

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
September 22, 2011

In the Matter of J.J. ODETTE, Minor.

No. 302700
Calhoun Circuit Court
Family Division
LC No. 2009-002091-NA

Before: MURPHY, C.J., and FITZGERALD and TALBOT, JJ.

PER CURIAM.

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

The child in this case was born prematurely at 31 weeks in a bathtub at the home of the child's 16-year-old mother. The mother had not received prenatal care during the pregnancy and was herself under the care of a guardian; both the child's mother and the mother's guardian appeared to be limited intellectually. The investigating protective services worker testified that the home was unsuitable for the infant due to the squalid conditions of the home and the protective services history of the mother's guardian.

Respondent was determined to be the father of the child on the basis of DNA testing. Respondent had made no effort to provide medical care for the child's birth or financial support for the child's mother, and perhaps was unaware of the pregnancy. At the time of the child's birth, respondent was 29 years old, had two other children by two other women, and those children lived with their respective mothers.

Respondent participated in a psychological evaluation at the request of petitioner. Respondent reported to the psychologist that he had previously been diagnosed with bipolar disorder and had anxiety attacks for which he took medication and saw a counselor. The evaluation revealed that respondent was below average in intelligence, average to severely impaired on the neuropsychological assessment, and that respondent's impairment affected decision making in areas such as home safety, planning, and anticipating consequences. The evaluation also revealed that respondent was depressed, under significant emotional distress, had mood dysregulation, and had poor coping powers that would predispose him to become physically abusive when parenting. Respondent was diagnosed as having a cognitive disorder, a mood disorder, and a personality disorder, and the prognosis for respondent developing the skills needed for parenting within the near future was determined to be very poor.

Respondent was thereafter arrested for criminal sexual conduct involving the child's mother who had been 15 at the time of their relationship. Respondent was released from incarceration after six months upon pleading guilty to attempted third-degree criminal sexual conduct and being sentenced to probation. While incarcerated, respondent participated in substance abuse counseling and mental health services. After being released from incarceration, respondent was provided with numerous services and participated in some of them, including counseling, visitation with the child, and parenting assistance with a parenting aide. Respondent, however, remained unemployed and without independent housing throughout the case, relying upon his own mother for housing and financial support. Respondent had been advised that the child could never be placed in his care as long as he failed to rectify these factors, particularly because his mother had an extensive history with child protective services and was not a suitable person with whom to place the child. With respect to visits with the child, there was testimony that respondent had difficulty understanding and retaining information provided to him about circumstances that would pose a danger to a child, that he appeared unable to attend to the child's basic needs such as hygiene and eating, that respondent appeared to have difficulty concentrating on the child's care, and that, when parenting time was increased, he appeared unenthusiastic about the additional time to bond with the child. Respondent did not appear to benefit from services in which he participated and did not improve in parenting skills. After eight additional months of services, the trial court terminated respondent's parental rights under MCL 712A.19b(3)(c)(ii), (g), and (j), and further found that termination was in the best interests of the child.

Respondent first contends that the trial court clearly erred in assuming jurisdiction of the child under MCL 712A.2(b). A challenge to the trial court's finding of jurisdiction in a child protective proceeding must be by direct appeal of the jurisdictional decision and not by collateral attack in an appeal from the order terminating parental rights. *In re Hatcher*, 443 Mich 426, 444; 505 NW2d 834 (1993); *In re SLH, AJH, & VAH*, 277 Mich App 662, 668 n 11; 747 NW2d 547 (2008); *In re Powers*, 208 Mich App 582, 587-588; 528 NW2d 799 (1995); see also MCR 3.993(A)(1) (order placing a minor under the court's jurisdiction or removing the minor from the home is appealable by right). Moreover, the mother's specific admissions and her plea in the adjudicative phase supported the court's exercise of jurisdiction under MCL 712A.2(b).

Respondent next contends that the trial court clearly erred in terminating his parental rights under statutory subsections (3)(c)(ii), (g), and (j). This Court reviews for clear error the trial court's finding that a statutory ground for termination existed, its best-interest determination, and the trial court's overall termination decision. MCR 3.977(K); *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003). To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been demonstrated by clear and convincing evidence. *In re Fried*, 266 Mich App 535, 540-541; 702 NW2d 192 (2005). Respondent contends that the trial court erred in terminating his parental rights under subsection (3)(c)(ii), arguing that he was not provided an opportunity to comply with the case service plan due to incarceration in violation of the directives of *In re Mason*, 486 Mich 142; 782 NW2d 747 (2010). He also maintains that the services were inadequate relative to addressing his shortcomings. These arguments lack merit. Unlike *Mason*, the trial court in this case did not terminate respondent's parental rights because he was incarcerated nor did the court or petitioner fail to facilitate access to services for respondent. Rather, the trial court acknowledged that respondent had made efforts during incarceration, but had not been provided

with full services. The trial court therefore insisted that respondent be given additional time to participate in services and to demonstrate progress. A caseworker testified that a case service plan was put into place and that respondent had been provided with a parent aide, counseling before and after his incarceration, services through the Community Fatherhood Program, a referral to Michigan Rehabilitation Services, housing assistance, transportation assistance, and a referral for mental health services. Only after respondent was provided with services with little progress for an additional eight months did the trial court terminate respondent's parental rights. Reversal is unwarranted.

Respondent next contends that termination was not warranted under subsection (3)(g), disputing the trial court's finding that respondent failed to provide proper care and custody for the child and that there was no reasonable expectation that he would be able to do so within a reasonable time considering the age of the child. Respondent argues that a finding under this subsection was precluded because he never actually had custody of the child and therefore could not have failed to provide proper care and custody. We disagree. Respondent failed to comply with the parent agency agreement, which is evidence of failure to provide proper care and custody. *In re JK*, 468 Mich at 214. Moreover, respondent's efforts to comply with some aspects of the case service plan revealed his inability to acquire the necessary skills to parent the child within a reasonable time, if ever.

The trial court also properly terminated respondent's parental rights to the child under subsection (3)(j), finding that there was a reasonable likelihood based on the conduct or capacity of respondent that the child would be harmed if placed in respondent's custody. This finding is supported by the report of the psychologist that respondent suffered from a cognitive disorder, a mood disorder, and a personality disorder and that these characteristics were long-term and not easily altered. This evidence was supported by the testimony of the foster care worker that after eight months of services, respondent had made very little progress and appeared unlikely to be able to parent the child within the foreseeable future. Further, respondent had never obtained employment or independent housing and had no plan to obtain either in the future, choosing instead to rely upon his own mother for housing and support even though he was repeatedly informed that the child could never be returned to him while he lived with his mother.

We also conclude that the trial court did not clearly err in determining that termination of respondent's parental rights was in the best interests of the child. Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court is required to affirmatively find that termination is in a child's best interests before ordering termination. MCL 712A.19b(5).

In this case, respondent contends that the trial court found that termination was in the best interests of the child because there was a minimal bond between respondent and the child. Respondent argues that the minimal bond was a result of the limited visitation schedule provided by petitioner. This contention is without support. Upon respondent's release, petitioner scheduled respondent to visit with the child once each week for 1-1/2 hours. When the child reacted negatively to the visits, the visits were reduced to one hour each week. When the child became more comfortable with the visits, and at the trial court's direction, the visits were increased to four hours once each week. Moreover, the bond between respondent and the child was only one factor considered by the trial court. The trial court also considered the age of the

child, that the child had been in foster care for his entire life, the child's need for permanence, a proper environment, and consistent and safe care, and that placement of the child with respondent posed a physical and emotional threat to the child.

Affirmed.

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot