313STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of T.A. JORDAN, Minor.

UNPUBLISHED
July 23, 2013

No. 313789
Montcalm Circuit Court
Family Division
LC No. 2005-000198-NA

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

PER CURIAM.

Respondent appeals the trial court's order terminating his parental rights to his son pursuant to MCL 712A.19b(3)(c) (failure to rectify condition leading to removal), MCL 712A.19b(3)(g) (failure to provide proper care and custody), and MCL 712A.19b(3)(j) (reasonable likelihood of harm). For the reasons set forth below, we affirm.

The parental rights of the child's biological mother were terminated in 2007, and the child was placed with respondent. In 2011, petitioner sought jurisdiction over the child and to remove him from respondent's care because respondent allowed contact with the child's biological mother and because of allegations of physical abuse and neglect. The child was removed and placed with his great-grandmother. Respondent attended counseling, completed a parenting class, and received in-home services from Catholic Charities. Respondent and his son were reunified on May 31, 2011. However, due to physical abuse, the child was again removed from respondent's care on August 11, 2011.

Respondent argues that insufficient evidence was presented that termination of his parental rights was in his son's best interests. The trial court's decision to terminate a respondent's parental rights is reviewed for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004). "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).

Respondent's counselor testified that he had "extremely limited success" in establishing or reestablishing attachment between respondent and the child. He also testified that although the two were bonded, the bond was inadequate. This was also reflected in the scores on

respondent's psychological examination, which indicated that attachment was weak and that there was a bonding problem. The evidence also clearly showed that the child does not feel safe around respondent. The boy's counselor recalled a time when he drew a "safety circle" of people that he felt were safe and could meet his emotional needs; the boy placed respondent outside the circle. The child also told his counselor that he was afraid that respondent would hurt him, that he did not want to see respondent alone, and that respondent was "lonely . . . because when I'm not there, he can't hit anyone." Similarly, the director of a trauma center for children testified that the child ranked respondent at 15 on a safety scale from 1 to 10, with 1 indicating safety and 10 indicating fear. The boy's counselor testified that it was "absolutely" important for permanency and stability to occur immediately so that the child could move on to the next phase of therapy.

Evidence also showed that respondent had a negative impact on the child's behavior. Before and after parenting time, the boy would become aggressive to the point of violence directed against his caregiver. Moreover, the child's special education teacher testified that he was "extremely argumentative and oppositional" both before and after his visits with respondent.

Although respondent completed a parenting class, in-house services, and attended counseling, the evidence showed that he did not benefit from the services. Indeed, the child was removed from his care after respondent engaged in these services because respondent admittedly grabbed the child and slammed him into a couch hard enough to leave a mark. Moreover, the evidence showed that respondent failed to sufficiently comply with his case service plan, failed to follow the recommendations from his psychological evaluation, stopped communicating with DHS in March 2012, failed to acknowledge the reason for the child's removal, and failed to verify his employment with DHS. And, when respondent did communicate with DHS, the testimony established that his interactions with various caseworkers were confrontational.

The evidence clearly preponderates in favor of the court's finding that termination was in the child's best interests. See *In re Moss*, ___ Mich App ___; ___ NW2d ___ (Docket No. 311610, issued May 9, 2013), slip op p 3.

We also reject respondent's unpreserved argument that petitioner failed to make reasonable efforts at reunification. With limited exceptions, "reasonable efforts to reunify the child and family must be made in all cases." MCL 712A.19a(2). However, "[w]hile the DHS has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered." *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). And it is not sufficient that a respondent participate in services—he or she must also sufficiently benefit from the services provided. *Id*. Here, respondent was provided with significant services, including parenting class, counseling, in-house support services from Catholic Charities, a psychological evaluation, and referrals to parent support groups. Parenting time was also facilitated. The evidence showed that respondent did not participate in all the offered services and did not benefit from the services in which he participated. Therefore, the trial court did not clearly err in finding that DHS made reasonable efforts at reunification. See *id*.

Finally, respondent argues that the trial court violated his due process rights when it refused to appoint an expert on parental alienation. We review for abuse of discretion the trial

court's decision on whether to appoint an expert witness. *In the Matter of Bell*, 138 Mich App 184, 187-188; 360 NW2d 868 (1984). A court abuses its discretion when it chooses a result that is outside the range of reasonable and principled outcomes. *People v Orr*, 275 Mich App 587, 588-589; 739 NW2d 385 (2007). "We review de novo the constitutional question whether the proceedings complied with respondents' due process rights." *In re HRC*, 286 Mich App 444, 462; 781 NW2d 105 (2009).

A court may appoint an expert nominated by a party or on its own motion. MRE 706(a); *In re Bell*, 138 Mich App at 187. In *People v Leonard*, 224 Mich App 569, 582; 569 NW2d 663, lv den 456 Mich 890 (1997), this Court held that a defendant

> "must demonstrate something more than a mere possibility of assistance from a requested expert; due process does not require the government automatically to provide indigent defendants with expert assistance upon demand. Rather . . . a defendant must show the trial court that there exists a reasonable probability both that an expert would be of assistance to the defense and that denial of expert assistance would result in a fundamentally unfair trial." [Quoting *Moore v Kemp*, 809 F 2d 702, 712 (CA 11, 1987).]

Respondent argues that while petitioner was allowed an expert witnesses to support petitioner's theory, he was "virtually handcuffed" when he tried to present his alternative theory about what caused the child's trauma. However, respondent conceded that an independently-appointed expert might determine that there is no parental alienation. Therefore, the trial court did not abuse its discretion in denying respondent's motion, which was based on mere speculation and conjecture.

Affirmed.

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