

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
July 21, 2011

In the Matter of KOSTELICH/FERRARA,
Minors.

No. 300756
Wayne Circuit Court
Family Division
LC No. 03-421640

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

PER CURIAM.

Respondent appeals as of right the trial court's order terminating his parental rights to the children under MCL 712A.19b(3)(b)(*ii*), (b)(*iii*), (c)(*i*), (c)(*ii*), (g), and (j). Because we conclude that there were no errors warranting relief, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

In 2003, petitioner filed its first petition seeking to place the children in the court's temporary custody on the basis of allegations that the children were neglected and respondent had physically abused the children's mother in front of the children. Respondent completed a parent-agency agreement, the children were placed back with the family, and the court dismissed its jurisdiction over the children in 2004.

Petitioner filed a new petition in December 2007, seeking to place the children in the court's temporary custody following allegations by respondent's nine-year-old daughter that, B.F., her paternal uncle and respondent's brother, had sexually molested her. The petition alleged that respondent had moved out of the home he shared with the children's mother in 2005 and that the mother was then living with B.F., another of respondent's brothers, and the children. The mother claimed that respondent was homeless.

The court took the children into its temporary custody and ordered respondent's compliance with a parent-agency agreement that required that he maintain suitable housing and a legal source of income; participate in individual, domestic violence, and family counseling; consistently visit the children; submit random drug screens and participate in drug treatment if the screens were positive; complete a Clinic for Child Study evaluation; and maintain contact with the caseworker. Petitioner later filed a supplemental petition to terminate respondent's parental rights to the children, alleging respondent had failed to comply with the court-ordered treatment plan.

At the termination hearing in October 2009, the caseworker testified that respondent had failed to substantially comply with his parent-agency agreement. He never submitted drug screens. His parenting classes were terminated because of missed classes. He failed to show that he had suitable housing before the termination hearing, even though he did present a lease to the caseworker only on the hearing date. After admitting that he had not visited the children for five months before the filing of the temporary custody petition, he visited the children while they were in the court's care on only seven of 12 scheduled dates.

His participation in counseling was terminated by his counselor because respondent refused to address issues of domestic violence and the reasons the children came into the court's care, particularly his daughter's allegations of sexual abuse. He participated in a Clinic for Child Study evaluation, but the clinician concluded that respondent should not be considered as a custodial placement for the children, noting that he adamantly denied his daughter's allegations of sexual abuse by his brother although later stating that another of his brothers was most likely the perpetrator. The clinician further noted that respondent had limited insight into the need for protective services for the children and denied having any responsibility for the children being in the court's care.

The caseworker testified that the children were then doing well in their foster care placement and in school. While respondent's son was too young to understand the proceedings, respondent's daughter informed the caseworker that she wanted to be adopted by a family.

The court found that clear and convincing evidence supported termination of respondent's parental rights and entered an order in October 2009, terminating respondent's parental rights under §§ 19b(3)(c)(i), (g), and (j). Respondent appealed the court's order. This Court vacated the order, based on a finding that the trial court had improperly had an in camera interview with respondent's daughter, and remanded the case with instructions that the case be assigned to a different judge to review the record and make findings regarding termination of respondent's parental rights. *In re Kostelich/Ferrara, Minors*, unpublished opinion per curiam of the Court of Appeals, issued May 4, 2010 (Docket No. 295121).

On remand, the trial court reviewed the lower court transcripts and evidence and concluded that the evidence supported termination of respondent's parental rights under §§ 19b(3)(b)(ii), (b)(iii), (c)(i), (c)(ii), (g), and (j) and that termination was in the children's best interest. This appeal followed.

II. ANALYSIS

On appeal, petitioner concedes that the trial court erred in terminating respondent's parental rights under § 19b(3)(b)(iii) and (c)(ii), which are not applicable to the facts here. However, the evidence from the lower court proceedings, particularly evidence showing respondent's minimal compliance with his parent-agency agreement and his refusal to address his daughter's sexual abuse allegations, shows that the trial court did not clearly err in finding termination was appropriate under §§ 19b(3)(c)(i), (g), and (j). MCR 3.977(H)(3); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). While the evidence did not support termination under the other grounds, the error was harmless where the remaining statutory grounds were supported by clear and convincing evidence. *In re Powers Minors*, 244 Mich App 111, 118; 624

NW2d 472 (2000). Further, the evidence showed that termination of respondent's parental rights was in the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Thus, the trial court did not clearly err in terminating respondent's parental rights to the children.

Affirmed.

/s/ Michael J. Kelly
/s/ Peter D. O'Connell
/s/ Deborah A. Servitto