling and classes successfully and find suitable housing and employment after his release from prison to avoid termination of his parental rights.

II. ANALYSIS

A. STATUTORY GROUNDS FOR TERMINATION

Respondent first argues that the trial court erred by finding statutory grounds for termination of his parental rights. "We review for clear error a trial court's finding of whether a statutory ground for termination has been proven by clear and convincing evidence." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). "Clear error exists when some evidence supports a finding, but a review of the entire record leaves the reviewing court with the definite and firm conviction that the lower court made a mistake." *In re Dearmon*, 303 Mich App 684, 700; 847 NW2d 514 (2014).

To terminate parental rights, the trial court must find clear and convincing evidence of one or more of the statutory grounds set forth in MCL 712A.19b(3). *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). In this case, the trial court terminated respondent's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j), which state in full:

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 dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(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.

First, the trial court did not clearly err by finding grounds for termination under subdivision (c)(i). The trial court determined that criminality and domestic violence led to the original adjudication, nearly two years had passed, but respondent had not made progress. In contrast with the child's mother's testimony about the domestic violence incident, respondent downplayed the incident by stating that he "just pushed [his] head against her head and screamed at her[,] suggesting that the encounter was not nearly as violent as the child's mother described it to be. Respondent also testified that his temper flared and abated rapidly. This testimony demonstrates respondent's refusal to acknowledge violence as a problem and his failure to work toward resolving conflicts without violence. In addition, respondent continued using drugs after the child was born and while on probation, and respondent went to prison on drug charges during the course of the proceedings. Respondent admitted that he could not conquer his substance abuse on his own, yet he attended no substance abuse classes or counseling before DHHS filed the termination petition. Instead, respondent purposefully avoided DHHS caseworkers when he was not in jail or in prison. Aside from two attempts to contact the current caseworker in response to the caseworkers' numerous attempts to get in touch with him, the caseworkers were only able to communicate with respondent when he was incarcerated. He also admitted that he ignored this DHHS matter in the hope that everything would return to normal if he ignored it and let the child's mother take care of it. Consequently, respondent's argument that DHHS did not give him an opportunity to participate in services despite his expressed willingness to participate is incorrect. Similarly, respondent's nonparticipation for the bulk of the proceedings gave the trial court no reason to believe that respondent would participate in and benefit from services with more time.

Respondent contends that he would have complied with DHHS's requests if the trial court had awaited his release from prison. However, the Legislature did not intend for children to be left in limbo but for parental rights to be terminated if the conditions that led to the adjudication could not be rectified within a reasonable time. *In re Dahms*, 187 Mich App 644, 647; 468 NW2d 315 (1991). The record contains scant evidence, beyond respondent's own statements about his ability to participate in services and obtain suitable housing and employment once released from prison, that he was making real steps to rectify the situation leading to adjudication. During the eight months when he was not incarcerated, from March 2015 to August 2015 and from February 2016 to May 2016, respondent decided not to participate in services, violated probation by using narcotics, and committed additional crimes. For these reasons, the trial court did not clearly err by finding that the conditions that led to the adjudication were not rectified and not likely to be rectified within a reasonable amount of time.

Next, the trial court did not clearly err by finding grounds for termination under subdivision (g). Respondent's drug use continued unabated throughout the course of the proceeding, and he provided, at best, questionable care for the child after he was born. Because of his continued drug use and other crimes, respondent returned to prison, and his earliest anticipated release date is in September 2018. Incarceration is not alone a sufficient reason for the termination of parental rights. *In re Mason*, 486 Mich 142, 160; 782 NW2d 747 (2010). Contrary to respondent's contention, the trial court did not base its termination decision solely on respondent's incarceration. At the time of the termination hearing, respondent had no sustained history of participation in services that would facilitate reunification, had not completed counseling and other services, and had no definite plans for housing or employment after his release. Moreover, his earliest anticipated release date was more than one year away, and he did not demonstrate that he would be able to provide proper care for the child within a reasonable time after his release on the basis of his generalized intention to complete counseling and find housing and employment. Therefore, the trial court did not clearly err by finding that respondent would not likely be able to provide the child with proper care and custody. Likewise, for all of these reasons, the trial court did not clearly err by concluding that the child would likely be harmed in respondent's care and finding statutory grounds for termination under subdivision (j).

B. BEST-INTEREST DETERMINATION

Respondent argues that the trial court erred by determining that termination of parental rights was in the child's best interests. We "review for clear error . . . the court's decision regarding the child's best interest under MCL 712A.19b(5)." *In re Olive/Metts*, 297 Mich App at 40 (quotation marks and citation omitted). Once it has found statutory grounds for termination, the trial court must make a best-interest determination before it can terminate parental rights. MCL 712A.19b(5); *In re Moss*, 301 Mich App at 86. The determination of a child's best interests is made on the basis of the preponderance of the evidence. *In re Moss*, 301 Mich App at 90. Factors to consider include child-parent bonding, parenting skills, "and the child's need for permanency, stability, and finality[.]" *In re Olive/Metts*, 297 Mich App at 41-42. The court may also consider "the likelihood that the child could be returned to [the parent's] home within the foreseeable future . . . and compliance with the case service plan." *In re Payne/Pumphrey/Fortson*, 311 Mich App 49, 64; 874 NW2d 205 (2015) (quotation marks and citation omitted).

The trial court did not clearly err by finding that termination of respondent's parental rights was in the child's best interests. Respondent was not bonded with the child and displayed inadequate parenting ability. Even if respondent were to be released at the earlier end of his sentence in September 2018, when the child will be nearly four years old, respondent will have been separated from the child for nearly three-quarters of the child's life. Respondent will require considerable rehabilitation to remain sober and to be prepared to reunify with the child. Further, the child was adapting well after returning to his mother's home. These factors, when viewed in the context of respondent's history of serious drug abuse, long periods of incarceration that separated him from the child, and unwillingness to participate in counseling, support the trial court's best-interest determination.

Respondent argues that he should be allowed more time to improve his parenting skills and to create an appropriate environment for the child because the child is safely in his mother's custody and because DHHS could intervene if respondent presented a danger to the child. DHHS has already intervened, yet respondent did not respond to DHHS's efforts to work with him. In addition, this argument echoes respondent's testimony that he left it to the child's mother to address DHHS's concerns. In short, respondent has identified no clear error in the trial court's ruling that termination of his parental rights was in the child's best interests.

We affirm.

/s/ Peter D. O'Connell

/s/ Joel P. Hoekstra

/s/ Brock A. Swartzle