

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DR, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DERRICK RICKY REID, SR.,

Respondent-Appellant.

UNPUBLISHED

November 26, 2013

No. 315353

Ingham Circuit Court

Family Division

LC No. 11-000362-NA

Before: METER, P.J., and SERVITTO and RIORDAN, JJ.

PER CURIAM.

Respondent appeals as of right from an order of the trial court terminating his parental rights to his minor child, DR. We affirm.

Respondent testified that he was convicted in November 2012 of fleeing and eluding, felony-firearm, carrying a concealed weapon, and felon in possession of a weapon. Respondent acknowledged that he was currently in prison, with an earliest release date in 2016.

A petition to establish jurisdiction over the minor child and terminate the parental rights of the child's mother was filed two days after the child's birth in March 2011. At a plea hearing on June 12, 2011, which also served as a dispositional hearing with respect to the mother, respondent admitted to using marijuana when DR was born and further testified that he knew the mother used both marijuana and cocaine, but stated that he "didn't know she was using drugs with the baby." The trial court concluded that respondent knowingly and voluntarily made the plea with sufficient facts to establish jurisdiction. Respondent did not object to the court's assuming jurisdiction. The court terminated the parental rights of the mother, and she has not appealed.

In January 2013, an updated service plan (USP) identified the following continuing issues concerning reunification of DR with respondent: (1) emotional stability, (2) parenting skills, (3) substance abuse, (4) social-support system, (5) communications/interpersonal skills, and (6) housing. A foster-care worker testified that these same barriers existed when she was assigned to the case in March 2012. Respondent told the court that he believed his son had not been returned

to him since birth because of “some setbacks that was—had a setback as far as for marijuana.” “But other than that,” he continued, “I’ve completed the programs that they asked me to do.”

At the termination hearing on February 27, 2013, respondent admitted to nine positive drug tests, mainly for marijuana but with one for cocaine.¹ Three of those positive tests, along with many missed tests, were between March 2012 and February 2013. Respondent was jailed in August 2012 for 30 days because of his failure to comply with drug screens.

Respondent indicated that he had income from disability payments and had housing in 2012. The foster-care worker testified that respondent had provided a lease for 2011, but not one for 2012 because he was renting month-to-month. She said he had provided only one rent-payment receipt, for June 2012. Respondent indicated that he attended and benefitted from a parenting class, including lessons on communication, but the foster-care worker felt additional classes were necessary. The January 2013 USP indicated that respondent had “failed to communicate with the agency, the caseworker and service providers prior to his incarceration. This resulted in [DR] waiting at the agency for [respondent] for scheduled parenting time, failing to resume individual therapy, and complet[e] drug screens.” The foster-care worker testified that respondent visited DR for two hours on Wednesdays and one hour on Thursdays, with increasing dependability between March 2012 and August 2012, but especially in September and October 2012. The foster-care worker believed that respondent was affectionate toward DR during visitation, and respondent believed he had bonded with the child. Respondent also testified that he had seen a counselor about four times before his current incarceration and saw a benefit in it. Respondent testified that he had signed up for individual improvement classes during incarceration, including “Thinking for a Change” and “Faith Through Substance Abuse.” He also indicated a desire to attend parenting classes.

The court found clear and convincing evidence to terminate respondent’s parental rights under MCL 712A.19b(3)(c)(i), (g), and (j). Regarding § 19b(3)(c)(i), the court found that the substance abuse and criminality that formed the basis of assuming jurisdiction in July 2011, over 182 days since the court’s order was issued, continued into the present, and “there’s no reasonable likelihood that [respondent’s] going to be in a position to rectify these conditions within any reasonable time considering the child’s age.” Under § 19b(3)(g), the court found that respondent had failed to provide proper care, with no expectation of future proper care, given his failure to secure such care in the nearly two-year window between birth and the termination hearing. The court concluded that respondent had not addressed the “major barrier to his ability to provide care,” which the court stated was “his drug use and the multiple times that he missed drug screens.” Further, the court recognized that respondent’s lifestyle led to his current incarceration. The court stated that DR “should not have to wait . . . three to five more years for someone to come and take care of him.” The court also noted respondent’s poor prognosis and reasoned that when he was released from prison, respondent would “have to . . . go through a lot

¹ A petition for termination dated November 27, 2012, identified 104 missed drug screens between May 9, 2001, and November 14, 2012, and 37 negative screens between June 21, 2011, and November 1, 2012.

of different things to get back on track.” Finally, under § 19b(3)(j), the court found a reasonable likelihood of harm to the child if returned to respondent, based on the unchecked drug use and also respondent’s carrying a concealed weapon while engaged in high-risk behavior.

