

STATE OF MICHIGAN
COURT OF APPEALS

In re J. L. THOMAS, Minor.

UNPUBLISHED
November 19, 2020

No. 352758
Wayne Circuit Court
Family Division
LC No. 17-000220-NA

Before: GLEICHER, P.J., and K. F. KELLY and SHAPIRO, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating his parental rights to his minor child, JLT, under MCL 712A.19b(3)(g), (h), and (j). Finding no errors warranting reversal, we affirm.

I. BASIC FACTS

On October 16, 2016, a murder occurred in Dearborn, Michigan. Respondent was arrested for the homicide on December 13, 2016. Ultimately, respondent pleaded guilty to second-degree murder, MCL 750.317, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to 28 to 50 years' imprisonment for the homicide and two years' imprisonment for the felony-firearm conviction. While respondent was incarcerated, his accomplice to the murder gave birth to their minor child on August 17, 2017. The child's mother also pleaded guilty to second-degree murder and was sentenced to serve 10 to 30 years' imprisonment. Consequently, the Department of Health and Human Services (DHHS) filed a petition to terminate their parental rights to the newborn child. The maternal grandfather had previously provided care for the mother's older children after the termination of her rights, and he accepted responsibility for the newborn. At a hearing, the child's mother testified that respondent was the biological father to the child, although he did not believe he was the father. When the mother gave this testimony, respondent apparently made mocking noises and laughed. When asked if he would assume responsibility for the child, respondent requested a DNA test.

The results of a DNA test were not presented at the next hearing. Instead, a worker from Washtenaw County's Children's Protective Services (CPS) testified that there was no legal father, respondent was the putative father, but he failed to establish paternity. The worker stated that respondent made no effort to care, support, or plan for the child, and at a prior hearing, respondent mentioned that he was "not the father." The referee found that the father of the child was

“unknown and unidentifiable,” no man had come forward to establish paternity, and statutory grounds and the child’s best interests supported termination of the rights of the “unknown, unidentified father.” Respondent appealed the order terminating the unknown biological father’s parental rights. After a lengthy appellate process, this Court concluded that a remand to the trial court was warranted to offer respondent a DNA test at petitioner’s expense to confirm or deny his relationship to the child. *In re J L Thomas Minor (On Remand)*, unpublished per curiam opinion of the Court of Appeals, issued June 27, 2019 (Docket No. 342183), slip op 1, 5-6.

On August 27, 2019, a DNA test report was prepared that concluded respondent could not be excluded as the father of the minor child, but rather, the “probability of paternity is 99.99999998%.” In September 2019, because respondent had been found to be the legal father, he offered his parents as possible caregivers for the child’s placement. A supplemental petition for permanent custody involving respondent was filed. This petition noted that respondent had not provided financial or other material support for the child, had not visited the child, was currently incarcerated for second-degree murder and felony-firearm, and his earliest release date was in 2048.

At the permanent custody hearing, the DHHS worker testified that the minor child was currently placed with his maternal grandfather. The grandfather was taking care of all the child’s needs, and the child did not have special needs. She opined that the grandfather had offered the child a stable home since birth and that this placement was in the child’s best interests. In addition, the grandfather had adopted the child’s older siblings. The worker recommended that respondent’s parental rights be terminated because he was currently incarcerated, the minor child would be 30-years old at the time of respondent’s prison release, the grandfather was providing “the best care and custody,” and the minor child would not be separated from his siblings. Because respondent had never cared for the child, there was no bond. The worker did have a family team meeting with respondent in which he identified his mother and his father as potential relative placements although they lived out of state. With the assistance of out of state agencies, it was determined that respondent’s relatives were “unsuitable” after conducting a criminal background check, a child protective services history, and consideration of the agency policy against sibling separation.

