STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
October 20, 2011

In the Matter of C. A. M. PERKINS-SMITH, Minor.

No. 303123
Washtenaw Circuit Court
Family Division
LC No. 2010-000025-NA

Before: M. J. KELLY, P.J., and FITZGERALD and WHITBECK, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating his parental rights to the minor child under MCL 712A.19b(3)(j) and (n)(*i*).[1] Because we conclude that there were no errors warranting relief, we affirm.

Respondent first argues that the trial court erred when it denied his motion to dismiss on the ground that the trial court lacked jurisdiction. This Court reviews de novo questions of law such as the proper application and interpretation of statutes and court rules, as well as questions of constitutional law. See *Hunter v Hunter*, 484 Mich 247, 257; 771 NW2d 694 (2009). This Court, however, reviews the trial court's findings of fact for clear error. *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008).

A trial court has subject matter jurisdiction "when the proceeding is of a class the court is authorized to adjudicate and the claim stated in the complaint is not clearly frivolous." *In re Hatcher*, 443 Mich 426, 444; 505 NW2d 834 (1993). In Michigan, trial courts have jurisdiction to adjudicate cases involving the neglect of a minor; specifically, where the person legally responsible for the care and maintenance of the juvenile neglects or refuses to provide proper and necessary support or where, by reason of neglect the juvenile's home or environment is unfit. See MCL 712A.2(b)(1) and (2). In order for the court to properly exercise jurisdiction over a child, the petitioner must prove by a preponderance of the evidence that the child comes within the statutory requirements stated under MCL 712A.2(b). See *In re Nelson*, 190 Mich App 237, 239-240; 475 NW2d 448 (1991).

[1] The child's mother released her parental rights and is not a party to this appeal.

Here, the trial court clearly had jurisdiction over the minor. There was evidence that both parents had failed to provide her with a proper home and adequate care. Further, the child's mother pleaded to the allegations in the complaint. Her plea was adequate to establish the basis for the trial court's exercise of jurisdiction over the child. *In re CR*, 250 Mich App 185, 202-203; 646 NW2d 506 (2002); c.f. *In re SLH*, 277 Mich App 662; 747 NW2d 547 (2008) (stating that a plea by a parent who is not a respondent cannot provide a basis for jurisdiction). It was not necessary for the trial court to establish a separate basis for jurisdiction premised on respondent father's neglect. See *In re LE*, 278 Mich App at 17 ("Once the family court acquires jurisdiction [over the minor child], it may take measures '"against any adult."' The court need not separately ascertain whether it has jurisdiction over each parent." (citations omitted)).

Respondent next argues that the trial court denied him due process when it improperly denied him the right to participate in the proceedings at an earlier stage and improperly denied him the opportunity to have visitation with the minor child. He contends that the trial court should have granted his motion to dismiss the petition. He also argues that petitioner failed to provide him with adequate services. These errors, he maintains, independently warrant reversal of the order terminating his parental rights.

Our Supreme Court has determined that an incarcerated respondent who did not fit within the exceptions of MCL 712A.19a(2)(a) must be allowed to attend hearings and participate in a service plan. *In re Mason*, 486 Mich 142, 155-160, 166-170; 782 NW2d 747 (2010). This is necessary, the Court explained, because without this rudimentary due process, the court was left with a "hole" in the evidence and could not properly assess the respondent's capacity to parent. See *id.* at 159-160. *Mason* relied on MCL 712A.19a(2)'s statement that "[r]easonable efforts to reunify the child and family must be made in all cases." *Mason*, 486 Mich at 152. Here, respondent did not come within the "aggravated circumstances" enumerated in the statute. See MCL 712A.19a(2)(b) and (c). Respondent probably also did not come within the additional circumstances listed in MCL 722.638(1), which include abandonment of a young child or severe abuse of the minor child or a sibling of the child. Respondent's felonious assault and misdemeanor CSC convictions did not fit within these parameters, and he did apparently try to see the child, but was prevented. Thus, the Department of Human Services and the trial court were required to involve respondent in the proceedings.

