

STATE OF MICHIGAN
COURT OF APPEALS

In re RYAN LIEVENSE, Minor.

LUTHERAN SOCIAL SERVICES and
DEPARTMENT OF HUMAN SERVICES,

UNPUBLISHED
February 7, 2006

Petitioners-Appellees,

v

JAMES MCCARRICK,

Respondent-Appellant.

No. 264742
Ingham Circuit Court
Family Division
LC No. 00-592711-NA

Before: Meter, P.J., Whitbeck, C.J., and Schuette, J.

PER CURIAM.

Respondent appeals as of right from a circuit court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(g) and (j). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. FACTS

Erin Underhill is the mother of three children: Ryan Lievense, Uriah Underhill, and Katelin Underhill. In November 2003, the children were living with their mother and her husband, David Underhill, the father of Uriah and Katelin; Ryan's father was unknown. Petitioner filed a petition alleging that Ryan had muscular dystrophy, that Katelin was not gaining weight at a reasonable rate, and that the Underhills were not keeping doctor's appointments because David had "a hard time getting up in the morning." Katelin did not know how to eat from a spoon, and during a welfare check, agency workers found the house in disarray and Ryan playing with a lighter. In December 2003, the Underhills admitted certain allegations in the petition and the court took jurisdiction over the children. According to agency records, petitioner had by then learned that respondent was believed to be Ryan's father. Respondent was apparently serving a prison sentence for second-degree criminal sexual conduct.

In August 2004, petitioner filed a termination petition as to Ryan. It alleged that respondent had been convicted of second-degree CSC and had never had contact with the child. Erin Underhill voluntarily relinquished her parental rights to Ryan in October 2004. A termination hearing as to respondent was held on November 17, 2004. However, after hearing brief testimony, the court requested that the petition be withdrawn. Consequently, petitioner

withdrew the request to terminate respondent's parental rights and a service plan was established for reunification.

In June 2005, petitioner filed a supplemental petition for termination alleging that respondent had failed to complete parenting classes, had no income, and was living with a woman whose own children had been removed. Domestic violence was an issue. A psychologist had reported that respondent was incapable of caring for a child with Ryan's needs, that respondent had had limited contact with Ryan, and that visits did not always go well. The court conducted a hearing on July 20, 2005. Testimony at the hearing indicated that Ryan had entered foster care in November 2003. Ryan also had muscular dystrophy and was severely mentally retarded. A foster care worker opined that respondent was unable to appreciate Ryan's special needs. A psychological evaluation admitted into evidence showed that respondent was "a multiply impaired individual struggling to meet the demands of everyday life with decidedly modest overall adaptive assets in a context of surviving a severely maladaptive and destructive childhood." Respondent was characterized as having a limited and inadequate understanding of his own behavior, as well as a limited understanding of the functioning of other people. Evidence also showed respondent was unable to adequately describe Ryan's mental and physical conditions. Respondent's only known source of income was \$149 in food stamps per month. Evidence also showed that respondent ended his visits with Ryan and did not complete parenting classes because he was in jail. Respondent also did not have appropriate housing for Ryan as he was living with his girlfriend, whose children had been removed from her care.

The court determined that there was clear and convincing evidence to warrant termination under §§ 19b(3)(g) and (j).

II. TERMINATION OF PARENTAL RIGHTS

A. Standard Of Review

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1993). The trial court's decision is reviewed under the clearly erroneous standard. MCR 3.977(J); *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999); *In re Gazella*, 264 Mich App 668, 672; 692 NW2d 708 (2005). In applying the clearly erroneous standard, this Court should recognize the special opportunity the trial court has to assess the credibility of the witnesses. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A finding of fact is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake was made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

B. Analysis

The court may terminate the rights of a parent to a child if the court finds by clear and convincing evidence that:

1. The 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. [MCL 712A.19b(3)(g).]

2. There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent. [MCL 712A.19b(3)(j).]

Respondent does not dispute that he failed to provide proper care or custody for his son. He contends only that, as held in *In re Newman*, 189 Mich App 61; 472 NW2d 38 (1991), the court erred in finding that he would not be able to provide same within a reasonable time because he was not offered the specialized services needed to become a better parent.

