

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

June 23, 2011

In the Matter of L. T. J. GARTH, Minor.

No. 301558

Wayne Circuit Court

Family Division

LC No. 09-486260

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

PER CURIAM.

Respondent appeals as of right from the trial court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence and that termination is in the best interest of the child. MCL 712A.19b(5); *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). The trial court's decision terminating parental rights is reviewed for clear error. MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 355-357; 612 NW2d 407 (2000). 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 JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003); *In re Miller*, 433 Mich 331, 337; 455 NW2d 161 (1989).

Termination of parental rights was proper under MCL 712A.19b(3)(c)(i), and (g) because the conditions that led to the adjudication continued to exist and respondent was unable to provide proper care and custody of the child. Respondent had never provided care for his daughter and admitted being unable to care for her at the time of her placement in protective care. At the time of the child's adjudication respondent was using illegal drugs and his mental health was unstable.

By the time of the permanent custody hearing, respondent was still unable to care for his daughter. He never came into compliance with his treatment plan. Respondent was terminated from parenting classes and counseling. He never obtained independent housing or demonstrated proof of employment. Respondent had not addressed his drug abuse problem or demonstrated that he was drug free by regularly submitting requested drug screens. He also delayed treating his mental health issues by failing to timely seek psychological and psychiatric evaluations. Respondent's failure to comply with his parent-agency agreement is evidence of his failure to provide proper care and custody for his child. *JK*, 468 Mich at 214. A parent must benefit from

the services offered so that he can improve parenting skills to the point where the child would no longer be at risk in the parent's custody. *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005). Respondent has not demonstrated that he completed or benefited from services.

Respondent argues that petitioner failed to make reasonable efforts to service his case because the trial court did not receive his psychological and psychiatric evaluations until shortly before the conclusion of the permanent custody hearing on November 12, 2010. Respondent argues that he was unable to comply with his treatment plan because he did not know he was suffering from bipolar disorder and needed medication. Respondent's assertions misrepresent the facts in this case. The psychological evaluation was conducted on June 4, 2010, and the psychiatric evaluation took place on July 8, 2010. However, these untimely evaluations were not the result of petitioner's failure to make reasonable efforts to provide services. The evaluations were completed late because respondent did not set up an appointment for evaluation or make himself available for evaluation. In fact, in an effort to motivate respondent to swiftly participate in these mental health evaluations, in August 2009 the trial court made completion of a psychological evaluation a prerequisite to visitation. But, by February 2010, respondent had missed four scheduled psychological evaluation appointments.

Moreover, respondent has not provided legal authority to establish that the petitioner's failure to make reasonable efforts alone establishes a basis for relief. MCL 712.18f(4). Rather, the absence of reasonable efforts by the petitioner has only been relevant to assessing whether the statutory grounds for termination were established. See, e.g., *In re Newman*, 189 Mich App 61, 65-68; 472 NW2d 38 (1991). The court did not clearly err in terminating respondent's parental rights because he failed to take advantage of the services offered to him and not because of petitioner's failure to make efforts. Thus, termination of parental rights was proper under MCL 712A.19b(3)(c)(i) and (g).

Termination of respondent's parental rights pursuant to MCL 712A.19b(3)(j) was also appropriate. Much of the evidence discussed concerning MCL 712A.19b(3)(g) also clearly established a reasonable likelihood that the child would suffer harm if placed in respondent's home. Respondent's untreated substance abuse and mental health issues would expose the child to risk of harm.

The trial court also did not err in its best interest determination. MCL 712A.19b(5). In this case, termination of parental rights was in the best interest of the child given respondent's extensive history of untreated substance abuse and mental health issues. Likewise, termination of parental rights was in the child's best interest because respondent had not demonstrated the ability to provide the child with safe and suitable housing or financially support her. It is in the child's best interest to be raised by someone who can provide her with a stable, safe home, without drugs and exposure to criminality. If a parent cannot or will not meet his irreducible minimum parental responsibilities, the needs of the child must prevail over the needs of the parent. *In re Terry*, 240 Mich App 14, 28; 610 NW2d 563 (2000). Thus, the trial court did not err in its best interest determination.

Affirmed.

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