

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
November 8, 2011

In the Matter of K. R. A. HALASI, Minor.

No. 303291
Macomb Circuit Court
Family Division
LC No. 2009-000407-NA

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Before: K. F. KELLY, P.J., and METER and GLEICHER, JJ.

PER CURIAM.

The trial court terminated both parents' rights to their young son based on their failure to secure stable housing, failure to timely follow through with and benefit from services, and inability to maintain sufficient income to provide for their child. While the court improperly relied on the respondents' poverty, the petitioner otherwise provided clear and convincing evidence to support termination on other cited grounds. However, the trial court failed to adequately consider whether termination was required or in the child's best interests where the child was placed in the care of his maternal grandmother. Accordingly, we affirm the trial court's determination that at least one statutory ground supported termination, but vacate the court's best interest analysis and remand for further consideration of that issue.

I. BACKGROUND

KH was born on April 16, 2008, in California.¹ At some point, respondent-mother, LM, returned to Michigan with KH and lived with her mother, SM. LM frequently left KH with SM

¹ LM's sister lives in California and it is unclear from the record whether LM also lived in California or was just visiting.

for extended periods without making any formal childcare arrangements. Then, in August of 2009, LM was pulled over and arrested on outstanding traffic-related warrants. KH was in the vehicle at the time. LM spent nine days in the county jail. During that time, respondent-father, NH, was unable to care for KH because he was essentially homeless. As a result, KH was temporarily placed with his grandmother, SM.

Thereafter, neither LM nor NH was able to take custody of KH. SM had evicted LM from the family home while she was in jail. Neither respondent had suitable housing or income to properly care for and support KH. Respondents pleaded no contest to allegations that they could not then provide proper care and custody for KH and the court exercised jurisdiction over the child. Petitioner continued KH in the care of his maternal grandmother.

Petitioner then prepared a parent-agency agreement (PAA) under which respondents were required to demonstrate emotional stability and appropriate parenting skills, obtain and maintain a legal source of income and suitable housing, refrain from illegal activities, and comply with the reasonable requests of the case worker. Respondents underwent psychological evaluations after which the psychologist recommended both parents participate in parenting classes and individual counseling. Over the course of the next year, respondents' compliance with the PAA was inconsistent. In particular, respondents were never able to complete counseling requirements or obtain and maintain stable and suitable housing.

Eighteen months after KH had been taken into care, the court terminated respondents' parental rights, concluding that respondents had failed to meet the goals of their treatment plans. Specifically, the court found that the conditions that led to adjudication — lack of housing, inability to care for the child, insufficient income, and an unstable relationship between the parents — continued to exist at the time of the termination hearing and would not be rectified within a reasonable time given the child's age.

II. STANDARD OF REVIEW

A court may terminate a respondent's parental rights if clear and convincing evidence proves one or more of the statutory grounds listed in MCL 712A.19b(3). Once a statutory ground for termination is established, the court shall order termination of parental rights if it finds that termination serves the child's best interests. MCL 712A.19b(5). "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" under MCL 712A.19b(5). *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); see also MCR 3.977(K). "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 mistake has been made." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989) (internal quotation omitted). This Court gives deference to a trial court's special opportunity to observe and judge the credibility of witnesses. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

III. PETITIONER ESTABLISHED AT LEAST ONE GROUND FOR TERMINATION

The trial court terminated respondents' parental rights based on the following three factors outlined in MCL 712A.19b(3):

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

(j) 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.

While we do not agree with the entirety of the trial court's reasoning, we hold that petitioner supported termination under MCL 712A.19b(3)(c)(i). The main reason KH was taken into care was his parents' lack of housing. That condition did not change during the pendency of these proceedings. LM lived in five different residences in the 18-month span of the child protective proceedings. NH roamed between the homes of several friends and relatives. On the second day of the termination trial, respondents indicated that they had purchased a mobile home the day before. Given the short notice, however, petitioner was unable to examine the suitability of the residence. Moreover, respondents had not yet demonstrated their ability to pay their lot rent and utilities on a consistent basis.

KH was also taken into care because respondents exhibited mental instability requiring psychological treatment. Neither respondent adequately complied with the PAA's required treatment plan. Respondents eventually underwent psychological evaluations. Yet, they failed to regularly attend counseling sessions, resulting in the termination of their free, agency-provided services. Further, LM was diagnosed with bipolar disorder and was referred to Community Mental Health (CMH) services for longer term treatment. While LM claims that she attended a CMH intake session, there is no record indication that she followed through with securing treatment.

