

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED  
February 21, 2013

In the Matter of D.L. MILSAP, JR., Minor.

No. 311848  
Saginaw Circuit Court  
Family Division  
LC No. 12-033323-NA

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Before: FITZGERALD, P.J., and METER and M. J. KELLY, JJ.

PER CURIAM.

Respondent-father appeals as of right from an order of the trial court terminating his parental rights to a minor child under MCL 712A.19b(3)(a)(ii) (“[t]he . . . parent has deserted the child for 91 or more days and has not sought custody of the child during that period”) and MCL 712A.19b(3)(g) (“[t]he 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”). We affirm.

Respondent-father challenges the court’s findings that the statutory grounds for termination were established. “This Court reviews for clear error the trial court’s ruling that a statutory ground for termination has been established and its ruling that termination is in the children’s best interests.” *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). “A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made.” *Id.*

A trial court must terminate a respondent’s parental rights if it finds that (1) a statutory ground under MCL 712A.19b(3) has been established by clear and convincing evidence and (2) termination is in the child’s best interests. See *In re B and J*, 279 Mich App 12, 18; 756 NW2d 234 (2008), and MCL 712A.19b(5).

Respondent-father argues that the trial court erred in finding that he abandoned the child because, as he testified, he never intended to do so. However, respondent-father’s argument is inapposite because MCL 712A.19b(3)(a)(ii) does not contain any reference to a parent’s intent. Termination under that subsection merely requires that the trial court find that the parent deserted the child for 91 or more days and did not seek custody during that time. At the July 20, 2012, hearing, respondent-father admitted he had not seen his son since the Department of Human Services (DHS) took the child into protective custody on February 10, 2012. It is undisputed that respondent-father had not sought custody of the child during that time, even though there had been repeated attempts by the case manager to contact respondent-father. Respondent-father’s

first meaningful contact with the case manager occurred in the county jail, 150 days after the child had been taken into custody. Given the evidence, the trial court did not err in finding that respondent-father had deserted the child for at least 91 days and had not sought custody during that period.

We note, in any event, that respondent-father's argument is essentially a credibility argument, and on appellate review this Court must give regard to "the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." MCR 2.613(C). At one point during its extensive findings, the trial court stated that "there's absolutely nothing to back . . . up" respondent-father's allegation that he had an intent to care for the child, and we give due regard to the trial court's conclusion. Moreover, evidence that throughout the proceedings respondent-father was inaccessible and repeatedly failed to contact the involved agencies<sup>1</sup> to inquire into how he could pursue having his son returned to his care renders respondent-father's "intent" assertion implausible. No error occurred.

In addition, respondent-father's argument that he never intended to abandon the child is irrelevant under MCL 712A.19b(3)(g), which expressly provides that intent is not a factor to consider. Respondent-father argues that he has sufficient housing and resources to care for the child. However, it is undisputed that respondent-father has provided no care or necessities for the child since the child was taken into DHS custody. Further, the trial court correctly found that respondent-father's abject failure to pursue custody or visitation during the nearly six-month period between removal and termination supported the conclusion that there was no reasonable expectation that respondent-father would provide proper care or custody within a reasonable time. The court did not err in finding that the ground for termination contained in MCL 712A.19b(3)(g) had been established.<sup>2</sup>

Respondent-father also argues that termination of his parental rights was not in the child's best interests. See MCL 712A.19b(5) ("[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"). "In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted).

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<sup>1</sup> The trial court noted that the DHS had contracted out some of its services to Lutheran Social Services of Michigan.

<sup>2</sup> Respondent-father cites *In re Boursaw*, 239 Mich App 161; 607 NW2d 408 (1999), overruled in part on other grounds by *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000), in support of his appeal. That case is distinguishable, however, because in *Boursaw*, the respondent had attended visitations and had taken significant steps toward becoming a better parent. See, e.g., *Boursaw*, 239 Mich App at 173-174, 177.

Respondent-father's arguments that the trial court erred are without merit. He posits that he formed a bond with the child in the hospital. However, the child was in the care of respondent-father and the child's mother for less than a week before he was taken into DHS custody. After that time, respondent-father never sought custody of or visitation with the child. As petitioner and the child's attorney argue, any persistent bond the child has formed is likely with his foster parents. Respondent-father further argues that he is willing to do anything to retain his parental rights. However, this assertion is refuted by his repeated failure throughout the proceedings to contact the involved agencies. This lack of contact also calls into question respondent-father's parenting ability. The need for permanency in the face of respondent-father's persistent failure to take affirmative steps to have his son returned supports the best-interests finding. The trial court did not clearly err in ruling that termination was in the child's best interests.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Patrick M. Meter

/s/ Michael J. Kelly