

STATE OF MICHIGAN
COURT OF APPEALS

In re BADHAM/WELLS, Minors.

UNPUBLISHED
December 18, 2018

No. 344278
Kalamazoo Circuit Court
Family Division
LC No. 2017-000194-NA

Before: SWARTZLE, P.J., and SAWYER and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent appeals as of right the trial court’s termination of his parental rights to his minor children under MCL 712A.19b(3)(c)(i), (c)(ii), (g), (h), and (j). We affirm.

I. BACKGROUND

Respondent has a long history of domestic violence and other criminal misconduct. Respondent was found guilty of domestic violence in 2009 for assaulting his teenage son. This son has since reached the age of majority and is not subject to this appeal. Respondent was placed on probation for this offense, but was unsuccessfully discharged. Then, in 2010, respondent pleaded guilty to a second domestic-violence charge, stemming from his assault of his mother. Respondent was again placed on probation for that offense and was subsequently unsuccessfully discharged.

The parental rights of the two minor children’s mother were terminated in 2012 and 2014. Then, in 2016, respondent engaged in another instance of domestic violence. According to the petition in this case, respondent “barricaded himself in the home and held [his girlfriend] and the minors hostage and repeatedly choked [his girlfriend] in the presence of the minors.” Respondent pleaded guilty to a third charge of domestic violence as a result.

Finally, less than a year after his third domestic-violence charge, respondent committed the assault that led to the removal of his minor children and ultimate termination of his parental rights to them. Following an argument, respondent trapped his girlfriend in a room and choked her. According to the petition, the children—who were three and five years old at the time—were present in the room at the time of this assault. Indeed, when the caseworker arrived at the home, the older child spontaneously informed her that respondent’s girlfriend needed to go to the hospital because respondent had choked her. That same day, the children were removed from respondent’s care, and, by the end of the month, respondent had pleaded guilty to a fourth

domestic-violence charge, for which he was sentenced to two to 10 years of imprisonment. In addition to the four domestic-violence offenses, respondent's record also includes charges of obstructing a police officer, assault with intent to rob, and assault and battery.

Following their removal, petitioner attempted to place the children with respondent's girlfriend, but she declined placement. Petitioner contacted respondent's mother, but she also declined placement, opining that the children "need to be in the foster care system." Ultimately, the children were placed in foster care, eventually in the same home. At the time of their removal, the children were behind academically and the older child exhibited inappropriate sexual behaviors, which were learned while in the care of respondent. While in foster care, the children made several concerning comments to their caregivers, indicating that they had witnessed several incidents of domestic violence and were beginning to adopt the same violent tendencies. Indeed, the children each asked their foster parent whether she was "going to be choked for taking us?" and one child indicated that he wanted to choke a fast-food worker because he did not receive his ketchup. The children were fearful of respondent and one child indicated that he did not want to return to respondent's care. Despite these setbacks, the children participated in several services while in the care of their foster parents and, by the time of the termination trial, were doing well academically and socially.

Respondent's caseworkers reported that they kept up contact with respondent while he was in prison. The caseworkers mailed a service plan to respondent, but he failed to sign and return it. Nonetheless, the caseworkers acknowledged that respondent's confinement disqualified him from participating in petitioner's services. Still, the caseworkers encouraged respondent to participate in the services offered by the prison. The record indicates, however, that respondent was not eligible for services in prison until he neared his release date. Thus, as of the time of his termination trial, respondent had not participated in any services. Caseworkers did facilitate respondent's communication with his children, however, by forwarding respondent's letters to the children. Nonetheless, respondent eventually stopped sending letters to his caseworkers, opting first to send letters to the children through a family member, and then to discontinue the letters altogether.

Caseworkers contacted multiple family members to inquire about a relative placement for the children. Nonetheless, these relatives either did not return the phone calls or declined placement, indicating that foster care was the best place for the children. Still, caseworkers repeatedly asked respondent about placing the children with his relatives. Respondent indicated that some relatives were inappropriate placements for the children, but provided the names of a few other potential relative placements, although he could not provide any contact information. Still, these placements did not pan out. Ultimately, the trial court gave respondent one final shot at relative placement by adjourning the termination trial so that caseworkers could contact respondent's uncle and cousin. Caseworkers contacted the uncle and cousin, but both declined placement.