At the end of the day, respondents' efforts were simply too little, too late. Even if respondents started therapy and obtained housing on the day of the termination hearing, petitioner would be unable to determine if respondents had achieved the necessary stability and consistency absent a several-month evaluation period. Petitioner would need to conduct repeated home visits to ensure the safety and suitability of the residence. With respect to counseling, respondents' progress could only be evaluated after several months of care. Indeed, considering respondents' long history of housing instability and failure to sustain forward progress, it might take a great deal of time before respondents could demonstrate sustained stability. Respondents'

failure to achieve stable housing and to demonstrate progress from counseling support termination under MCL 712A.19b(3)(c)(i).

However, we do not condone the court's reliance on respondents' "insufficient income" to support termination of their parental rights. Both respondents were employed throughout the majority of the proceedings. LM worked full-time, but at minimum wage jobs. NH was a laborer for a construction company and was repeatedly laid off. It is fundamentally unfair to condemn working parents for the systemic causes of their poverty.

Respondents' lack of stable housing and failure to demonstrate emotional stability also support termination under MCL 712A.19b(3)(g). Because of these ongoing conditions, respondents failed to provide proper care and custody for KH and would be unable to do so in the foreseeable future. In addition, respondents made no financial or in-kind contribution to KH's care while he was in the custody of his maternal grandmother.

We do not agree, however, that clear and convincing evidence supported termination under MCL 712A.19b(3)(j). There is no evidence that KH was ever placed in physical or emotional danger while in his parents' care. And there is no indication that KH would be placed in harm's way simply because respondents lacked sufficient income to maintain consistent housing. It was unnecessary for the court to stretch the evidence and order termination on this ground. A petitioner need only establish one statutory ground to support termination, *Trejo*, 462 Mich at 350, and the petitioner established two in this case.

IV. FURTHER CONSIDERATION OF CHILD'S BEST INTERESTS IS REQUIRED

Although petitioner established at least one ground supporting termination, the court must also find that termination is in the child's best interests. MCL 712A.19b(5). Here, neither the trial court nor the petitioner considered whether termination was necessary or in the child's best interests where the child was placed with a relative.

Our Supreme Court recently held that a child's placement with a relative is an important consideration under the best interest analysis:

[T]he court never considered whether respondent could fulfill his duty to provide proper care and custody in the future by voluntarily granting legal custody to his relatives during his remaining term of incarceration. . . .

Indeed, a child's placement with relatives weighs against termination under MCL 712A.19a(6)(a), which expressly establishes that, although grounds allowing the initiation of termination proceedings are present, initiation of termination proceedings is not required when the children are "being cared for by relatives." Thus the boys' placement with respondent's family was an explicit factor to consider in determining whether termination was in the children's best interests, yet placement with relatives was never considered in this regard. [*In re Mason*, 486 Mich 142, 163-164; 782 NW2d 747 (2010).]

Even more recently, the Supreme Court granted leave in *In re Mays*, 489 Mich 857; 795 NW2d 6 (2011), to review whether a trial court must always consider the propriety of

termination when a child is “being cared for by a relative.” In *Mays*, the children were placed with their maternal grandmother after being removed from their parents’ care. *In re Mays*, unpublished opinion per curiam of the Court of Appeals, issued November 23, 2010 (Docket No. 297446), slip op at 2. This Court affirmed the trial court’s determination that termination was in the children’s best interests where respondents failed to comply with the terms of their treatment plans, lacked any source of income, and failed to establish stable housing. *Id.*, slip op at 8.² As in this case, however, neither the petitioner nor the trial court in *Mays* considered whether termination was appropriate even though the children were placed with a relative.

Given the Supreme Court’s analysis in *Mason* and grant of leave in *Mays*, the trial court’s consideration of the child’s best interests in this case simply was not complete. While we affirm the trial court’s determination that at least one statutory ground supported the termination decision, we must vacate the trial court’s conclusion that termination was in KH’s best interests. On remand, the trial court must consider whether termination is required and advisable given KH’s placement with his maternal grandmother.

Affirmed in part, vacated in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly
/s/ Patrick M. Meter
/s/ Elizabeth L. Gleicher

² The Supreme Court heard oral argument in *Mays* on October 6, 2011, but has not yet issued its decision.