STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
July 23, 2013

In the Matter of J. CORNELL, Minor.

No. 313764
Dickinson Circuit Court
Family Division
LC No. 12-000520-NA

Before: MURPHY, C.J., and SAAD and SERVITTO, JJ.

PER CURIAM.

Respondent father appeals as of right the trial court's order terminating his parental rights to his minor child pursuant to MCL 712A.19b(3)(g) (failure to provide proper care and custody). We affirm.

A petition was filed by the Department of Human Services (DHS) on September 20, 2012, seeking jurisdiction over and immediate removal of the minor child and his four half-siblings on the basis of allegations that respondent and his wife, the children's mother, were living in the basement of a friend's house, that respondent and the mother had informed DHS that the friend was engaged in illegal drug activity, that the basement was environmentally unsafe and unsanitary and unfit for habitability, that the five children slept in one bed absent any sheets, that one of the children, a four-year old, smoked cigarettes, that one of the other children, a 14-year-old girl, was often left alone to watch and care for the other younger children, and that the children were not being homeschooled as earlier claimed by the mother. The petition further indicated that respondent and the mother had criminal records, that respondent was a registered sex offender, and that respondent and the mother had a history of domestic violence. The record reflects that respondent had been convicted in Wisconsin of sexual assault against a child. He served six years in prison for the crime. At the time the petition was filed, respondent had also just completed a jail term on a conviction for felony nonsupport. As a term of probation, respondent was not permitted to have contact with minor children. A few days after the petition was filed, respondent, given the basement living arrangement, was incarcerated for violating probation as to contact with minor children. On the day the petition was filed, an order was entered taking all of the minor children, including respondent's child, into protective custody.

A supplemental petition seeking termination of parental rights as to respondent was filed just a week after the original petition was filed. In addition to those allegations mentioned above, DHS alleged that respondent's parental rights had been terminated in regard to two other children, that respondent had an active foster care case with respect to yet another child

(daughter), that respondent would be incarcerated until February 2013 for having violated probation, and that respondent's wife and her sister revealed that respondent stated that he had sexual feelings for his 14-year-old stepdaughter and generally liked 12-year-old girls. Subsequently, the children's mother entered a plea of admission to some of the allegations, thereby giving the court jurisdiction over the children, in exchange for an agreement not to seek termination of her parental rights at the initial dispositional hearing and to set a goal of reunification. But DHS planned to continue to pursue termination in regard to respondent, and the court noted that the agreement did not apply to respondent. To that end, yet another supplemental petition was filed seeking to terminate respondent's parental rights to the minor child. The information alluded to by us above in regard to the previous two petitions was also contained in this newest petition. This petition also added allegations that respondent had a history and pattern of failing to support his children over the years, and it also noted that he was in favor of having his parental rights terminated as to the daughter currently in foster care; he had no interest in her whatsoever.

A termination trial was conducted on November 20, 2012, which was exactly two months after the original petition had been filed by DHS. At trial, the court took judicial notice of two prior voluntary terminations of respondent's parental rights in 1991. Evidence was presented showing that respondent currently owed $5,685 in child support, that he was found to have violated probation by having contact with two of his wife's minor daughters, that he was presently in jail and would likely not be released until January 2013, that he was subject to probation until at least June 2014, that he had an extensive criminal history, including two convictions for failure to comply with sex offender registry laws, that respondent had claimed to his parole officer that he was self-employed in the scrap-metal industry, with no other regular type of employment since 1986, and that respondent planned on moving to Wisconsin after his release from jail. Respondent's wife testified about his sexual feelings for his 14-year-old stepdaughter, about his failure to provide financial support for the child, and about moving regularly, at times without respondent because of domestic violence issues. The evidence essentially supported the allegations set forth in the petitions. Respondent presented no evidence.

The trial court found that clear and convincing evidence existed to support the termination of respondent's parental rights under MCL 712A.19b(3)(g).[1] The trial court also concluded that termination of respondent's parental rights was in the best interests of the child.

