

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
January 12, 2012

In the Matter of J. ROMERI, Minor.

No. 303728
Chippewa Circuit Court
Family Division
LC No. 10-013881-NA

Before: HOEKSTRA, P.J., and MARKEY and BORRELLO, JJ.

PER CURIAM.

Respondent father appeals as of right the trial court's order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(b)(i), (c)(i), (g), and (j). For the reasons stated in this opinion, we affirm.

The Department of Human Services (DHS) petitioned the trial court to take jurisdiction over the minor child and to terminate the mother's parental rights in March 2010. The petition alleged in part that the minor child was admitted to the hospital on March 7, 2010, for "failure to thrive" because she had lost weight since birth and was "unable to feed properly as a result of being too weak and malnourished." The petition was amended twice, and the second amended petition alleged that respondent continued to believe the child's mother was able to provide proper care despite the fact that he was ordered to be the primary caregiver and ordered not to leave the minor child in the mother's care. The minor child was taken into protective custody pursuant to an order dated March 23, 2010. On June 3, 2010, the trial court exercised jurisdiction over the minor child after both respondent and the mother tendered pleas of admission to the allegations in the petition. The trial court found that jurisdiction was proper because the minor child failed to thrive when cared for by both parents and was hospitalized for about three weeks. Further, the trial court found that jurisdiction was proper because respondent believed that the child's mother provided proper care for the child when in fact the evidence demonstrated that the mother was unable to care for the child.

On July 28, 2010, the trial court conducted a hearing regarding the termination of the mother's parental rights. The same hearing also constituted the dispositional hearing in regard to respondent. The mother's parental rights to the minor child were terminated in an order dated August 12, 2010. The August 12, 2010 order also instructed respondent to follow a case-service plan, to have no contact with the minor child's mother, and to obtain housing separate from the minor child's mother. Respondent's case-service plan required that he obtain counseling and that he participate in supervised parenting time.

The first review of respondent's case was held on October 28, 2010. The trial court found that no progress had been made by respondent, and again ordered respondent to comply with the case-service plan. The next review was held on January 24, 2011. The trial court again found that respondent had made no progress in regard to the case-service plan. The trial court modified respondent's case-service plan to require that respondent obtain regular employment.

In February 2011, the DHS filed a supplemental petition that requested termination of respondent's parental rights to the minor child. A hearing regarding the termination of respondent's parental rights was held on March 17, 2011. Numerous witnesses testified during the hearing, including respondent's counselor, David Babcock, who is a Child Protective Services employee, and Kristen Corbiere, a DHS caseworker. The testimony established that respondent failed to obtain housing or permanent employment. Further, the testimony demonstrated that respondent failed to improve his parenting skills despite participating in parenting classes and supervised visitation. Respondent's counselor testified that respondent refused to recognize that he played any role in the minor child's malnourishment. Babcock and Corbiere both recommended that respondent's parental rights be terminated. The physician that treated the minor child testified that there was no medical reason for the child's failure to thrive and that her extreme malnutrition and weight loss was the result of her parents' failure to properly provide her with food.

On April 15, 2011, the trial court placed its findings of fact and conclusions of law on the record instead of issuing a written opinion. The trial court found that the statutory grounds for termination were established by clear and convincing evidence and that termination of respondent's parental rights would be in the minor child's best interests. The trial court noted that respondent's attitude indicated that he would not make progress regardless of the amount of time he is given and that the child needed permanency, safety, and security that respondent would not and could not provide.

On appeal, respondent argues that the trial court clearly erred in finding that he did not make progress with his case-service plan. Specifically, respondent argues that the trial court's consideration of his progress affected its determination that the statutory grounds for termination were established. Accordingly, we will consider the issue in that context.

In order to terminate parental rights, a trial court must find that at least one statutory ground for termination in MCL 712A.19b has been proven by clear and convincing evidence. *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005). We review the trial court's findings of fact for clear error. MCR 3.977(K); *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003). A finding is clearly erroneous if, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake was made. *Id.* at 209-210. Deference is given to the trial court's special opportunity to judge the weight of evidence and the credibility of witnesses who appear before it. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

We conclude that the trial court's determination that respondent did not satisfactorily complete his case-service plan was not clear error. Further, we conclude that the trial court's determination finding clear and convincing evidence to support the statutory grounds for termination was similarly not clearly erroneous. It is apparent from the evidence that respondent at least partially complied with aspects of his plan in that he attended a parenting program,

attended supervised parenting time, and attended counseling sessions; however, it is not enough to simply participate in services. A parent must also benefit from services to enable the trial court to find that he or she is able to provide a home for the child where there is no longer a risk of harm. *In re Gazella*, 264 Mich App 668, 677; 692 NW2d 708 (2005).

Here, the circumstances that led to the child's adjudication involved respondent's failure to protect the child from the child's mother, who was not capable of providing proper care. Further, respondent failed to recognize his own role in contributing to the child's malnourishment and failure to thrive, which led to the child's eventual hospitalization. The evidence at the termination hearing clearly demonstrated that respondent still had not accepted any responsibility for the child's circumstances. According to respondent's therapist, respondent continued to believe that the "whole thing" was the product of a conspiracy against him and the child's mother. In addition, the evidence established that respondent continued to associate with the child's mother and believed that she was an appropriate caregiver, despite the prior termination of her parental rights and issuance of an order prohibiting respondent from having contact with her. The evidence does not provide any basis for concluding that the trial court clearly erred in finding clear and convincing evidence establishing the statutory grounds for termination set forth in MCL 712A.19b(3)(b)(ii), (c)(i), (g), and (j).

Contrary to respondent's argument on appeal, the evidence did not show that he obtained suitable housing. At best, it showed that he made minimal efforts to attempt to secure housing and new employment during the month before the termination hearing, but was not successful in achieving either goal. The trial court's failure to comment on this evidence when concluding that respondent failed to make adequate progress does not establish clear error. It was not necessary for the trial court to specifically comment on all of the evidence. "Brief, definite and pertinent findings and conclusions on contested matters are sufficient." MCR 3.977(I)(1).

We also reject respondent's argument that the trial court erred by terminating his parental rights instead of affording him an additional 90 days to participate in services. Respondent's reliance on *Stallworth v Stallworth*, 275 Mich App 282; 738 NW2d 264 (2007), is misplaced because that case did not involve a child protective action. After finding that there were statutory grounds to terminate respondent's parental rights, the trial court was required to determine whether termination was in the child's best interests pursuant to MCL 712A.19b(5). That statute instructs that "[i]f the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). Respondent does not address the child's best interests. Considering that respondent was unable or unwilling to provide safety and security for the child, we find no clear error in the trial court's determination that termination of respondent's parental rights was in the child's best interests. *In re JK*, 468 Mich at 209; *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009). Therefore, under MCL 712A.19b(5), the trial court was required to terminate respondent's parental rights and respondent was not entitled to additional reunification services.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Jane E. Markey
/s/ Stephen L. Borrello