

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
March 26, 2013

In the Matter of KLOOSTERMAN Minor.

No. 312138
Ottawa Circuit Court
Family Division
LC No. 12-071644-NA

Before: STEPHENS, P.J., and HOEKSTRA and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent-father appeals as of right the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(g)¹ entered on August 16, 2012. Because the trial court did not have subject matter jurisdiction, we reverse.

I. BASIC FACTS AND PROCEDURAL HISTORY

Petitioners are the grandparent-guardians of the minor child and the parents of respondent. The child had resided for several years with petitioners in their fit and appropriate home and under their full guardianship, an arrangement respondent did not contest. During that time, respondent had not become able to resume the child's custody, but continued to abuse drugs and commit crimes, and refused to discuss the option of the child's adoption by petitioners. Pursuant to MCR 3.977(2)(c),² the grandparent-guardians filed a petition on March 15, 2012, requesting termination of respondent's parental rights and the parental rights of the child's biological mother.³ The guardians sought ultimately to adopt the child so as to make permanent the secure and stable home she had enjoyed with them for six and a half of her seven years. At the time of filing, respondent was serving a 6 to 20-year sentence for conducting criminal enterprise. In May 2012, this Court reversed that conviction, *People v Kloosterman*, 296 Mich

¹ MCL 712A.19b(3)(g): failure to provide proper care or custody with no reasonable expectation that parent will be able to provide proper care and custody within reasonable time.

² MCR 3.977(2) states in relevant part: "Parental rights of the respondent over the child may not be terminated unless termination was requested in an original, amended, or supplemental petition by . . . (c) the guardian, legal custodian, or representative of the child[.]"

³ Termination of the mother's parental rights is not at issue in this appeal.

App 636; 823 NW2d 134 (2012), and in October 2012, the Supreme Court denied leave to appeal. *People v Kloosterman*, 493 Mich 877; 821 NW2d 573 (2012).

The trial court determined that it had subject matter jurisdiction under MCL 712A.2(b)(1) and (2). The court next found clear and convincing evidence to terminate respondent's parental rights under MCL 712A.19b(3)(g), and also found termination to be in the child's best interests. On appeal, respondent asserts as error the trial court's assumption of jurisdiction over the child under MCL 712A.2(b)(1) and (2). Respondent further argues that the child was not neglected and did not reside in an unfit home or environment, and that it was therefore error to terminate his parental rights under MCL 712A.19b(3)(g).

II. ANALYSIS

In order to assume jurisdiction over the minor child in a termination of parental rights proceeding, the trial court must find that at least one of the statutory grounds for jurisdiction in MCL 712A.2(b) has been established by a preponderance of the evidence. MCR 3.972(C)(1). This Court reviews the trial court's findings of fact under the clearly erroneous standard. MCR 3.977(K); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

As the trial court correctly noted, the sections of MCL 712A.2(b) most relevant in this case are 3, 4, and 5, which afford the court jurisdiction in proceedings concerning a juvenile under 18 years of age found within the county:

(3) Whose parent has substantially failed, without good cause, to comply with a limited guardianship placement plan described in section 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5205, regarding the juvenile.

(4) Whose parent has substantially failed, without good cause, to comply with a court-structured plan describe in section 5207 or 5209 of the estates and protected individuals code, 1998 PA 386, MCL 700.5207 and 700.5209, regarding the juvenile.

(5) If the juvenile has a guardian under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, and the juvenile's parent meets both of the following criteria:

(A) The parent, having the ability to support or assist in supporting the juvenile, has failed or neglected, without good cause, to provide regular and substantial support for the juvenile for 2 years or more before the filing of the petition or, if a support order has been entered, has failed to substantially comply with the order for 2 years or more before the filing of the petition.

(B) The parent, having the ability to visit, contact, or communicate with the juvenile, has regularly and substantially failed or neglected, without good cause, to do so for 2 years or more before the filing of the petition.

As the trial court pointed out, subsections 3 and 4 do not apply because the guardianship is not limited and there was no court-structured plan in place. Subsection 5 does not apply because respondent had not “regularly and substantially failed or neglected, without good cause,” to “visit, contact, or communicate” with his daughter during the two years prior to the petition. The court found that, despite respondent’s incarceration for most of this two-year period, he had maintained contact with the child through visits facilitated by petitioners, telephone calls, and correspondence. In addition, the court found that, over the two years prior to the petition, respondent had not failed to comply substantially with a support order.

Having thus found that it could not assume jurisdiction under MCL 712A.2(b)(3), (4), or (5), the trial court turned to subsections (1) and (2), which permit the court jurisdiction in proceedings concerning a juvenile under 18 years of age found within the county:

(1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship.

* * *

(2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in.

Statutory interpretation is reviewed de novo on appeal. *In re Ballard*, 219 Mich. App. 329, 331, 556 N.W.2d 196 (1996). “When interpreting the meaning of a statute, our primary goal is to discern the intent of the Legislature by first examining the plain language of the statute.” *Driver v Naini*, 490 Mich 239, 246-247; 802 NW2d 311 (2011). When the language of the statute is clear and unambiguous, the Court will apply the statute as written and judicial construction is not permitted. *Id.* at 247. In subsection (1), “parent or other person legally responsible” plainly refers to the person in whose custody the child is. In subsection (2), “environment” plainly refers to the child’s ordinary surroundings. The trial court read subsection (1) as permitting jurisdiction where a child is thriving under a guardianship but the parent is not taking the necessary steps to resume care and support of the child, and subsection (2) as encompassing the broader social environment of the child. However, in light of the plain meaning of the terms at issue, this Court rejects those interpretations. MCL 712A.2(b)(1) and (2) are intended to apply in cases where the parent or other legally responsible person have custody of the child, and where the environment is that in which the child lives. The trial court’s assumption of jurisdiction under MCL 712A.2(b)(1) and (2) fails.

We reverse the trial court's termination of respondent's parental rights, and leave intact the full guardianship of the child with petitioners. Since the trial court did not have jurisdiction to terminate respondent's parental rights, we do not address the statutory grounds for termination or the best interests of the child.

Reversed.

/s/ Cynthia Diane Stephens

/s/ Joel P. Hoekstra

/s/ Amy Ronayne Krause