Respondent testified that he was incarcerated before the child’s birth. The sister of the child’s mother notified respondent of the birth and sent him pictures. Once respondent requested a DNA test, the child’s family suspended all contact and did not respond to letters. Respondent testified that he was contacted in 2019 by an unknown DHHS worker asking to provide family members willing to be involved in his child’s life. Respondent provided his mother’s name and phone number, his father’s name, and the phone number for his father’s wife. To respondent’s knowledge, none of his family members were contacted or visited by DHHS. Additionally, the DHHS worker asked about family contact with the child, but did not inquire about respondent’s wishes. Respondent requested and continued to request contact with his child, but was advised that the decision belonged to the maternal grandfather. Consequently, respondent asked to be named on the child’s birth certificate to allow the child to visit him in prison. Respondent asserted that he did not abandon the child by being imprisoned. Finally, respondent advised the court that “I do want to be involved in my child’s life. I didn’t have my father. I want my son to have his.” When questioned about respondent’s referral of his father as a possible placement for his child, respondent testified that his father came into his life when he “got older.”

At the conclusion of the testimony, the trial court found that the statutory grounds for termination of parental rights were satisfied and that termination of respondent's parental rights was in the child's best interests. The court found that respondent failed to present suitable relatives to support and care for the child during his incarceration.

II. STATUTORY GROUNDS

Respondent alleges that DHHS failed to present clear and convincing evidence to support the statutory grounds for termination of his parental rights. We disagree.

“To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground under MCL 712A.19b(3) has been established.” *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). “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.” *Id.*; see also MCR 3.977(K).

The statutory grounds for termination relied on by the trial court state:

(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:

(g) The parent, although, in the court's discretion, financially able to do so, 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.

(h) The parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years, and the parent has not provided for the child's proper care and custody, 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. [MCL 712A.19b.]

“Only one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights, even if the court erroneously found sufficient evidence under other statutory grounds.” *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011). We conclude that there was clear and convincing evidence to support MCL 712A.19b(3)(h).

The state may not fail to evaluate or involve a respondent, but then terminate his rights premised on his failure to comply with the case service plan at that time or in the future. *In re Mason*, 486 Mich 142, 159-160; 782 NW2d 747 (2010). “The mere present inability to personally care for one's children as a result of incarceration does not constitute grounds for termination.” *Id.* at 160. Although a parent is imprisoned, he need not personally care for the child, but may

fulfill the “duty to provide proper care and custody in the future by voluntarily granting legal custody to his relatives during his remaining term of incarceration.” *Id.* at 161-163.

With regard to MCL 712A.19b(3)(h) addressing parental imprisonment, respondent asserts that he “immediately tried to establish paternity for his son and offered family members to care for his son while he was incarcerated,” but DHHS failed to properly consider his family because they lived out of state.

The record does not reflect that respondent “immediately” tried to establish paternity for his son. The most immediate course of action would have been to follow the acknowledgment of parentage act, MCL 722.1001 *et seq.*, which merely requires the completion of a form acknowledging paternity, MCL 722.1003. Alternatively, respondent could have filed an action to determine paternity. MCL 722.714(1). Instead, the referee noted that when the mother identified respondent as the minor child’s biological father, he made mocking noises and laughed as the mother testified. Consequently, at respondent’s request, the referee stated that it would order a DNA test. However, when the parties appeared at the hearing to address termination of parental rights, there was no indication that a test was ever completed. Because respondent questioned paternity and did not come forward with a plan for the child, the case proceeded to terminate the rights of the “unknown and unidentifiable” father on December 15, 2017. Respondent did not object during the proceedings to that course of action, but pursued a claim of appeal. With remands to the trial court, it took nearly 22 months to resolve the appellate process before a DNA test confirmed respondent as the child’s biological father. Consequently, respondent and his family did not have any relationship with or plan for the minor child for nearly 22 months.

After the DNA test established paternity on August 27, 2019, DHHS spoke to respondent on September 17, 2019. At that time, respondent provided the names and contact information for the child’s paternal grandmother living in Texas and paternal grandfather living in Connecticut. However, a DHHS worker had to conduct a child protective services and criminal background check. Because respondent’s parents were located out of state, the worker relied on reports from those state agencies that the potential placements were deemed “unsuitable.” Further, the minor child had been placed with his maternal grandfather since his birth on August 17, 2017, was being raised with his two siblings, and knew no other home or family.