We review for clear error the trial "court's findings on appeal from an order terminating parental rights." MCR 3.977(K); see also *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009). A finding is clearly erroneous if, although there is evidence to support it, the

[1] MCL 712A.19b(3)(g) provides for termination when there exists clear and convincing evidence that "[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."

reviewing court is left with a definite and firm conviction that a mistake was made after review of the entire record. *In re Rood*, 483 Mich 73, 91; 763 NW2d 587 (2009). We must give regard "to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011). We review de novo a trial court's interpretation of statutes and court rules. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

If a trial court finds that a single statutory ground for termination has been established by clear and convincing evidence *and* that it has been proven by a preponderance of the evidence that termination of parental rights is in the best interests of a child, the court is mandated to terminate a respondent's parental rights. MCL 712A.19b(3) and (5); *In re Ellis*, 294 Mich App at 32; *In re Moss Minors*, __ Mich App __; __ NW2d __, issued May 9, 2013 (Docket No. 311610), slip op at 3.

Respondent argues that the trial court erred in finding that MCL 712A.19b(3)(g) had been established. More particularly, respondent first maintains that termination under § 19b(3)(g) was improper because DHS failed to provide him with any reunification services and was therefore derelict in its duties. "Generally, when a child is removed from the parent's custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *In re HRC*, 286 Mich App 444, 462; 781 NW2d 105 (2009); see also MCL 712A.18f. However, DHS "is not required to provide reunification services when termination of parental rights is the agency's goal." *HRC*, 286 Mich App at 463, citing *In re Terry*, 240 Mich App 14, 25 n 4; 610 NW2d 563 (2000); see also *Moss*, slip op at 7. In the case at bar, termination of respondent's parental rights was DHS's goal commencing one week into the proceedings. Furthermore, reasonable efforts to reunify a child with his or her parents must be made, except where aggravated circumstances exist as outlined in MCL 712A.19a(2). *Mason*, 486 Mich at 152. MCL 712A.19a(2)(d) provides that "[r]easonable efforts to reunify the child and family must be made in all cases except" when "[t]he parent is required by court order to register under the sex offenders registration act." Here, not only was respondent required to register as a sex offender, he had already been convicted twice of failing to register.[2]

Respondent also contends that termination under § 19b(3)(g) was improper because the trial court relied on his history and past practices instead of focusing on his current plans and his ability to turn his life around, effectively permanently punishing him for previous mistakes. While the court did take into account, in part, his past practices and history, the evidence also showed that at the time the petition was filed, respondent was in violation of probation by being in contact with minors, the child was living in unsanitary conditions and in an unacceptable

[2] We also note that respondent was afforded a meaningful opportunity to participate in the proceedings, notwithstanding the fact that he was incarcerated during the proceedings, and that the court did not terminate his parental rights merely on the basis of his incarceration. *Mason*, 486 Mich at 160-164. Rather, the court's termination decision was based on a multitude of factors such as deplorable living conditions, decades of underemployment, an extensive criminal history, including a sexual assault against a child, failure to provide financial support, inappropriate thoughts and feelings about the minor stepdaughter, and a general failure to provide proper care and custody.

environment, respondent had questionable employment and was providing little if any support, and he was commenting about having sexual feelings toward is 14-year-old stepdaughter and liking young girls. Regardless, respondent's history and patterns were very relevant for purposes of determining under § 19b(3)(g) whether there was a reasonable expectation that respondent would be able to provide proper care and custody within a reasonable time. Respondent's parenting history and patterns of behavior strongly supported the conclusion that a change in conduct and behavior relative to providing proper care and custody in the future was highly unlikely. Further, with respect to his future plans, respondent acknowledges in his brief on appeal that his plan to move to Wisconsin to find a job had "hurdles" and that "there [was] no evidence that this plan would be successful[.]"

Finally, we reject respondent's argument that the trial court clearly erred in finding that termination of his parental rights was in the child's best interests.[3] There was a mountain of evidence, already alluded to throughout this opinion, that supported the ruling that termination was in the child's best interests. Reversal is unwarranted.

Affirmed.

/s/ William B. Murphy
/s/ Henry William Saad
/s/ Deborah A. Servitto

[3] The trial court considered the best-interest factors found in MCL 722.23 and typically used in child custody disputes. Consideration of these factors in the context of a termination case is not improper. See *In re JS & SM*, 231 Mich App 92, 102; 585 NW2d 326 (1998), overruled in part on other grounds *In re Trejo Minors*, 462 Mich 341; 612 NW2d 407 (2000).