With the exception of the first few hearings, respondent was present and represented by counsel for the hearings. And there is no indication that his absence from the initial hearings prejudiced his ability to receive services. C.f. *In re Rood*, 483 Mich 73, 118-121, 125, 126; 763 NW2d 587 (2009) (concluding that the trial court erred by failing to provide sufficient services to a noncustodial parent). The Department had to prepare an initial service plan within 30 days of removal. See MCL 712A.13a(8)(a). Although the service plan does not appear in the file, there is a parent agency agreement and an updated service plan dated June 2010. These documents indicate that respondent received referrals in March 2010 for parenting classes, psychiatric services and counseling, and was required to provide drug screening through Community Corrections. At this point, however, the department was pursuing reunification of the minor with the child's mother. This was put on the fast track with intensive services in April and May 2010. Aside from a few phone calls and the unfunded referrals, the Department did not directly involve respondent until the court ordered it to provide additional services.

The relevant question, then, becomes whether the services that the Department provided after the trial court's order were sufficient. The court entered its order in July 2010. After that, the Department provided respondent with 11 sessions of therapy (12, had he attended all that were scheduled), psychological and substance abuse evaluations, drug screens, and one set of general parenting classes. The Department did not, however, allow him parenting time with the child. In *In re DMK*, 289 Mich App 246, 255; 796 NW2d 129 (2010), this Court reversed a termination where the Department "deliberately withheld services from respondent, with the approval of the circuit court," and did not recognize his right to participate until after the first three dispositional review hearings. In the present case, of course, the court did not allow respondent to go through the dispositional review process. The court also denied respondent's repeated requests for visitation. Under MCL 712A.13a(11), the trial court must normally allow for parenting time unless the parenting time would be harmful to the child:

> If a juvenile is removed from his or her home, the court shall permit the juvenile's parent to have frequent parenting time with the juvenile. If parenting time, even if supervised, may be harmful to the juvenile, the court shall order the child to have a psychological evaluation or counseling, or both, to determine the appropriateness and conditions of parenting time. The court may suspend parenting time while the psychological evaluation or counseling is conducted.

See also MCL 722.27a(1).

The trial court did not expressly determine that visitation would be harmful to the child here. The box indicating that "visitation, even if supervised, would be harmful to the child" was never checked, and the only written reference to the trial court's decision to deny parenting time was a notation that the respondent's motion for parenting time had been denied. However, after evaluating respondent, Dr. Ehrlich prepared a report in August 2010 that implied that the minor child might be harmed by visitation with respondent. Early in the case, there had also been a reference to threats made by respondent, leading to a personal protection order against him that also apparently involved the minor child. The child was thought to have been traumatized by witnessing respondent's domestic violence towards the child's mother. There was also a report that respondent sexually abused the child when she was two months old.

In light of these allegations, the negative psychiatric evaluation, and the fact that respondent had criminal sexual conduct and felonious assault convictions, we cannot conclude that the trial court erred when it denied respondent the right to visitation. Indeed, the trial court ultimately found in its final opinion that respondent would be a danger to the child.

The court did order the Department to provide some services, which spanned from late July or early August through December 2010. Further, the consensus of professional opinion by Dr. Ehrlich, respondent's therapist, and the caseworker, was that respondent would not be ready, within a reasonable time, to adequately parent the minor child. Respondent's criminal sexual conduct conviction, which was a very important factor in the court's decision to deny respondent's motion, is a listed ground for terminating parental rights under MCL 712A.19b(3)(n)(*i*). Although it is not included in MCL 712A.19a(2) or MCL 722.638(1), such a conviction does indicate that respondent would be a danger to a young girl. Respondent fondled a seven-year-old girl in 2003, which was only seven years before the proceedings here. His

"defenses" were that he did not recall the incident because he was too drunk or incapacitated by drugs to recall the incident, that he was set up, and that it was "just fondling." He also tried to minimize the circumstances and admitted to Dr. Ehrlich and his therapist that he may have done the fondling. His therapist indicated that his sexual offender tendencies would be difficult to treat because he professed to have a poor memory of the events. Thus, these circumstances are readily distinguished from *Mason*, which involved a criminal history that "consisted largely of short jail stints for comparatively minor offenses" and did not involve harm to a child. *Mason*, 486 Mich at 165.