This case is distinguishable from *Newman*. In that case, the mother's intellectual limitations apparently did not prevent her from providing the necessary daily care and guidance a child requires. She simply required help in learning to provide a safe environment and the agency had not offered services designed to help her learn those skills. In this case, respondent's problem was not with the mechanics of everyday tasks, but with understanding and coping with his son's special needs.¹ Respondent was provided with information regarding muscular dystrophy but clearly did not understand even the basic concept that it was a disease of the muscles that affects motor skills. Respondent was provided with parenting classes to educate him on the basic skills involved in parenting, yet was unable to identify what it took to be a nurturing father apart from refraining from physical abuse. Further, respondent did not suffer from mere cognitive limitations that might be overcome with intensive training; he suffered from "maladaptive thinking" that left him "fundamentally confused" and barely able to function independently.

Finally, it is clear from the record that parenting skills aside, respondent was not in a position to provide for Ryan's basic needs. He had no meaningful relationship with his son, who was reluctant to even visit with him. He had no income apart from food stamps and was apparently unable to do even unskilled work,² and his home was unsuitable by virtue of the fact that his girlfriend had lost custody of her own children. In short, respondent's problems are so extensive that he clearly would not be able to provide proper care and custody within a reasonable time. The trial court did not clearly err in finding that § 19b(3)(g) had been proved by clear and convincing evidence.

¹ Respondent makes a notable misleading statement of fact. He claims that petitioner did not make "any real effort" to teach him how to care for Ryan's needs even though such services were provided to the foster parents. The foster care worker testified that the services at issue included training in the administration of Ryan's daily physical and speech therapy. Respondent was not given such instruction because he was not yet providing for Ryan's daily needs. The foster care worker stated that if and when Ryan was placed with his father, such services would be provided.

² According to the March 2, 2005 updated service plan, respondent reported that he had been working at Taco Bell but was let go "because he couldn't keep up"

With respect to § 19b(3)(j), respondent does not dispute the court's finding that Ryan was likely to be harmed if returned to his home. He contends only that he was not provided sufficient services commensurate with his limited abilities that would enable him "to demonstrate what his true capacity to parent" might be. Unlike §§ 19b(3)(c)(i) and (g), § 19b(3)(j) does not focus on the likelihood of correcting the parent's problems, but on the likelihood that those problems will harm the child. As the psychological evaluation clearly indicates, respondent's incapacity for coping with the stresses of parenting is such that the child is likely to be harmed if placed in respondent's home.

II. BEST INTERESTS OF THE CHILD

A. Standard of Review

Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court shall order termination of parental rights, unless the court finds from evidence on the whole record that termination is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000). The trial court's decision regarding the child's best interests is reviewed for clear error. *Id.* at 356-357. A finding of fact is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake was made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

B. Analysis

The trial court's finding regarding the child's best interests was not clearly erroneous. *In re Trejo Minors*, 462 Mich 341, 354, 356-357; 612 NW2d 407 (2000); MCL 712A.19b(5). Respondent was incapable of adequately dealing with Ryan's muscular dystrophy and severe mental retardation. Despite receiving services, respondent could not articulate what it meant to be a nurturing parent or to identify the nature of his son's physical and mental conditions. The evidence clearly showed that respondent's difficulties were so extensive that, even assuming they might be overcome with additional services, they were unlikely to be rectified within a reasonable time given Ryan's age. Additionally, respondent was unable to financially support Ryan with no income other than from food stamps, and he lacked the ability to secure an income to support Ryan even through unskilled work. Further, respondent's living arrangements with his girlfriend, whose own children had previously been removed from her care, was not suitable housing for Ryan. Therefore, the trial court did not clearly err in terminating respondent's parental rights. *In re Trejo, supra* at 356-357.

Affirmed.

/s/ Patrick M. Meter
/s/ William C. Whitbeck
/s/ Bill Schuette