STATE OF MICHIGAN

COURT OF APPEALS

In re T. R. L. ALLEN, Minor.

UNPUBLISHED
December 10, 2020

No. 352835
Monroe Circuit Court
Family Division
LC No. 17-024373-NA

Before: LETICA, P.J., and RIORDAN and CAMERON, JJ.

PER CURIAM.

Respondent-father appeals as of right the trial court's order terminating his parental rights to the minor child, TRLA, pursuant to MCL 712A.19b(3)(c)(*i*) (conditions leading to adjudication continue to exist), (g) (unable to provide proper care and custody), and (j) (likelihood of harm).[1] We affirm.

I. BACKGROUND

In November 2017, TRLA resided with his biological mother and four siblings. One of TRLA's siblings, EA, was also respondent's child.[2] For various reasons, the Department of Health and Human Services (DHHS) petitioned the trial court to take temporary custody of TRLA and his siblings. EA was placed with his maternal grandmother and TRLA's other siblings were placed with their father, but TRLA could not be placed with his grandmother because of behavioral issues. Nor could TRLA be placed with respondent, who was in jail awaiting trial. Therefore, TRLA was

[1] Petitioner sought termination under MCL 712A.19b(3)(c)(*i*), (c)(*ii*), (h), (i), and (j). After the court determined that three statutory grounds were established, it did not address the other statutory grounds. Respondent does not challenge the trial court's findings as to the statutory grounds, but indicates that the trial court also terminated his parental rights under MCL 712A.19b(3)(h) (deprivation of a normal home for more than two years due to parent's incarceration). The record does not support this assertion and, as only a single statutory ground need be established in support of termination, we will not further address the sufficiency of the statutory grounds.

[2] Respondent released his parental rights to EA during these proceedings. TRLA's mother also released her parental rights to EA and TRLA; she is not a party to this appeal.

placed in a residential program through foster care. Respondent was subsequently convicted and sentenced to a term of imprisonment. DHHS prepared a case service plan for respondent, but the services available to him were limited because of his incarceration in a maximum-security prison. After over two years, respondent remained incarcerated and DHHS filed a supplemental petition to terminate respondent's parental rights to TRLA. After a termination hearing, the trial court terminated respondent's parental rights to TRLA.

This appeal followed.

II. REASONABLE EFFORTS

Respondent argues that the trial court clearly erred by finding that DHHS made reasonable efforts to reunify him with TRLA. Relying on *In re Mason*, 486 Mich 142; 782 NW2d 747 (2010), respondent contends that DHHS's failure to provide additional services deprived him of a meaningful opportunity to participate in the proceedings. He argues that this is particularly true where he complied as well as he could with his case service plan and DHHS's reasonable efforts would have improved his ability to be reunified with TRLA. We disagree.

We review a trial court's finding that DHHS made reasonable efforts to reunify a respondent and child for clear error.[3] See *In re Fried*, 266 Mich App 535, 541-543; 702 NW2d 192 (2005) (reviewing for clear error the trial court's finding that DHHS made reasonable efforts). "A finding is clearly erroneous if[,] although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re COH, ERH, JRG, & KBH*, 495 Mich 184, 203-204; 848 NW2d 107 (2014) (quotation marks omitted).

When determining whether to terminate a respondent's parental rights, a trial court must consider whether DHHS made reasonable efforts to reunify the child and family. See MCL 712A.19a(2). DHHS "has an affirmative duty to make reasonable efforts to reunify a family before seeking termination of parental rights." *In re Hicks/Brown*, 500 Mich 79, 85; 893 NW2d 637 (2017), citing MCL 712A.18f(3)(b), MCL 712A.18f(3)(c), and MCL 712A.19a(2). "The state is not relieved of its duties to engage an absent parent merely because that parent is incarcerated." *Mason*, 486 Mich at 152. "As part of these reasonable efforts, [DHHS] must create a service plan outlining the steps that both it and the parent will take to rectify the issues that led to court involvement and to achieve reunification." *Hicks/Brown*, 500 Mich at 85-86. "If a child continues

[3] We have previously stated that a respondent must "object or indicate that the services provided to [him or her] were somehow inadequate" to preserve a claim that DHHS failed to provide reasonable efforts toward reunification. *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). Respondent did not object to DHHS's service plan, and therefore failed to preserve any argument that DHHS failed to fulfill its statutory obligation under MCL 712A.19a(2) (mandating that reasonable efforts to reunify the parent and child must be made unless one of the exceptions applies). However, respondent argues on appeal that the trial court erred when it found that DHHS had made reasonable efforts. As "no exception need be taken to a finding or decision," we will review this issue as preserved. MCR 2.517(A)(7).

in placement outside of the child's home, the case service plan shall be updated and revised at 90-day intervals . . . ." MCL 712A.18f(5).

