

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
September 20, 2011

In the Matter of C. M. ASSEMAN Y, Minor.

No. 302929
Wayne Circuit Court
Family Division
LC No. 08-480029

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

PER CURIAM.

T. Assemany appeals the order terminating his parental rights to the minor child.¹ The trial court terminated Assemany's parental rights having found (a) that the conditions leading to the adjudication continued to exist and the lack of a reasonable likelihood of rectification², (b) the failure to provide proper care and custody³, and (c) the reasonable likelihood of harm to the child if returned to the parental home.⁴ We affirm.

At birth, the minor child tested positive for cocaine. She and her two older half siblings were removed after Assemany and the mother were arrested for aggravated assault and attempted murder. The child's half brother, then aged 15, also tested positive for cocaine use. Throughout the pendency of the case, Assemany and the mother were sporadically compliant with their treatment plans, which included the provision of random weekly drug screens and the completion of substance abuse treatment. Assemany and the mother were provided unsupervised visitation, but due to their relapse into drug use supervised visitation was reinstated. Family counseling was discontinued based on the counselor's expression of concern regarding the safety of the home environment and the belief that drug trafficking was occurring. Although the DHS dismissed the first termination petition because Assemany and the mother were demonstrating sufficient progress, the situation changed when the foster care worker was alerted to MySpace pictures showing Assemany and the mother having a party in their home involving the suspected

¹ The parental rights of the child's mother were also terminated, but she is not a party to this appeal.

² MCL 712A.19b(3)(c)(i).

³ MCL 712A.19b(3)(g).

⁴ MCL 712A.19b(3)(j).

use of alcohol with underage individuals. The foster care worker left a message for the mother suspending unsupervised visitation and requesting her to telephone to arrange for visitation with the minor child at the agency. Neither Assemany nor the mother telephoned to arrange for visitation and concurrently terminated their submission of random drug screens and participation in other aspects of their treatment plans. In mid-December 2010, just before the termination hearing, Assemany re-initiated the submission of drug screens but did not provide the foster care worker with an explanation for his previous failure to comply with the random drug screens or to provide his current address and employment information. At the termination hearing, the mother testified that she had smoked crack with Assemany in June 2010.

Assemany contends that the trial court erred in finding that the statutory grounds for termination were established by clear and convincing evidence. In termination proceedings, this Court must defer to the trial court's factual findings if those findings do not constitute clear error.⁵ Specifically:

We review for clear error both the court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest. 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 mistaken has been made.⁶

The trial court did not clearly err in finding that the conditions leading to the adjudication continued to exist without a reasonable likelihood for rectification⁷ and the failure of Assemany to provide proper care and custody for the minor child.⁸ The conditions leading to the adjudication primarily involved Assemany's substance abuse and arrest for aggravated assault. At the time of the termination hearing, Assemany failed to consistently submit the required random weekly drug screens, except for intermittent periods of compliance. Although the mother testified that Assemany used crack cocaine with her in June 2010, he did not seek further substance abuse treatment for this relapse in use. Contrary to the requirement for contact with the foster care worker in his treatment plan, Assemany did not initiate any communication with the foster care caseworker from June 27, 2010, to mid-December to secure visitation or to obtain information regarding the minor child's well-being. Assemany also failed to provide the case worker with information on his current residence and employment. Evidence indicated that Assemany and the mother permitted the minor child's older half brother to reside with them despite their knowledge that the brother had run away from his placement and the prohibition that he reside in their home. Indisputably, Assemany continued to demonstrate that his substance abuse issues had not been resolved such that the conditions leading to the adjudication continued to exist. Assemany's inability to provide proper care and custody for the minor child was

⁵ MCR 3.977(K).

⁶ *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009) (citations omitted).

⁷ MCL 712A.19b(3)(c)(i).

⁸ MCL 712A.19b(3)(g).

sufficiently demonstrated based on the lack of a stable residence or verification of income adequate to support the child. Considering Assemany's failure to consistently participate in services and visitation and the overall length of time the case was pending, the trial court did not err in determining that there was no reasonable likelihood that Assemany would rectify the conditions of adjudication or be able to provide proper care and custody within a reasonable timeframe for the minor child.

Assemany further asserts that the trial court improperly considered unreliable hearsay evidence when the foster care caseworker testified that she requested that the parents' random drug screens be monitored based on the suspicion that they were submitting other people's urine. First, we note that there was no objection to this testimony. Second, hearsay evidence is admissible at termination hearings under specific circumstances and may be relied on to the extent of its probative value.⁹ The referenced testimony did not comprise hearsay as it was not admitted for the truth of the matter asserted regarding the parents submission of other people's urine, but rather to show why the foster care worker requested that the drug screens be monitored.¹⁰ The trial court's findings reflect the appropriate use of this evidence.

The trial court also did not err in its determination that there existed a reasonable likelihood of harm to the minor child if returned to Assemany's home.¹¹ The child became a court ward because her parents were arrested for aggravated assault and allegations of a long-standing history of substance abuse by the parents. During the pendency of the case, Assemany and the mother changed residences several times and did not provide a stable home environment. Assemany made no demonstrable effort to contact the foster care caseworker regarding visitation with the child for an extended time period. The family counselor terminated her services because she did not feel safe in Assemany's home due to the frequent comings and goings of strangers and her belief that drug trafficking was occurring at the residence. Such evidence supports the trial court's findings on this factor.

Finally, we find that the trial court did not clearly err in its best interest determination.¹² The minor child was six years old when she was removed from her parents' home. After nearly three years with no or only sporadic progress on his substance abuse issues, the trial court did not err in finding that termination of Assemany's parental rights was in the child's best interests. The record fails to support Assemany's contention that the DHS failed to prove parental unfitness and merely showed that the child would be better off in foster care. The only evidence submitted at the termination hearing regarding the child's foster care placement was that she was residing with a maternal aunt and her husband, who were willing to adopt the child. There is no

⁹ MCR 3.977(H)(2).

¹⁰ MRE 801(c).

¹¹ MCL 712A.19b(3)(j).

¹² MCL 712A.19b(5).

evidence that the trial court engaged in an improper comparison of Assemany's home to the foster care placement.

Affirmed.

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