STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of GOODLOW, Minors.

UNPUBLISHED
October 10, 2013

No. 315886
Kalamazoo Circuit Court
Family Division
LC No. 2011-000192-NA

Before: MURRAY, P.J., and DONOFRIO and BORRELLO, JJ.

PER CURIAM.

Respondent appeals as of right the March 13, 2013 order terminating his parental rights to the minor children, under MCL 712A.19b(3)(g) (failure to provide proper care and custody) and (h) (parent imprisoned for a period depriving the children of a normal home for over two years), which was entered by Kalamazoo Circuit Court, Family Division Judge Patricia N. Conlon.[1] For the reasons set forth in this opinion, we affirm.

On appeal, respondent first argues that the trial court erred in finding statutory grounds for the termination of his parental rights. A trial court's finding that a ground for termination has been established is reviewed under the clearly erroneous standard. MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

In this case, respondent's earliest release date for his first-degree criminal sexual conduct conviction was March 21, 2015. Accordingly, when the trial court entered its decision on March 11, 2013, respondent had over two years of imprisonment before he would have been able to provide the minor children with a normal home, as required under MCL 712A.19b(3)(h). The remaining questions under MCL 712A.19b(3)(g) and (h) were whether the evidence supported that respondent failed to provide the minor children with proper care and custody and whether there was no reasonable expectation that he would be able to provide proper care and custody within a reasonable time considering the minor children's ages.

Testimony revealed that respondent did not financially provide for the children for more than two years prior their removal from the home of their mother. Respondent testified that he

[1] The trial court also terminated the parental rights of the minor children's mother, but she has not appealed that decision and is not a party to this appeal.

could not provide them a home when they were removed from their mother because he "barely had a home" himself. He could also not provide for any his 11 or 12 other children. On this record there can be no other conclusion but that respondent failed to provide proper care and custody.

Respondent nevertheless argues that he could have properly cared for the minor children through placement with a relative. See *In re Mason*, 486 Mich 142, 163-164; 782 NW2d 747 (2010). In this case, however, the minor children were placed by petitioner into the care of their maternal grandmother. There is no indication that respondent participated in the minor children's placement with their maternal grandmother, sanctioned it or tried to offer another appropriate placement after the children's removal or during his lengthy incarceration. Thus, this is not a case where respondent provided care for the minor children by placing them with one of his relatives.

Respondent also asserts that he attempted to send the minor children letters while he was incarcerated in an effort to comply with his service plan. A parent's compliance with a parent/agency treatment plan is evidence of the ability to provide proper care and custody. See *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). However, the record is clear that respondent had not provided material support for the minor children after he moved out of their mother's house in 2008. Accordingly, while there was some evidence respondent tried to comply with parts of his treatment plan, the trial court's finding that respondent failed to provide the minor children with proper care and custody before the termination hearing was not clearly erroneous. MCR 3.977(K); *Trejo Minors*, 462 Mich at 356-357.

Next, we reject respondent's argument that because there was no longer an impediment to visiting the children, he could provide proper care and custody within a reasonable time. Respondent claims that the reason he did not visit the minor children at their mother's house before removal was because he did not get along with the mother's boyfriend. Respondent now claims that because the minor children's mother ended her relationship with that boyfriend, respondent would not have a reason to stay away from his children's home in the future. Regardless, respondent not only failed to visit the minor children in the past, he also failed to provide any material support for them after he moved out of the mother's home in 2008. Thus, his assertion does not demonstrate that he could provide proper care and custody within a reasonable time. Therefore, given respondent's more than two-year remaining minimum sentence, his admission that it would take time for him upon release to provide for the children, and his history of failing to provide care and custody, it was not clearly erroneous for the trial court to find that there was no reasonable expectation that respondent would be able to provide proper care and custody within a reasonable time considering the ages of the children. *In re Archer*, 277 Mich App 71, 75-76; 744 NW2d 1 (2007). On this record, we must conclude that the trial court did not clearly err in finding statutory grounds for termination of respondent's parental rights under MCL 712A.19b(3)(g) and (h). MCR 3.977(K); *Trejo Minors*, 462 Mich at 356-357.

Respondent next argues that the trial court clearly erred in finding that petitioner made reasonable efforts to reunite respondent with his children. The trial court's factual finding that reasonable efforts were made to reunify respondent with the minor children is reviewed under the clearly erroneous standard. MCR 3.977(K).

Generally, "petitioner must make reasonable efforts to rectify conditions, to reunify families, and to avoid termination of parental rights," *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008), except where aggravated circumstances exist under MCL 712A.19a(2). The aggravated circumstance that applies in this case is MCL 712A.19a(2)(d), which provides that reasonable efforts need not be made where "[t]he parent is required by court order to register under the sex offenders registration act." Here, respondent was convicted of first-degree criminal sexual conduct under MCL 750.520b. Because of that conviction, respondent is required to register as a sex offender under the Sex Offenders Registration Act, MCL 28.721, *et seq*. MCL 28.722(k); MCL 28.722 (v)(*iv*); MCL 28.723(1)(a) and petitioner was not required to make reasonable efforts to reunify respondent with the minor children.

Finally, respondent argues that the trial court failed to consider several relevant factors when it made its best-interest findings. A trial court's finding that termination is in a child's best interests is generally reviewed under the clearly erroneous standard. MCR 3.977(K); *Trejo Minors*, 462 Mich at 356-357.

In this case, the trial court found that the minor children had "greatly improved physically, emotionally and behaviorally since being in the home of their maternal grandmother." In contrast, the trial court found that "[t]here was nothing in any of the evidence presented to indicate that [respondent] understands the responsibility that he has to his numerous children to support them financially, emotionally, physically, or academically, or to be a good role model for them." These findings were supported by the record, and they were proper because a trial court may consider the minor children's advantages in foster care when determining the children's best interests. *In re Foster*, 285 Mich App 630, 635; 776 NW2d 415 (2009); *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004). And, it may also consider the need for stability and permanency. *In re VanDalen*, 293 Mich App 120, 141; 809 NW2d 412 (2011).

On appeal, respondent argues that the trial court failed to consider that he expressed an interest in interacting with his children; that he wanted to be a part of the proceedings; that he supported the minor children when he lived with them and continued to be involved with them after he and the children's mother ended their relationship; and that he understood that the minor children were safe in the care of their maternal grandmother. The record shows that respondent expressed interest in interacting with his children, and that he generally participated in the proceedings while incarcerated. However, the minor children's mother testified that the only times respondent saw the minor children after he moved out in 2008 was when she brought the minor children to see respondent approximately once every one or two weeks. Further, both the minor children's mother and respondent acknowledged that he did not provide for the minor children after he moved out of the mother's house. Accordingly, while respondent's factual assertions above tend to portray respondent as an interested father concerned with the minor children's care, the evidence shows that respondent was largely uninvolved in the minor children's lives.

Moreover, the trial court must determine the best interests of a child using evidence from the whole record. *Trejo Minors*, 462 Mich at 353. Even if the record conclusively showed that respondent was concerned with the minor children's care, this would not negate the trial court's finding that the minor children were better off in the care of their maternal grandmother, who

was providing permanency and stability. Accordingly, the whole record supported the trial court's finding that termination was in the minor children's best interests. *Id*. Respondent fails to show that the trial court clearly erred in finding that termination of his parental rights was in the minor children's best interests. MCR 3.977(K); *Trejo Minors*, 462 Mich at 356-357.

Affirmed.

/s/ Christopher M. Murray
/s/ Pat M. Donofrio
/s/ Stephen L. Borrello