In this case, TRLA was removed from his mother's custody and placed in foster care on November 22, 2017. Throughout these proceedings, respondent was incarcerated, first in jail and then in prison. Respondent was present, either physically or electronically via teleconferencing technology, for 14 of 21 court hearings. For five of the remaining seven hearings, the trial court timely scheduled an additional hearing in order to allow respondent to participate in a dispositional review hearing. The two remaining hearings were a status conference regarding the upcoming termination hearing and a dispositional review hearing. Although respondent was not present, his attorney attended both hearings.

On December 1, 2017, respondent entered a plea, and the court exercised its jurisdiction over TRLA. DHHS prepared a case service plan that the court adopted on December 27, 2017. At the time, respondent was in jail awaiting trial on pending criminal charges. Thereafter, respondent was convicted and sentenced to a term of imprisonment. At the first dispositional review hearing on March 12, 2018, DHHS informed the court that respondent's service plan had to be amended to address respondent's incarceration. The amended service plan pertinently required respondent to: (1) attend adult basic education classes or complete a general educational development (GED) course, unless respondent already had a high school diploma or GED; (2) maintain employment in prison, unless prohibited from doing so; (3) request a mental health assessment and permit DHHS access to that assessment; (4) request access to the prison library to review parenting education resources; and (5) prepare a written plan outlining respondent's future plans regarding housing, employment, childcare, and mental health treatment. DHHS agreed to make all necessary referrals to support respondent.

Subsequently, respondent's attorney advised the DHHS caseworker that the prison would not give respondent a mental health assessment unless DHHS submitted a request. The caseworker agreed to do so. When the caseworker contacted the prison about the assessment, she was told that respondent had to make the request. Eventually, respondent's DHHS caseworker for another termination case requested an assessment from respondent's prison and obtained the results, which were accessible to the caseworker in this case. And because the prison library did not have any parenting education resources, the caseworker mailed a parenting handbook to respondent, which he completed and returned. Due to a waiting list for prison jobs, respondent could not obtain employment immediately, but eventually he did so. Further, between the filing of the supplemental petition for termination and the termination hearing, respondent sent the caseworker a letter outlining his plans for employment, housing, and childcare once he was released from prison. Respondent anticipated that he would be paroled on August 31, 2020. The caseworker also sent approximately 40 letters to respondent to apprise of the progress of the case and discuss his service plan with him. The caseworker included pre-stamped envelopes to enable respondent to reply. She did not, however, personally visit respondent in prison. Moreover, the caseworker mailed information to respondent about obtaining his driver's license multiple times, but the prison always returned it. Finally, respondent already had his GED, satisfying the general educational requirement of his case service plan.

Respondent argues the trial court erred by finding that DHHS had made reasonable efforts toward reunification because the DHHS caseworker never personally visited him in prison, never

attempted to arrange a telephone call, and never took any steps to ensure he understood the case service plan. Respondent also asserts there was no record evidence showing that the case worker spoke to a prison social worker or attempted to advocate or secure resources to aid him in complying with his case service plan. Respondent further contends that the caseworker failed to follow through and arrange for his mental health evaluation. In respondent's view, DHHS gave him a cursory plan with "a list of impossible tasks so as to set him up for failure and then to deprive him of his parental rights."

As previously mentioned, respondent was incarcerated in a maximum-security prison, which limited the programming available to him. Additionally, respondent's prison misconducts and security-level impacted the opportunities available to him. As described above, the caseworker assisted respondent in completing his case service plan, in part, by providing parenting education material. Although the caseworker did not personally visit respondent, she provided him with her telephone number and remained in constant contact with him via mail. The record further reflects that the caseworker was also in contact with prison staff. Likewise, the record confirms that respondent's mental health evaluation was completed in another termination case and was made accessible in this case. In fact, contrary to respondent's argument, respondent completed the majority of his case service plan.

Importantly, respondent's reliance on *Mason* is misplaced as, the only similarity between this case and *Mason* is that the respondent-fathers were incarcerated. In *Mason*, the incarcerated respondent was essentially excluded from participating in the proceedings leading up to the termination of his parental rights. There were 16 months of review and permanency planning hearings in *Mason* where the trial court failed to secure the respondent's participation as required under MCR 2.004. *Mason*, 486 Mich at 154-155. In this case, on the other hand, the trial court either secured respondent's participation or rescheduled all but 2 of 21 hearings.

