STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
June 23, 2011

In the Matter of GENTRY, Minors.

No. 301056
Oakland Circuit Court
Family Division
LC No. 08-753007-NA

Before: FITZGERALD, P.J., and SAWYER and BECKERING, JJ.

PER CURIAM.

Respondent appeals as of right the trial court order terminating his parental rights under MCL 712A.19b(3)(b)(*i*), (c)(*ii*), and (i). We affirm.

I

On November 10, 2008, petitioner, the Department of Human Services, filed a petition for temporary custody of respondent's two minor children alleging in part that: (1) respondent was admitted to Providence Hospital after he told hospital staff that he was hearing voices telling him to harm himself, strangle his wife, and hurt his children; (2) he had a long history of bipolar disorder and depression and had stopped taking his medication for those conditions eight years before; (3) he reported that he drank two pints of liquor a week and occasionally used cocaine; (4) he tested positive for cocaine at the hospital; (5) he had a lengthy criminal history dating back over 30 years and was then on parole after being released from prison in January 2008; (6) in April 2008, Children's Protective Services (CPS) investigated an incident in which respondent's son missed two days of school and returned to school with a bruise under his eye after school officials called home to report bad behavior; (7) respondent and the children's mother said that as punishment for the bad behavior at school, respondent whipped his son with a belt on the legs and buttocks and accidentally hit him under the left eye; (8) respondent was convicted of fourth-degree child abuse for this incident; (9) services were offered to both parents and closed in July 2008; and (10) in November 2008, petitioner asked the children's mother to place her children in a safety plan, she refused to do so, and she continued to leave the children in respondent's care. On January 23, 2009, a petition was filed requesting that the court take jurisdiction over a third child of respondent's, following the child's birth.

The trial court assumed jurisdiction over the children, and although respondent and the children's mother appeared to be benefitting from services provided to them, on March 18, 2010, petitioner filed a supplemental petition seeking to terminate respondent's parental rights due to another incident of abuse on March 8, 2010.[1] The petition alleged in part that: 1) on March 8, 2010, respondent physically abused his son, leaving a 12-inch welt on his back, and that respondent's physically abusive behavior placed the child at risk of harm; 2) following the incident, respondent was arrested and charged with domestic violence; and 3) petitioner has had contact with the family since 2008, the children have been removed from the home twice and are currently temporary court wards, services were provided in the form of individual counseling, in-home services through the Judson Center, and parenting classes, that despite these services and efforts to maintain the family, the petition again contains allegations of abuse, and that based on the repeated physical abuse by respondent, it was likely that the children would be harmed if they remained in his care.

At the hearing scheduled for the petition to terminate respondent's parental rights, he made admissions[2] to the allegations in the March 18, 2010, petition and requested a best interests hearing. The trial court entered an order finding that petitioner had proven by clear and convincing evidence grounds for termination of respondent's parental rights pursuant to MCL 712A.19b(3)(b)(*i*), (c)(*ii*), and (i).

A best interests hearing was held on October 7, 2010. Respondent, who was incarcerated for having violated his parole due to the March 8, 2010, incident, chose to participate in the best interests hearing by telephone due to health issues.

Dr. Douglas James Park, a psychologist working for the Oakland County Psychology Clinic, was qualified as an expert in clinical psychology and testified that he performed psychological evaluations of respondent's son and respondent in August and October 2010, respectively. Respondent missed his first appointment because he feared mistreatment, but the appointment was rescheduled. At the appointment, respondent was alert and oriented. He became tearful several times about his incarceration and possibly not seeing his children again.

Respondent acknowledged domestic violence in the past, specifically an arson charge in 1998 and said that he burned down the home of a woman (not the children's mother) because he was angry after she threw him out. Respondent said that there was no domestic violence involving the children's mother, but he said that he had to "go over his wife" to get to his son in the last incident of abuse. Respondent acknowledged some abuse of his son, but denied some also. For example, respondent admitted that he hit his son in the past, but he denied ever hitting

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[1] The children's mother was also named in the petitions due to her failure to protect the children from respondent, but respondent was incarcerated following the March 8, 2010, incident and the mother's parental rights have not been terminated.

[2] On the "Plea of Admission/No Contest to Supplemental Petition to Terminate Parental Rights," form, respondent placed his initials next to the statement, "I understand that if I plead to the facts, I will give up my right to challenge their truth in the hearing.

him in the eye, despite reports that he had. Respondent felt that the last incident of abuse was appropriate physical discipline and minimized other abuse.

In Dr. Park's interview with respondent's son, the son tried to minimize the violence and initially reported that there was no violence. When confronted with the facts in the petition, he acknowledged that violence. The son felt that his parents could not live together because he would need to protect his mother from respondent. There was a bond between the son and respondent father, and the son knew that if he spoke out against his father, things would go poorly for respondent. This was an indication of trauma in the son.

Respondent told Dr. Park that he was in prison for physically abusing his son and violating parole, but he later said that his parole was violated for a technical rule violation. Respondent initially denied ever hearing voices, but when confronted with the report, he said that he was on drugs at the time and denied that the voices told him to do anything.

Dr. Park recommended that respondent's parental rights be terminated because of his minimization of the abuse and failure to take full responsibility for it. Dr. Park did not believe that respondent felt the type of physical discipline administered was inappropriate. Respondent's personality profile showed some anti-social tendencies with periods of marked dysfunction in terms of his thinking, emotions, and behavior. In general, respondent had a lack of awareness in terms of how his actions impacted others.

