

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
September 20, 2011

In the Matter of J. C. BIRAGA, JR., Minor.

No. 302530
Oakland Circuit Court
Family Division
LC No. 09-764088-NA

Before: KELLY, P.J., and OWENS and BORRELLO, JJ.

PER CURIAM.

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

Respondent first claims that the trial court clearly erred in terminating his parental rights without offering him a meaningful chance to participate in the case service plan to reunify with his child. We disagree. Because the case was originally filed in Macomb County, there was a delay in implementing the parent agency agreement (PAA) in Oakland County. However, some services began before disposition. In early December 2009, a court-ordered psychological evaluation was performed. After this, the court continued the dispositional hearing to secure respondent's presence. Respondent attended six out of nine hearings pertinent to his case and did have a meaningful opportunity to participate in services. Respondent had adequate time, from at least January to September 2010, to complete his PAA before the termination petition was filed. It is true that the caseworker did not visit respondent in jail or ascertain what programs were available in the jail, but much of the lack of contact was due to respondent's failure to notify DHS of his whereabouts. We, therefore, find the facts of this case distinguishable from *In re Mason*, 486 Mich 142; 782 NW2d 747 (2010) and *In re DMK*, 289 Mich App 246; 796 NW2d 129 (2010).

Next, we find no clear error in the trial court's conclusion that the statutory grounds for termination were proven by clear and convincing evidence. None of respondent's four children were in his custody. He had a 15-year history of substance abuse yet failed to avail himself of the substance abuse treatment ordered by the trial court. During the pendency of the case, he was arrested and convicted of possessing heroin in March 2010, was observed under the influence by the caseworker in June or July 2010, and admitted using heroin in August 2010. He also continued to abuse prescription drugs, at times taking more than prescribed and testing positive for substances that were not prescribed. Further, respondent's medical condition was precarious; he was found unconscious and spent 23 days in a coma and then developed muscular degeneration in his leg. He also suffered from a heart condition. On two occasions, he was too

weak to hold the baby by himself. Respondent admitted that nearly all his physical problems stemmed from drug abuse. Although he was determined not to abuse drugs again, we find the facts in his history a better predictor than his professed intentions. *In re Williams*, 286 Mich App 253, 272-273; 779 NW2d 286 (2009).

Respondent failed to complete several important aspects of his PAA. Failure to comply with a court-ordered PAA or case service plan is evidence of neglect. *In re Trejo*, 462 Mich 341, 360-361 n 16; 612 NW2d 407 (2000). Many of respondent's drug screens were missed, adulterated, or positive for substances with no prescriptions on file. Respondent did not attend AA/NA regularly. Except for a short stint at Burger King early on, respondent had no job or prospects. He lacked suitable housing. Respondent's plan for the child was unrealistic; it involved being awarded disability payments and living with the child's mother, with whom respondent had had an incident of domestic violence and a no-contact order. Respondent violated the no-contact order repeatedly. Moreover, the record shows that his visitations with the child were sporadic. When he did visit regularly at first, his interactions were appropriate. But he went to jail four times during the pendency of the case and was unable to visit for long periods due to illness or incarceration. Clearly, he was unable to provide proper care or custody and would have been unable to do so within a reasonable time. The child also would have been at risk of harm in respondent's care because of his drug history. The trial court did not err in finding the statutory grounds proven by clear and convincing evidence.

Finally, we find no clear error in the court's determination that termination was in the child's best interests. MCL 712A.19b(5); MCR 3.977(H)(3); MCR 3.977(K); *Trejo*, 462 Mich at 356-357; *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009). Respondent had no job or suitable housing, and the trial court, while giving respondent credit for his honesty and love for the child, was rightfully skeptical of his ability to stay sober. The child needs a safe, stable, permanent home, which respondent cannot provide. The court did not clearly err in its best-interest ruling.

Affirmed.

/s/ Michael J. Kelly

/s/ Donald S. Owens

/s/ Stephen L. Borrello