STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
January 24, 2013

In the Matter of TWEEDY, Minors.

No. 309968
Livingston Circuit Court
Family Division
LC No. 2010-013588-NA

Before: SAWYER, P.J., and MARKEY and M. J. KELLY, JJ.

PER CURIAM.

Respondent-father appeals as of right the trial court's order terminating his parental rights to the minor children under MCL 712A.19b(3)(c)(*i*), (g), and (j). We affirm.

"In a termination of parental rights proceeding, a trial court must find by clear and convincing evidence that one or more grounds for termination exist and that termination is in the child's best interests." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). An appellate court "review[s] for clear error both the [trial] court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the [trial] court's decision regarding the child's best interest." *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The trial court's termination decision "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 JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

The trial court found that there were statutory grounds for termination pursuant to MCL 712A.19b(3)(c)(*i*), (g), and (j). Because we find clear and convincing evidence of statutory grounds for termination pursuant to (3)(c)(*i*), the only ground challenged by respondent-father, we affirm the trial court's finding that there were statutory grounds for termination. *In re CR*, 250 Mich App 185, 195; 646 NW2d 506 (2002) (the trial court must find clear and convincing evidence of at least one statutory ground for termination).

Pursuant to MCL 712A.19b(3)(c)(*i*), termination is warranted if petitioner provides clear and convincing evidence that:

> (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 . . . .

(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.

The trial court's findings under § 19b(3)(c)(*i*) were not clearly erroneous. The conditions that led to adjudication in this case were that respondent was incarcerated for assaulting respondent-mother, and that the children lacked a stable home environment. The record reveals that respondent-father was incarcerated again at the time of the termination proceeding for violating his probation, and his earliest release date for this most recent offense was January 15, 2014. Moreover, respondent-father failed to provide a stable home for the children. The children were homeless at the time of the assault that led to respondent-father's incarceration. Respondent-father originally suggested that the children could be cared for by respondent-mother while he was incarcerated, and while she had the children in her care at one point, she voluntarily relinquished her parental rights during the proceedings. Additionally, while the children stayed with two of respondent-father's relatives at various points during the proceedings, the children were removed from both placements and both relatives testified that they could not care for the children on their own. Therefore, there was clear and convincing evidence that the conditions that led to adjudication continued to exist more than 182 days after the issuance of the initial dispositional order. Additionally, given respondent-father's earliest release date and the fact that he failed to find proper care and custody for the children while he was incarcerated, the trial court's finding that there was no reasonable likelihood that the conditions that led to adjudication would be rectified within a reasonable time was not clearly erroneous. See, e.g., *In re Trejo Minors*, 462 Mich at 358 (where the respondent does not overcome the conditions that led to removal, the trial court does not clearly err in finding that statutory grounds for termination existed under § 19b(3)(c)(i)).

Respondent-father disagrees, citing *In re Mason*, 486 Mich 142, 160; 782 NW2d 747 (2010), where our Supreme Court ruled that "[t]he mere present inability to personally care for one's children as a result of incarceration does not constitute grounds for termination." Respondent-father's citation to *In re Mason* is unpersuasive because the facts in the case at bar are dissimilar to the facts in *In re Mason*. In *In re Mason*, petitioner sought termination of the respondent-father's parental rights solely because the respondent-father was incarcerated. *Id.* Moreover, petitioner essentially ignored the respondent-father as well as any potential placement for the children that respondent-father could provide, and terminated the respondent-father's rights simply because he could not *personally* care for the children. *Id.* at 157-164. Here, by contrast, the trial court did not find grounds for termination under § 19b(3)(c)(*i*) simply because respondent-father was incarcerated and he could not personally care for the children. Rather, the trial court found that respondent-father continued to engage in criminal behavior and that he failed to provide an adequate placement for the children while he was incarcerated. Thus, the facts in this case stand in contrast to those in *In re Mason*, and respondent-father's citation to the case is unpersuasive.