Respondent testified that he was 55 years old and that he was then incarcerated at the Parnall Correctional Facility (an MDOC facility) in Jackson. He was participating in the Bridges Program, which gave perpetrators of domestic violence insight into their behavior, feelings, and emotions. The program met twice weekly for two hours, and participants did not complete the program in any specific amount of time; rather, completion was at the discretion of the instructor. Respondent gained insight through the program. He had matured and learned that it was not right for him to hit his child. He knew that he had to resolve the problems that he had with himself, his feelings, and his emotions before acting out against someone else. Respondent initially testified that the program was voluntary but then testified that the program was an MDOC requirement and that after his release, he would be given help for future problems.

Respondent testified that he loved his children very, very much and that it never entered his mind to abuse his son. Respondent testified that "maybe" he did it the wrong way, and he needed more help as far as parenting was concerned, but he loved his babies and their mother. The family never had problems and this was a one-day incident. Otherwise, they were doing well, he and the children's mother were getting their babies back, and he was getting his associate's degree. He was sorry.

Respondent admitted that this was the second incident involving his son that brought him before the court, but he testified that after his release from prison, he would participate in services with Easter Seals, including psychiatric medication and counseling services, in addition to the MDOC aftercare program. Respondent would never put his hands on any of his children again. He never wanted to repeat what he had been through since March. His wife, his family, and his children missed him. He apologized to the children's mother and to the court. He was the one responsible for his being there that day, not petitioner or CPS.

On cross-examination, respondent admitted that he learned from his previous parenting classes that it was not right to hit children and he disregarded what he had learned when he hit his son. Respondent testified that CPS tore up his house and put him back in prison, and CPS called the Department of Corrections and told them to tear up his house. CPS had his son telling people that he was a monster. He was not a monster; he was a father.

Respondent's brother-in-law testified on his behalf that he had seen respondent around the children and their mother. Respondent was warm to the mother, showed care and consideration, was good to her and the children, and had a very close bond with the entire family. Respondent had been a good provider and seemed to set the direction, or focus, for the family and to raise the family's hopes and dreams and give them things to strive and work toward. Respondent's brother-in-law testified that he and the rest of the family would assist respondent with programs if respondent's parental rights were not terminated. However, if the domestic violence continued, he and his family would support the children and their mother over respondent.

The trial court held that petitioner had established by clear and convincing evidence that termination of respondent's parental rights was in the children's best interests. In its opinion, the court quoted from respondent's psychological evaluation, including the following:

> This profile suggests a veneer of friendliness and sociability that cloaks an abrasive hypersensitive—hypersensitivity to criticism in a marked tendency to project blame onto others. He made able—he may be able to favorably impress casual acquaintances, but he displays a characteristic unpredictability, impulsiveness, resentment and moodiness to family members and close associates. He may claim to be an innocent and unfortunate victim of malevolent others, hence, absolving himself of fault and thereby justifying his resentment and anger. [Respondent] is likely to act out his anti-social tendencies when crossed, subjected to minor pressures, or faced with potential embarrassment he may be provoked to a vindictive anger.

The court then specifically noted that respondent's show of anger and temper during cross-examination was as described in the psychological evaluation. During direct examination, respondent father was "docile," "emotional," and "said he was sorry." During cross-examination, "[w]e saw the vindictiveness, we saw the anger, we saw the anti-social response of [his] personality. We saw him lash out at the Department; lash out at MDOC, just as he lashed out at [his son]." The court stated that it feared for the safety of respondent's children if returned to him because "you're going to blow up again."

II

In order to terminate parental rights, a trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been proven by clear and convincing evidence. *In re Fried*, 266 Mich App 535, 540-541, 702 NW2d 192 (2005). Once a ground for termination is established, the court must order termination of parental rights if it finds that termination is in the children's best interests. MCL 712A.19b(5). "We review for clear error both the court's decision that a ground for termination has been proven by clear and convincing evidence and . . . the court's decision regarding the child's best interest." *In re Trejo*,

462 Mich 341, 356-357; 612 NW2d 407 (2000); MCR 3.977(K). "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 Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989) (quotation marks and citations omitted).

III

Respondent argues that the trial court clearly erred in finding that the statutory grounds for termination were established by clear and convincing evidence. The court terminated respondent's parental rights based on the following grounds:

> (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:
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> (b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:
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> (*i*) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.
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> * * *
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> (c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:
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> (*ii*) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.
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> (i) Parental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful. [MCL 712A.19b.]

Although this issue is not preserved because respondent admitted the allegations in the supplemental petition for termination, we find that the trial court clearly erred in finding that

MCL 712A.19b(3)(c)(*ii*) and (i) were established by clear and convincing evidence. The court did not explain what "other conditions" existed to satisfy section 3(c)(*ii*), and section 3(i) appears to be inapplicable. However, the error was harmless, because only one statutory ground need be established for proper termination, see *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000), and the court did not clearly err in finding that respondent's son had suffered physical injury and abuse at respondent's hand and that it was reasonably likely that respondent's children would suffer from physical abuse in the future if returned to his custody. MCL 712A.19b(3)(b)(*i*). These facts were established by respondent's admission to the petition and by the lower court record in this matter. Respondent did not allege that his admissions were involuntary before the trial court and he does not so argue on appeal. Therefore, the trial court did not clearly err in finding that section (b)(*i*) was established by clear and convincing evidence.

Respondent also argues that the trial court erred when it determined that termination was in the children's best interests. Based on our review of the lower court record, the court did not clearly err in its best interest determination. The court took jurisdiction over the children because of respondent's physical abuse of his son. Numerous services were offered to respondent to deal with this issue, and he physically abused his son again shortly after the child returned home. There was no evidence that respondent benefited from any services after that time, and no evidence that he would benefit from future services offered in prison or upon his release. Further, the court made specific findings regarding respondent's demeanor during his cross-examination at the best interests hearing, which was such that the court feared for the safety of the children if returned to respondent's custody. Therefore, the court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ David H. Sawyer
/s/ Jane M. Beckering