Petitioner ultimately petitioned the trial court to terminate respondent's parental rights, indicating that respondent's incarceration and criminal history showed that he was unable to provide a safe home environment for his children. The trial court found that petitioner had made reasonable efforts to facilitate respondent's reunification with the children, but that these efforts were unsuccessful. The trial court then found that statutory grounds existed to terminate

respondent's parental rights and that termination was in the children's best interests so that they "could have some stability in their lives."

This appeal followed.

II. ANALYSIS

Reasonable Efforts. Respondent first argues that termination was inappropriate because petitioner failed to provide him with reasonable reunification services. Absent exceptions not present here, petitioner is required to make reasonable efforts to reunify families and to rectify the conditions that led to the initial removal. See *In re Terry*, 240 Mich App 14, 25-26; 610 NW2d 563 (2000). We review the trial court's findings regarding reasonable efforts for clear error. *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011).

Respondent first argues that petitioner's efforts were deficient because caseworkers failed to provide him with services while he was in prison. We disagree. The record confirms that caseworkers drafted a service plan for respondent, but that his incarceration disqualified him from services. The caseworkers directed respondent to engage in services offered by the prison, but respondent had not become eligible for those services by the time of the termination. Still, despite respondent's ineligibility for services, caseworkers kept up contact with respondent and attempted to facilitate his communication with his children. This is not a case where petitioner failed to engage with respondent; rather, the record confirms that petitioner made multiple attempts to engage with respondent and direct him to the services he was eligible for.

Next, respondent argues that petitioner failed to timely contact family members to find a suitable relative placement for the children. Again, we disagree. The record confirms that caseworkers contacted multiple relatives on respondent's behalf, but that those relatives were not willing to accept placement of the children. Indeed, respondent's relatives opined that the children were better off in foster care. Respondent acknowledges that these relatives declined placement, but argues that, had caseworkers contacted the relatives sooner, a willing and suitable placement could have been found. Respondent, however, has offered no evidence to support his claim that his relatives would have accepted placement if they had been contacted sooner. Moreover, the record reveals that respondent was unable to provide caseworkers with the contact information for his relatives and that the relatives the caseworkers were able to locate were difficult to communicate with. Overall, it is clear from the record that, despite numerous attempts by petitioner to locate a relative placement, respondent's relatives were not interested in caring for his children.

Thus, the trial court's finding that petitioner made reasonable efforts to secure a relative placement for the children and to facilitate respondent's reunification with the children in the event of his release was not clearly erroneous.

Best Interests. On appeal, respondent does not challenge the trial court's finding that statutory grounds supported termination of his parental rights. Rather, respondent argues that

termination of his parental rights was not in the children's best interests because he had been an active, devoted presence in the children's lives. We disagree.

“If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.” MCL 712A.19b(5). “[W]hether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence,” *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013), based on the record as a whole, *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). We review for clear error the trial court's finding regarding the children's best interests. *In re Trejo*, 462 Mich 341, 356–357; 612 NW2d 407 (2000); MCR 3.977(K).

The record shows that respondent committed at least four domestic assaults, two of which occurred in front of the minor children and one of which was perpetrated against his own son. Respondent's domestic violence caused the children to fear him and adopt violent tendencies. Ultimately, this violence removed respondent from the children's lives for two to 10 years. Moreover, while in respondent's care, the children suffered academically and learned inappropriate sexual behaviors. Respondent was unable to locate a placement for his children during his incarceration and even his family members opined that foster care was in the children's best interests. The record confirms those opinions, given the relative success of the children in foster care. Thus, despite respondent's alleged devotion to his children, the record makes clear that respondent would not be able to provide a safe home for the children within the reasonably foreseeable future and that foster care was in their best interests. We agree with the trial court that these young children were entitled to permanency and conclude that the trial court's finding that termination was in the children's best interests was not clearly erroneous.

Affirmed.

/s/ Brock A. Swartzle
/s/ David H. Sawyer
/s/ Amy Ronayne Krause