Respondent-father also argues that he was not given an opportunity to comply with the parent-agency agreement and that petitioner failed to provide him with adequate services. He argues that petitioner largely ignored him throughout the proceedings and failed to provide him with services to reunify his family. He notes that although petitioner provided services, he could not comply with these services because of his incarceration. In *In re Mason*, 486 Mich at 152,

our Supreme Court ruled that "[t]he state is not relieved of its duties to engage an absent parent merely because that parent is incarcerated." The Court emphasized that when petitioner's goal is reunification—as was the case here—petitioner must provide an incarcerated respondent with a case services plan and cannot ignore the respondent during the proceedings. *Id.* at 156. Petitioner in *In re Mason* failed to provide the respondent with notice of the hearings and failed to provide him with any services with which he could comply while he was incarcerated. *Id.* at 155-158.

Respondent-father's citation to *In re Mason* is again unpersuasive and his arguments are without merit. Unlike in *In re Mason*, petitioner did not deny respondent-father access to services while he was incarcerated, but rather, respondent-father's own criminal activity and his security classification prevented him from having access to services. Additionally, the record reveals that petitioner did not ignore respondent-father during the proceedings, but instead allowed him to participate at the hearings. Further, petitioner contacted the jail where respondent-father was incarcerated and inquired as to what, if any, services respondent-father could participate in during his incarceration. Therefore, *In re Mason* is inapposite because petitioner did not deny respondent-father services, but rather, respondent-father's own actions and security classification led to his inability to participate in services.

Moreover, respondent-father is not entitled to relief because the record reveals that when he had a chance to participate in services, he failed to do so, and he failed to comply with the parent-agency plan. Indeed, his parent-agency plan required respondent-father to comply with the terms of his probation, to notify petitioner of his address and compliance with his probation, and to not violate any criminal laws. In the 13 days after respondent-father was released from jail during these proceedings, he violated the terms of his probation, failed to notify petitioner, and was arrested for failing to comply with his probation. Furthermore, respondent-father did not make any efforts to set up the services to which petitioner referred him during this time period. In *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005), this Court held that where a respondent fails to participate in the services given to him, he cannot allege petitioner provided inadequate services or that petitioner failed to make reasonable efforts to reunify him with his family. Respondent-father's failures to comply with services when he had an opportunity to do so preclude him from arguing that the services offered by petitioner were inadequate or unreasonable. *Id.*

Respondent-father also argues that the trial court should have considered a potential relative placement for the children instead of terminating his parental rights. A respondent may be able to provide proper care and custody for his children through placement with a relative. *In re Mason*, 486 Mich at 161, 163-164. However, in this case, the two relatives with whom the children stayed during the proceedings testified that they could not care for the children on their own and the children were removed from their care during the proceedings. None of respondent-father's other relatives had been qualified for a relative placement. Further, this Court has held that the trial court is not required to place children with relatives. *In re McIntyre*, 192 Mich App 47, 52; 480 NW2d 293 (1991). There is no merit to respondent-father's argument.

Next, after reviewing the entire record, we find that the trial court did not clearly err when it determined that termination of respondent-father's parental rights was in the children's best interests. There was testimony that the children suffered emotional trauma from the time

they spent living with respondent-father. Additionally, respondent-father continued to engage in criminal activity throughout these proceedings. Most notably, respondent-father violated his probation immediately after his release from jail and was arrested once again. He did so despite the fact that on October 26, 2011, less than one month before he was released, petitioner changed its goal from reunification to termination. Therefore, despite knowing that he could lose his children for failing to comply with his probation, respondent-father nonetheless knowingly violated his probation by failing to live at the appropriate address. Furthermore, the record reveals that the children's behavior improved in foster care and that they benefited from the stability of their current foster care placement. The trial court did not clearly err by finding that termination was in the children's best interests.

In reaching this conclusion, we reject respondent-father's argument that the trial court failed to consider a potential relative placement in its best interests analysis. In *In re Olive/Metts*, 297 Mich App 35, 43; __ NW2d __ (2012), we held that a child's placement with relatives weighs against termination, and "the fact that a child is living with relatives when the case proceeds to termination is a factor to be considered in determining whether termination is in the child's best interests." Here, though, the children were not living with a relative at the time the case proceeded to termination. Respondent-father's argument is without merit.

Affirmed.

/s/ David H. Sawyer
/s/ Jane E. Markey
/s/ Michael J. Kelly