Regarding the best interests of the child, the court recognized the appropriate behavior of respondent with the minor and the existence of a bond between them. However, the court noted that respondent “really has not been available to his son” and that DR “has nobody else. . . . He should not have to sit in limbo.” The court found that “permanency is needed,” and thus that it was in the best interests of the child to terminate respondent’s parental rights.

Respondent first argues that the court’s exercise of jurisdiction was in error. Respondent argues that the assumption of jurisdiction over the child was erroneous because respondent was not lawfully able to plead to allegations against DR’s mother and any plea concerning respondent himself was insufficient to establish jurisdiction. Generally, this Court reviews the trial court’s determination of jurisdiction for clear error. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). Clear error exists if this Court is “left with the definite and firm conviction that a mistake has been made.” *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010) (citations and internal quotation marks omitted).

However, the court entered an order of adjudication in June 2011, which “may only be appealed by leave granted.” *In re SLH, ALH, & VAH*, 277 Mich App 662, 669 n 13; 747 NW2d 547 (2008), citing MCR 3.993(B). At any rate, an adjudication such as that at issue in the present case cannot be collaterally attacked in an appeal from the order terminating parental rights. *In re Hatcher*, 443 Mich 426, 427-428, 439-440, 444; 505 NW2d 834 (1993); *In re Gazella*, 264 Mich App 668, 679-680; 692 NW2d 708 (2005), superseded by statute on other grounds as stated in *In re Hansen*, 285 Mich App 158, 163; 774 NW2d 698 (2009), vacated on other grounds 486 Mich 1037 (2010).²

Respondent argues that termination was not in the best interests of the child because he was making strides to turn his life around and he must be given a reasonable amount of time to show he will be able to care for his child. He asserts that the court erred in terminating his parental rights solely because he was in prison. We review a trial court’s decision regarding the children’s best interests under the clearly-erroneous standard. *In re Trejo*, 462 Mich 341, 356-

² We note, at any rate, that the order of adjudication states that jurisdiction was based on both a plea and trial. Although the court stated that it found jurisdiction after respondent’s admissions, subsequent testimony regarding the mother’s history and the child’s testing positive for drugs at birth also supported the exercise of jurisdiction. Respondent also argues that his plea was not knowingly or understandingly made because he allegedly showed confusion during the questioning and allegedly was not advised that his plea could be used against him later. This argument is disingenuous. The record reflects that respondent was advised that if “you admit these things . . . your child will be a Court ward” and that “the Court could terminate your parental rights.” Respondent acknowledged that he understood and that he had no questions.

357; 612 NW2d 407 (2000); MCR 3.977(K). In order to terminate parental rights, the court must consider the whole record, *In re Trejo*, 462 Mich at 356, and find that termination is in the best interests of the child by a preponderance of the evidence, *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013).

Respondent argues that incarceration alone cannot justify termination. See *In re Mason*, 486 Mich at 160. However, the trial court, during the course of its various rulings, emphasized a number of factors, not just respondent's incarceration. Respondent continued in a pattern of drug abuse and other high-risk behavior that resulted in his most recent incarceration. Although at liberty and receiving services during the first year of DR's life, respondent failed to reform his behavior sufficiently to provide proper care and custody for his son. He missed numerous drug screens and tested positive with respect to others. The court noted respondent's poor prognosis and reasoned that when he was released from prison respondent would "have to . . . go through a lot of different things to get back on track." Based on the evidence and the court's findings, the court did not err in concluding that DR, who needed permanency, could not wait for the period it would take respondent to get out of prison and establish a safe home. It was not clearly erroneous for the trial court to determine that termination of petitioner's parental rights was in the best interests of the child.

Affirmed.

/s/ Patrick M. Meter
/s/ Deborah A. Servitto
/s/ Michael J. Riordan