

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
March 20, 2012

In the Matter of COLE/GOMEZ, Minors.

No. 304820
Jackson Circuit Court
Family Division
LC No. 09-003633-NA

In the Matter of GOMEZ, Minors.

No. 304821
Jackson Circuit Court
Family Division
LC No. 09-003633-NA

Before: RONAYNE KRAUSE, P.J., and DONOFRIO and FORT HOOD, JJ.

PER CURIAM.

In Docket No. 304820, respondent-mother appeals as of right, and in Docket No. 304821, respondent-father appeals as of right from the trial court's order terminating their parental rights to the minor children. The court terminated respondent-mother's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), and (j), and terminated respondent-father's parental rights pursuant to MCL 712A.19b(g) only. We affirm.

I. STANDARD OF REVIEW

In an action to terminate parental rights, the petitioner must prove at least one statutory ground for termination under MCL 712A.19b(3) by clear and convincing evidence. MCR 3.977(A)(3) and (H)(3); *In re Trejo Minors*, 462 Mich 341, 356; 612 NW2d 407 (2000). The trial court's decision is reviewed for clear error. MCR 3.977(K); *In re Trejo*, 462 Mich at 356. Once a statutory ground for termination is established, the trial court shall order termination of parental rights if it finds that termination is in the child's best interests. MCL 712A.19b(5). The trial court's best interests decision is also reviewed for clear error. *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003). A finding is clearly erroneous when the reviewing court is left with the firm and definite conviction that a mistake was made. *Id.* at 209-210.

II. RESPONDENT-MOTHER'S APPEAL IN DOCKET NO. 304820

The trial court did not clearly err in finding that §§ 19b(3)(c)(i), (g), and (j) were each established by clear and convincing evidence with respect to respondent-mother. The evidence showed that respondent-mother participated in services as required by her treatment plan, but did not benefit from those services. A psychological evaluation indicated that respondent-mother's prognosis for benefitting from therapy was poor, and this conclusion was substantiated by the evidence. Despite her participation in services for more than a year, respondent-mother continued to accuse her oldest child of breaking up the family by reporting the incident of sexual abuse that led to petitioner's involvement in the case. She also continued to emotionally abuse the children after her participation in parenting classes and therapy. The children were returned to respondent-mother in June 2010, but were removed just two months later because of the continuing emotional abuse. Respondent-mother also participated in anger management therapy, but continued to have angry outbursts at service providers and her children during visits. The evidence supports the trial court's determination that grounds for termination were established under §§ 19b(3)(c)(i), (g), and (j).

In addition, the trial court did not clearly err in finding that termination of respondent-mother's parental rights was in the children's best interests. Service providers found that the behavioral and emotional problems of the two older children that existed while in respondent-mother's care decreased after being removed from respondent-mother's home and receiving therapy. Furthermore in light of respondent-mother's failure to benefit from services and her poor prognosis for rehabilitation, there was no reasonable expectation that respondent-mother would be able to provide any better care for the two younger children,

III. RESPONDENT-FATHER'S APPEAL IN DOCKET NO. 384821

The trial court did not clearly err in finding that § 19b(3)(g) was established by clear and convincing evidence with respect to respondent-father. Respondent-father failed to provide proper care for his children by exposing them to domestic violence when he lived with respondent-mother. Further, respondent-father engaged in criminal activity, resulting in his imprisonment until at least 2013, and possibly not until 2017. Even if he was paroled from prison on his earliest expected release date in 2013, he would still need to reestablish himself before he could be expected to provide proper care and custody. However, respondent-father's release at the earliest date was unlikely in light of the violent offense committed and the substantial number of misconduct tickets he received while incarcerated. The evidence clearly showed that there was no reasonable expectation that respondent-father would be able to provide proper care and custody for his children within a reasonable time.

We reject respondent-father's argument that termination was improper because petitioner failed to provide him with rehabilitation services during his incarceration. Respondent-father's reliance on *In re Mason*, 486 Mich 142, 160; 782 NW2d 747 (2010) is misplaced. The *Mason* Court held that the state was not relieved of its duty to engage an absent parent on the basis of incarceration. *Id.* at 152. In *Mason*, the father was incarcerated for a limited duration for a drunk driving offense, but the state did not even afford the father the opportunity to participate in hearings over the telephone pursuant to MCR 2.004. *Id.* at 152-154. In the present case, respondent-father was not incarcerated at the commencement of the petition, and petitioner was limited in its ability to provide services after his incarceration. Specifically, respondent-father's receipt of substantial misconduct tickets elevated his prisoner classification and delayed his

ability to participate in parenting classes. Respondent-father was not denied the opportunity to participate in these proceedings and in services. He participated in hearings by telephone, and he was represented by counsel throughout the proceedings. Petitioner provided him with a treatment plan and attempted to arrange for services in prison, but respondent-father's poor prison record made him ineligible for most services. Respondent-father refused to communicate with the caseworker when he learned that his communications would be shared with others.

Respondent-father also asserts that a family relative may have been able to care for his children until he was released from prison and in a position to care for the children himself. However, the caseworker testified that she contacted known relatives and none were able or willing to care for the children. According to the caseworker, respondent-father never provided the names of other relatives who might be able to provide placement.

Finally, in light of respondent-father's history of criminal activity and domestic violence, and the lack of any significant bond between respondent-father and his two young children, the court did not clearly err in finding that termination of respondent-father's parental rights was in the children's best interests.

Affirmed.

/s/ Amy Ronayne Krause
/s/ Pat M. Donofrio
/s/ Karen M. Fort Hood