

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
September 20, 2018

In re PARKS/WITCHER, Minors.

No. 343443
Wayne Circuit Court
Family Division
LC No. 15-520481-NA

Before: O'CONNELL, P.J., and CAVANAGH and SERVITTO, JJ.

PER CURIAM.

Respondent-father appeals as of right the trial court's order terminating his parental rights to the two minor children under MCL 712A.19b(3)(g) (failure to provide proper care and custody).¹ We affirm.

The Department of Health and Human Services (DHHS) initiated child protective proceedings in August 2015 after the children's mother burned their fingers with an open flame and bruised their backs by hitting them with a brush. Respondent first learned that the children were in protective custody in 2016, and he first appeared in court in September 2017. In December 2017, respondent admitted that statutory grounds to terminate his parental rights existed. After the trial court ordered DNA testing, in January 2018, respondent established that he was the children's biological father. In March 2018, after a best-interest hearing, the trial court ordered termination of respondent's parental rights.

Respondent argues that the trial court violated his constitutional right to parent the minor children by terminating his parental rights. We disagree. Generally, we review a constitutional claim de novo. *In re TK*, 306 Mich App 698, 703; 859 NW2d 208 (2014). Respondent did not preserve this issue, however, so we review it for plain error affecting substantial rights. See *id.*

Parents have a fundamental right to "make decisions concerning the care, custody, and control of their children." *In re Sanders*, 495 Mich 394, 409; 852 NW2d 524 (2014). This right is not absolute, however. *Id.* The "state has a legitimate interest in protecting the moral, emotional, mental, and physical welfare of the minor and in some circumstances neglectful

¹ The children's mother's parental rights were also terminated. She is not a party to this appeal.

parents may be separated from their children.” *Id.* at 409-410 (quotation marks and citation omitted). The “parent’s interest in the companionship, care, and custody of the child gives way to the state’s interest in the child’s protection” once a statutory ground for termination has been proven by clear and convincing evidence. *In re Trejo Minors*, 462 Mich 341, 355-356; 612 NW2d 407 (2000). In this case, respondent admitted in the trial court that statutory grounds to terminate his parental rights existed. Therefore, the trial court’s order terminating his parental rights did not violate respondent’s constitutional rights as a parent.

We reject respondent’s argument that the length of his absence from the children’s lives was an insufficient basis for a statutory ground for termination. Respondent admitted allegations supporting the statutory ground for termination at MCL 712A.19b(3)(g), which authorizes termination of parental rights for a parent’s failure to provide proper care or custody and when “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.” Although MCL 712A.19b(3)(g) does not specify how long a parent must fail to provide care or custody, respondent neglected his parental duties toward the two children since they were born in 2010 and in 2011. Respondent moved to Texas in 2012, and he did not regularly see the children or provide for them. Respondent’s failure to pursue custody of the children when he first learned about the child protective proceedings in 2016 shows that caring for the children was not his priority for several years. Respondent did not establish his paternity until January 2018 when the trial court ordered DNA testing. Although respondent did not doubt that he was the children’s biological father, his failure to establish paternity precluded him from pursuing his rights to the children, demonstrating a lack of commitment. Respondent’s sluggish response to the proceedings also showed that he was not likely to provide the children with proper care and custody within a reasonable time.

Respondent further contends that DHHS did not provide him with a parent-agency agreement. He did not express an interest in caring for the children for the majority of the time they were in protective care, however. In addition, when the petition was filed, the children did not have a legal father with whom DHHS could enter into a parent-agency agreement. The children were removed from their mother’s care in August 2015, and respondent did not contact DHHS until May 2017. Respondent did not appear in court until September 2017, shortly after DHHS filed the petition to terminate his parental rights. Respondent had not visited the children regularly since 2012 and had not provided care or custody prior to the petition being filed. For these reasons, the trial court did not violate respondent’s constitutional right by finding statutory grounds for termination.

Respondent maintains that the children’s best interests demand that the children be raised by their parents. Once the trial court finds a statutory ground for termination and that termination is in the best interests of the children, the trial court must order termination of parental rights. MCL 712A.19b(5). We review a trial court’s decision to terminate parental rights, including a best-interest determination, for clear error. *In re Trejo Minors*, 462 Mich at 356-357. “A finding of fact is clearly erroneous where the reviewing court is left with a definite and firm conviction that a mistake has been made.” *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000).

The trial court did not clearly err by finding that termination of respondent’s parental rights was in the best interests of the children. Respondent was not bonded with the children,

and he lacked insight into their behavior. Respondent did not have suitable housing or a stable income. When respondent learned that his children were in protective care, he did not immediately pursue custody of them. In short, respondent did not demonstrate that he was a suitable caregiver who could provide the children with the permanence and stability they needed. Therefore, the trial court did not clearly err by finding that termination of respondent's parental rights was in the children's best interests.

We affirm.

/s/ Peter D. O'Connell
/s/ Mark J. Cavanagh
/s/ Deborah A. Servitto