Respondent cites *In re Stauffer*, unpublished opinion per curiam of the Court of Appeals, issued February 15, 2011 (Docket No. 298405) in support of the argument that his history of criminal sexual conduct could not be held against him and that he was not provided with adequate services. But the facts of that case are also distinguishable. The Court in *Stauffer* found that the trial court clearly erred in terminating parental rights where the parent was denied reunification services. The court noted that a criminal sexual conduct conviction against a child who was not the parent's child or a sibling was not one of the exceptions listed in MCL 712A.19a(2) or MCL 722.638. The Court also held that services provided (visitation, drug screens, a psychological evaluation, sex offender assessment, and offers of transportation) did not address the father's drug and alcohol dependency, housing and employment problems, criminal sexual propensities, or parenting limitations, and none were aimed at reunification. Here, respondent's services did address his mental health issues, past drug and alcohol use, and parenting and domestic violence issues. Further his lack of independent housing should not have been a consideration. See *In re Mitchell*, 485 Mich 922; 773 NW2d 663 (2009) (reversing this Court's decision for the reasons stated in the dissent, which noted that the trial court improperly considered the respondent's lack of independent housing).

Here, the caseworker admitted that respondent did all that was asked of him, except perhaps for keeping in regular contact with the Department. However, respondent had some very disturbing and alarming events in his past, and his description of the sexual contact with a seven year old as "just fondling" indicates that he lacked insight into the harmful nature of his own acts. He still had problems with anger management, and an incident involving the killing of a cow strongly suggested that he might be violent any time he went off his medication, which had occurred in the past. In short, there was evidence that respondent *was* a danger to the minor child.

Given this record, we cannot conclude that the trial court erred when it denied respondent's motion for parenting time and denied his motion to dismiss the petition against him.

Respondent also argues that the trial court erred in terminating his parental rights. Termination of parental rights is appropriate where petitioner proves by clear and convincing evidence at least one ground for termination. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). This Court reviews the lower court's findings under the clearly erroneous standard. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses. *Mason*, 486 Mich at 152.

The trial court terminated respondent's parental rights under MCL 712A.19b(3)(j) and (n)(*i*). A trial court may terminate a parent's parental rights under MCL 712A.19b(3)(j) if there "is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent." Further, if the parent has been convicted of certain enumerated offenses "and the court determines that termination is in the child's best interests because continuing the parent-child relationship with the parent would be harmful to the child", the trial court may terminate a parent's parental rights under MCL 712A.19b(3)(n)(*i*). Only one statutory subsection need be proven by clear and convincing evidence to terminate parental rights. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

Here, respondent's criminal sexual conduct conviction was one of the enumerated offenses under MCL 712A.19b(3)(n)(*i*). The trial court also cited the psychological evaluation and Dr. Ehrlich's opinion that respondent did not have the capacity to parent a young child, even with significant help. The court noted respondent's tendency to violent outbursts and his denial of the facts underlying his criminal convictions and assaultive conduct. The court found a reasonable likelihood that the minor child would be harmed if returned to his home. In assessing the child's best interests, see MCL 712A.19b(5), the court also noted that respondent had not seen the child in over three years and that he had been convicted of molesting a girl who was only three years older than his child. Further, the court noted respondent's lack of a legal source of income, recent homelessness, and history of seizures and blackouts, including waking up with blood on him while next to a gutted cow. He also had convictions for failing to register as a sex offender and for felonious assault. These circumstances and the others noted above indicate a reasonable likelihood of harm to the child if she were returned to respondent's care. MCL 712A.19b(3)(j). Moreover, the evidence supported termination under MCL 712A.19b(3)(n)(*i*), which requires only a violation of certain criminal laws and a court determination that termination is in the child's best interests because continuing the parent-child relationship would be harmful to the child. The court made this finding, and the finding was supported by the record. In addition, the record supports the trial court's finding that termination was in the child's best interest.

There were no errors warranting relief.

Affirmed.

/s/ Michael J. Kelly
/s/ E. Thomas Fitzgerald
/s/ William C. Whitbeck