

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
November 15, 2011

In the Matter of V. J. M. AMORMINO, Minor.

Nos. 303172/303216
Ogemaw Circuit Court
Family Division
LC No. 09-014087-NA

Before: TALBOT, P.J., and FITZGERALD and MARKEY, JJ.

PER CURIAM.

In these consolidated appeals, the minor child’s father, C. Amormino, and mother, K. Amormino, appeal as of right the order terminating their parental rights to their minor child based on the trial court’s determinations that the conditions leading to adjudication continued to exist,¹ the failure to provide proper care or custody,² and a reasonable likelihood of harm if the minor child was returned to the parents’ home.³ We affirm.

To terminate parental rights, the trial court must first find that at least one of the grounds delineated by statute⁴ was proven by clear and convincing evidence.⁵ Once a statutory ground for termination of parental rights is established, the court shall order termination of parental rights if the court also finds that “termination of parental rights is in the child’s best interests.”⁶ We review a trial court’s findings of fact and that a ground for termination was established by clear and convincing evidence for clear error.⁷ “A finding is ‘clearly erroneous’ [if] although

¹ MCL 712A.19b(3)(c)(i).

² MCL 712A.19b(3)(g).

³ MCL 712A.19b(3)(j).

⁴ MCL 712A.19b(3).

⁵ *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003).

⁶ MCL 712A.19b(5).

⁷ MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

there is evidence to support it, the reviewing court . . . is left with the definite and firm conviction that a mistake has been made.”⁸

I. DOCKET NO. 313172

C. Amormino argues that the trial court erred in finding after the preliminary hearing that the minor child would be at a substantial risk of harm if returned to him. We disagree.

For placement of a child outside the parental home following a preliminary hearing, the trial court must find that to allow the child to remain in the parents’ home would be contrary to the child’s welfare.⁹ The court must also determine whether reasonable efforts to prevent the removal of the child from the home either were made or were not required.¹⁰

There was testimony at the preliminary hearing from child welfare specialist Roseann Buchholz, that C. Amormino executed poor judgment by planning to move to a home that was unfit for children and by keeping reptiles and amphibians in the home without exploring the potential health risks such animals posed to children. Buchholz also testified that C. Amormino evidenced emotional issues involving suicidal ideation, failed to take responsibility for budgeting issues, and that one of his step children had alleged that C. Amormino physically struck him. When asked at the preliminary hearing whether it was contrary to the minor child’s welfare for her to remain in the home with her father even though the mother, K. Amormino, was in jail at that time, Buchholz opined that since C. Amormino wished to have a relationship with K. Amormino, it was unlikely that the father could keep the minor child safe from the mother or supervise the minor child properly.

The trial court found, based on the evidence presented, that allowing the minor child to stay in the home with her father would be contrary to the child’s best interests. As there is nothing in the preliminary hearing testimony to suggest that a clear error was made by the trial court, the trial court’s ruling must stand.

C. Amormino next argues that the trial court erred in finding that a statutory ground for terminating his parental rights was proven by clear and convincing evidence. We disagree.

The trial court found three grounds on which C. Amormino’s parental rights should be terminated. The trial court terminated C. Amormino’s rights based on its determination that (1) the conditions leading to adjudication continued to exist,¹¹ (2) the failure to provide proper care or custody,¹² and (3) a reasonable likelihood of harm if the minor child was returned to the

⁸ *Id.*

⁹ MCR 3.965(C)(3).

¹⁰ MCR 3.965(D)(1).

¹¹ MCL 712A.19b(3)(c)(i).

¹² MCL 712A.19b(3)(g).

parents' home.¹³ The conditions leading to the adjudication included C. Amormino's criminal history, his inability to maintain a job or source of income, and his lack of forethought in having multiple reptiles and amphibians in the home with young children and a pregnant wife.