In *Mason*, our Supreme Court was not even certain that the respondent had received a copy of his case service plan—a plan that was not adapted to his incarceration. *Id*. at 156-158. Furthermore, the DHHS caseworker in *Mason* did nothing to assist the respondent with his service plan. *Id*. at 157-158. In this case, however, the DHHS updated respondent's service plan once it learned he had been sentenced to prison, the caseworker sent a copy of respondent's service plan to respondent and discussed it with him via mail, and the caseworker made several efforts to assist respondent with his service plan. Thus, the facts in *Mason* bear little resemblance to those in the instant case. On this record, we conclude that the trial court did not clearly err by finding that the DHHS made reasonable efforts to reunify respondent with TRLA.

III. BEST INTERESTS

Respondent argues the trial court erred in finding that termination of his parental rights was in TRLA's best interests. Respondent primarily suggests that, in light of TRLA's behavioral issues, his low probability of being adopted, and his need for a father-figure, TRLA would have been better off waiting for respondent to be in a position to care for him. We disagree.

We review the trial court's finding that termination of parental rights is in a child's best interests for clear error. *In re Schadler*, 315 Mich App 406, 408; 890 NW2d 676 (2016). "A finding is clearly erroneous if[,] although there is evidence to support it, the reviewing court on

the entire evidence is left with the definite and firm conviction that a mistake has been made." *COH*, 495 Mich at 203-204 (quotation marks and citation omitted).

"Once a statutory ground for termination is established by clear and convincing evidence, the trial court must terminate parental rights unless it finds from the whole record that termination clearly is not in the child's best interests." *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004). When determining the best interests of a child, the trial court should weigh all the evidence before it and consider a variety of factors. *In re Keillor*, 325 Mich App 80, 93-94; 923 NW2d 617 (2018). The court may consider

> the child's bond to the parent, . . . the child's need for permanency, stability, and finality, . . . the advantages of a foster home over the parent's home[,] . . . the length of time the child was in care, the likelihood that the child could be returned to [his] parent[']s[] home within the foreseeable future, if at all, and compliance with the case service plan. [*Id*. at 93 (second and third omission in original; first alteration in original; quotation marks omitted).]

The court may also consider the possibility of adoption. *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014).

Aside from respondent's compliance with his case service plan, nearly every factor weighed in favor of terminating respondent's rights. TRLA did not have a bond with respondent. *Keillor*, 325 Mich App at 93. Fifteen-year-old TRLA had only spent time with respondent on a few, sporadic occasions. TRLA never lived with respondent and respondent never provided any kind of support for TRLA's care. Although TRLA recognized that his mother limited contact with respondent, TRLA was cognizant that respondent's criminal activities and incarcerations interfered with the development of a father-son bond. TRLA testified that he had no desire to have contact with respondent until TRLA was an adult and respondent stopped engaging in criminal behavior.

The trial court also did not know when respondent would be paroled. At a minimum, respondent would be incarcerated for seven months. And, once paroled, respondent would need additional time to acquire housing and income before TRLA could live with him. TRLA had already been in foster care for over two years. Thus, the length of time that TRLA was in foster care and the likelihood of TRLA being placed in respondent's care within the foreseeable future weighed in favor of termination. *Id*.

TRLA's need for permanency, stability, and finality also weighed heavily in favor of terminating respondent's parental rights. TRLA was abused when he was younger, resulting in posttraumatic stress disorder and inappropriate behavior. While in foster care, TRLA had to be placed in a residential program. Once there, TRLA's behavior improved enormously. So much so that the program was hopeful TRLA would be able to move to a semi-independent living program once he turned 16.

The trial court further found that reunifying respondent and TRLA would detrimentally impact TRLA's progress because respondent was not equipped to address TRLA's unique needs. The trial court also found that, after being in foster care for over two years without knowing

whether respondent would ever obtain custody of him, having finality would benefit TRLA. Reviewing the evidence presented, the trial court's finding that TRLA's need for permanency, stability, and finality weighed in favor of terminating respondent's parental rights was not clearly erroneous. *COH*, 495 Mich at 203-204.

Respondent further argues that TRLA has a low probability of being adopted given his age and behavioral issues, which weighed against terminating respondent's parental rights. *White*, 303 Mich App at 714. But the caseworker testified that there was a 50% probability of TRLA being adopted. The court agreed, noting that TRLA's treatment had greatly enhanced his opportunity for adoption. To the extent that respondent contends the trial court clearly erred in accepting the caseworker's testimony, we defer to the trial court's special opportunity to judge the credibility of the witnesses before it. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). On this record, the trial court's finding that the possibility of adoption weighed in favor of termination was not clearly erroneous. *COH*, 495 Mich App at 203-204.

For all of these reasons, the trial court did not clearly err when it found that termination of respondent's parental rights was in TRLA's best interests.

Affirmed.

/s/ Anica Letica
/s/ Michael J. Riordan
/s/ Thomas C. Cameron