

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED  
July 21, 2011

In the Matter of K. L. BRYSON, Minor.

No. 301637  
Roscommon Circuit Court  
Family Division  
LC No. 08-727262-NA

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Before: BECKERING, P.J., and FORT HOOD and STEPHENS, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i) and (g).<sup>1</sup> We affirm.

Respondent first argues that the trial court's order terminating his parental rights should be reversed because the termination hearing was not held within the time frame prescribed by MCR 3.977(F)(2), which requires that a hearing on a supplemental petition for termination of parental rights be held within 42 days after the petition is filed, unless the court extends the period for an additional 21 days for good cause shown. However, the record discloses that respondent's counsel specifically requested and agreed to the delayed hearing date in order to have more time to prepare for the hearing after respondent's release from prison. By affirmatively requesting and agreeing to the delayed hearing date, respondent waived this issue, thereby extinguishing any error. See *People v Carter*, 462 Mich 206, 216; 612 NW2d 144 (2000); *People v Ortiz*, 249 Mich App 297, 311; 642 NW2d 417 (2001). Regardless, even if this issue was considered, because neither the Legislature nor the Supreme Court has provided a remedy for failure to timely hold a termination hearing, and because there is no basis for finding that respondent was prejudiced by the delay, which was allowed to give his counsel time to prepare, respondent would not be entitled to appellate relief. See *In re Jackson*, 199 Mich App 22, 28-29; 501 NW2d 182 (1993) (stating that there were no sanctions for violating the time requirements of former MCR 5.974(F), redesignated as MCR 3.977(F)).

Respondent next argues that the trial court erred in finding that the statutory grounds for termination were established by clear and convincing evidence. The petitioner bears the burden

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<sup>1</sup> Although the parties also refer to §§ 19b(3)(c)(ii) and (j), the record discloses that the trial court did not rely on those statutory grounds as a basis for its decision.

of proving a statutory ground for termination by clear and convincing evidence. MCL 712A.19b(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). Once the petitioner has proven a statutory ground for termination, the circuit court must order termination if “termination of parental rights is in the child’s best interests.” MCL 712A.19b(5). This Court reviews “for clear error a trial court’s factual findings as well as its ultimate determination that a statutory ground for termination of parental rights has been proved by clear and convincing evidence.” *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010); MCR 3.977(K). A finding is clearly erroneous if, despite there being some 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 Mason*, 486 Mich at 152, quoting *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989) (quotations omitted).

Even if it was improper for the trial court to rely on § 19b(3)(c)(i)<sup>2</sup> where the conditions that led to the adjudication related solely to the child’s mother, the error was harmless because the court did not clearly err in finding that § 19b(3)(g)<sup>3</sup> was established by clear and convincing evidence. Respondent failed to provide proper care and custody for his child because of his drug use. Petitioner presented evidence that respondent had been immersed for many years in a culture of drugs, in which he used and sold drugs and his parents used drugs. Respondent’s involvement in substance abuse and criminal activity adversely affected his ability to act as a fictive father to the child’s elder half-sibling. Although the other child was not respondent’s son, respondent’s treatment of one child, including a child that is not his own, is probative of how he will treat other children. See *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001); *In re Powers*, 208 Mich App 582, 591-592; 528 NW2d 799 (1995), superseded by statute on other grounds as stated in *In re Jenks*, 281 Mich App 514; 760 NW2d 297 (2008). Respondent’s behavior toward the other child was particularly relevant in this case because they had established a de facto father-son relationship. Although respondent denied that either child was aware of his involvement with drugs, the other child not only knew that respondent sold drugs, but admired him for acquiring expensive possessions and social status by selling drugs. Despite his participation in substance abuse treatment, and his imprisonment in 2010 for selling drugs, respondent tested positive for marijuana in October 2010 after he was released from prison and approximately a month before the termination hearing. Therefore, it was not reasonable to expect that he would be able to provide proper care and custody for the child within a reasonable amount of time considering the child’s age. The trial court did not clearly err in finding that the evidence supported termination of respondent’s parental rights under § 19b(3)(g).

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<sup>2</sup> MCL 712A.19b(3)(c)(i) provides: “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” that the “conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.”

<sup>3</sup> MCL 712A.19b(3)(g) provides: “The parent, without regard to intent, 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.”

Respondent also argues that petitioner failed to provide him with services and failed to allow him opportunities to participate in the proceedings while he was incarcerated. In *In re Mason*, 486 Mich at 146, our Supreme Court reversed an order terminating the respondent-father's parental rights where he was not given the opportunity to participate in hearings over a 16-month period during which he was incarcerated and the petitioner failed to provide him with services necessary for reunification. The Court noted that the respondent "missed the crucial, year-long review period during which the court was called upon to evaluate the parents' efforts and decide whether reunification of the children with their parents could be achieved." *Id.* at 155. In contrast, respondent participated in hearings in person when not incarcerated and by telephone while incarcerated. As described by the trial court, respondent was "involved in this case in one extent or another right from the get-go." He completed a parenting program in 2008, underwent outpatient treatment for substance abuse and participated in another parenting program in 2009, before being incarcerated, and had the opportunity to receive relevant rehabilitative services while he was in prison boot camp. He continued substance abuse treatment after his release from prison. Over the course of the proceedings, respondent participated in services provided by the petitioner, through the various court systems associated with his criminal conduct, and through his own efforts. Unlike the respondent in *In re Mason*, respondent was not shut out of the proceedings, yet he failed to overcome his drug problem so as to enable him to provide proper care and custody for the child.

Respondent also argues that the trial court erred in finding that termination of his parental rights was in the child's best interests. See MCL 712A.19b(5). We also review the trial court's best interests decision for clear error. *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003). Although petitioner acknowledged that respondent and his son loved each other and were bonded with each other, the evidence showed that the child had already begun to show signs of destabilization and distorted perceptions of reality because of respondent's unstable lifestyle and involvement with drugs. The court did not err in finding that exposure to respondent's criminal activity and substance abuse would harm the child, especially in view of the harm already done to the child's half-brother. Accordingly, the trial court did not clearly err in finding that termination of respondent's parental rights was in the child's best interests.

Affirmed.

/s/ Jane M. Beckering  
/s/ Karen M. Fort Hood  
/s/ Cynthia Diane Stephens