At the time of the termination hearing, C. Amormino also had an unresolved charge of domestic violence stemming from an incident with his wife, and lacked a steady source of income. C. Amormino had removed the reptiles and amphibians from the home before the termination hearing. There was no evidence presented at the termination hearing that there was no reasonable likelihood that the conditions leading to adjudication would be rectified within a reasonable time considering the minor child's age.¹⁴ The Department of Human Services ("DHS") did not present evidence regarding C. Amormino's chances of obtaining the SSI benefits that he was seeking for income. Nor was there any evidence presented regarding the likelihood that he would be convicted on the pending domestic violence charge or engage in further criminal activity. As such, that the conditions that led to adjudication continued to exist was not proven by clear and convincing evidence.

This error by the trial court, however, was harmless as only one statutory ground for termination must be proven before parental rights can be terminated.¹⁵ The record did contain evidence that C. Amormino failed to provide proper custody or care for the minor child, and that there continued to be a reasonable likelihood that the child would be harmed if she returned to his home.¹⁶ In addition to failing to obtain a steady source of income and having an unresolved charge of domestic violence related to his wife, there was evidence presented that C. Amormino continued to use marijuana. He also failed to provide proper care for the child by not separating from K. Amormino, whose behavior put the child at risk of harm. C. Amormino was living with his mother and that home was deemed unfit for the minor child to live because of concerns about his mother's background. There was further evidence presented that C. Amormino failed to participate in the counseling services offered to him to address the issues that were preventing the minor child from being returned to his care. There is no indication that the trial court erred in finding that grounds¹⁷ for terminating C. Amormino's parental rights were proven by clear and convincing evidence.

C. Amormino also contends that the trial court erred in its determination that termination of his parental rights was in the best interests of the child. We disagree. The trial court made its best-interest determination based on the earlier statutory standard which only required a finding

¹³ MCL 712A.19b(3)(j).

¹⁴ MCL 712A.19b(3)(c)(i).

¹⁵ MCL 712A.19b(3); *In re JK*, 468 Mich at 210.

¹⁶ MCL 712A.19b(3)(g), (j).

¹⁷ *Id.*

that termination was not contrary to the child's best interests.¹⁸ That error was harmless as the record clearly supports a finding that termination of C. Amormino's parental rights was in the child's best interests.¹⁹ C. Amormino continued to use marijuana, had not secured disability benefits or routine income, and was involved in a domestic violence incident with K. Amormino. He lived with his mother, whose home was deemed not to be appropriate by DHS. The minor child required permanence, the foster parents expressed a desire to adopt her, and the child was comfortable in the foster home. Although the record suggests that C. Amormino loved the child and they shared a bond, and that termination of parental rights would separate the minor child from her siblings, being in C. Amormino's care put the child at risk of harm given his instability. The trial court's finding that the termination of C. Amormino's parental rights was in the best interests of the child was not clearly erroneous.

II. DOCKET NO. 303216

K. Amormino argues on appeal that the trial court erred in finding that a statutory ground for termination of her parental rights was proven by clear and convincing evidence. We disagree.

There was evidence that the minor child was born with marijuana in her system and that K. Amormino continued to use marijuana throughout this case as was evidenced by positive drug screens.²⁰ She also failed to consistently take her psychiatric medications and acknowledged that it affected her ability to parent. K. Amormino indicated that she stopped taking the medications because she did not have the \$4 to \$6 to pay her co-payment, although she spent money on cigarettes, marijuana and fish for aquariums. It was recommended by a psychological evaluator that she contact a facility for medication stabilization, but K. Amormino continued to fail to take her medications consistently. K. Amormino was also offered individual counseling, a psychological evaluation, and anger management to assist her in attaining mental and emotional stability, but she failed to benefit from them. On the basis of this evidence, we find no clear

¹⁸ MCL 712A.19b(5) was amended effective July 11, 2008, to require an affirmative finding that termination is in the child's best interest.

¹⁹ MCR 2.613(A); MCR 3.902(A).

²⁰ K. Amormino was issued a medical marijuana card on March 3, 2010.

error in the trial court's findings that the grounds for termination were proven by clear and convincing evidence.²¹

Affirmed.

/s/ Michael J. Talbot
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey

²¹ MCL 712A.19b(3)(c)(i), (g), and (j).