In light of the above facts and circumstances, respondent did not support his contention that he “immediately” pursued a relationship with his son and proffered his parents as a suitable placement only to be thwarted by DHHS’ failure to investigate his proposed placement. The trial court assessed the credibility of the witnesses and did not conclude that the DHHS investigation of respondent’s family was deficient, but accepted the credibility of the DHHS worker’s testimony that the placements were deemed “unsuitable.” This Court defers to “the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.” *In re Ellis*, 294 Mich App at 33.

Therefore, this case does not reflect that respondent’s parental rights were terminated solely premised on his imprisonment and failed to consider his fulfillment of his duty to provide proper care and custody by his placement of the child with his relatives. *In re Mason*, 496 Mich at 160-163. Rather, after the child was born to his incarcerated parents, his maternal grandfather assumed responsibility to raise the child when the mother was imprisoned for a minimum term of ten years

and respondent for a minimum term of 28 years. Respondent contested his status as the child's father, but when relieved of responsibility to provide for the child through a termination of the rights of the "unknown" father, he appealed the decision. While the appeal was pending, respondent did not take any action to provide care for the child through relatives. Only two years after the initiation of the petition, respondent identified his parents as relative placements only to learn that the investigating agencies deemed them unsuitable. Considering the length of the period of incarceration and the failure to provide proper care and custody during his imprisonment, the trial court's determination that MCL 712A.19b(3)(h) was satisfied was not clearly erroneous.¹

III. BEST INTERESTS

Respondent contends that termination of his parental rights was not in the child's best interests because he could have had a relationship with the child despite his incarceration, proffered relatives as a suitable placement, and the placement with the maternal grandfather weighed against the termination when a guardianship was satisfactory. We disagree.

Once a statutory ground for termination has been established, the trial court must conclude that termination of parental rights is in the child's best interests before it can terminate parental rights. MCL 712A.19b(5); *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). A trial court's decision regarding a child's best interests is also reviewed 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 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). "In deciding whether termination is in the child's best interests, the court may consider the 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*, 297 Mich App at 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). A child's placement with relatives is also a factor to consider and generally weighs against termination. *In re Gonzales/Martinez*, 310 Mich App 426, 434; 871 NW2d 868 (2015).

The trial court did not clearly err in concluding that termination of respondent's parental rights was in the child's best interests. Respondent was never able to plan for the child or demonstrate any parenting skills because he was incarcerated when the child was born. Additionally, because there was no contact with the child, respondent did not have a bond with him. Respondent was incarcerated for a minimum of 28 years. However, the child needed permanency, stability, and finality. The child had been living with his maternal grandfather and

¹ Although only one statutory ground for termination of parental rights is necessary, the trial court also did not clearly err in concluding that MCL 712A.19b(3)(g) was satisfied with clear and convincing evidence.

his siblings since his birth. Indeed, DHHS has an obligation to make reasonable efforts to place siblings in the same adoptive home unless it would be contrary to their safety or well-being. MCL 722.954a(6)(a). Although a relative placement generally weighs against termination, the maternal grandfather sought to adopt the child as he had done with the child's siblings. After a DNA test confirmed respondent was the child's biological father, DHHS consulted with respondent to determine if he had relatives willing to plan for the child. However, respondent offered his parents who resided out of state, and an investigation did not find that they would make a suitable placement. In light of respondent's lack of a bond with the child, his minimum term of imprisonment of 28 years, his failure to identify relatives that were deemed suitable placements, and the child's current placement with his maternal grandfather and siblings that provided permanency, stability, and finality, the trial court did not clearly err in its best interests determination.

Affirmed.

/s/ Elizabeth L. Gleicher

/s/ Kirsten Frank Kelly

/s/ Douglas B. Shapiro