

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 16, 2010

In the Matter of E. P. BURNETT, Minor.

No. 298551
Macomb Circuit Court
Family Division
LC No. 2008-000595-NA

Before: JANSEN, P.J., and SAWYER and O'CONNELL, JJ.

PER CURIAM.

The minor child appeals by leave granted, challenging the circuit court's orders denying a petition to terminate respondents' parental rights under MCL 712A.19b(3)(c)(i), (g), and (j), and returning the child to respondents' care. We affirm.

I. STATUTORY BASES FOR TERMINATION

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 proven by clear and convincing evidence. *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004); *In re CR*, 250 Mich App 185, 194-195; 646 NW2d 506 (2002). This Court reviews the trial court's decision for clear error. MCR 3.977(J); *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003). A trial court's factual findings are clearly erroneous if, although some evidence exists to support them, a reviewing court is left with a definite and firm conviction that a mistake has been made, giving due regard to a trial court's special opportunity to observe witnesses. *In re BZ*, 264 Mich App at 296.

We find no clear error in the trial court's decision under MCL 712A.19b(3)(c)(i). The conditions that led to the adjudication included respondent-mother C. Green's depression and failure to take her medication, her inability to care for the minor child, respondent-father J. Burnett's refusal to assist Green in taking care of the child and the home, Burnett's anger management problems, and the deplorable condition of the home. The evidence at the termination trial showed that Green was taking medication on a regular basis and that she had discontinued certain medication because it made her too groggy. She did not feel depressed and had not experienced suicidal thoughts.

Both Green and Burnett completed domestic violence and anger management assessments, an alternatives for domestic aggression course, couples counseling, and anger management classes. Prior to the domestic aggression course, the child's foster mother/maternal

grandmother observed Burnett throw a cell phone into Green's vehicle outside petitioner's offices. After the course, Burnett testified that he would have handled the situation differently and would have tried to talk to Green. Burnett asserted that he had learned how to appropriately control his anger and that he and Green now discuss their problems instead of him leaving the home to avoid their problems. He admitted that he had not been there for the child previously because he was not ready to be a father and did not know what to do with her. He maintained that he had learned how to interact and bond with her, and had learned how to take care of her instead of being afraid of her. The trial court could find from this evidence that both Green and Burnett were willing to parent the child and had acquired parenting skills that they did not possess before her removal.

Further, the evidence showed that although there were still some problems with the cleanliness of respondents' home, its condition had substantially improved since the child's removal. During an unannounced visit on the day before trial, the caseworker observed that the kitchen floor was dirty, that clothing was strewn about, that six garbage bags were in the hallway and kitchen area, that the bed was still broken, that the bed and crib linens were dirty, and that the home was very disorganized. However, there was evidence that the garbage bags contained returnable bottles to be taken to a store, and that the clothes strewn about were clean and just needed to be folded and put away. Other conditions in the home had significantly improved since the child's removal. The previous conditions included a soaked carpet, black mold, and lack of space for a child to crawl; there was no evidence those conditions still existed. The trial court did not clearly err in finding that the home, although not the cleanest, did not pose any significant safety hazards to the child.

Accordingly, the trial court did not clearly err in determining that the evidence failed to show that the conditions that led to the adjudication continued to exist.

The trial court also did not clearly err in finding that termination was not warranted under MCL 712A.19b(3)(g) and (j). Respondents had completed couples counseling and community mental health therapy, complied with visitation requirements, attended all court hearings, kept in regular contact with the caseworker, submitted to random alcohol and drug screens, completed domestic violence and anger management assessments, completed an alternatives to domestic aggression course, and completed an anger management class.

The child argues that respondents failed to benefit from services. The caseworker witnessed respondents visit the child on three occasions in January, February, and March 2010, just before trial. Although he claimed that he observed Burnett engage in inappropriate behavior with the child, he admitted that the "inappropriate behavior" merely involved giving her candy. Moreover, an infant mental health specialist spent considerable time with respondents each week and opined that they were continually progressing, that the child reacted more positively toward them, that they had demonstrated an ability to handle their frustrations, that both respondents were cooperative, and that she had never witnessed any acts of domestic aggression between respondents. Although the specialist opined that respondents would be unable to intelligently and safely parent the child if she were returned to their custody that day, she maintained that they were progressing and continued to demonstrate improvement.

Respondents provide for themselves with money that Burnett receives from a trust. Burnett owns the condominium in which they live. The evidence showed that, after having completed couples counseling, respondents were less angry with each other and better able to handle conflict and communicate. To avoid conditions that might aggravate the child's asthma, they thoroughly cleaned the home to rid it of smoke residue and no longer smoked inside the home. Burnett tested positive for alcohol on only one occasion in August 2009, but disputed the test result because it was so high. There is no indication that Burnett tested positive for alcohol or drugs on any other occasion, and he denied consuming alcohol since November 2009.

Although the evidence showed there were still some issues awaiting respondents' resolution, the trial court could properly find there was a reasonable expectation that respondents would be able to provide proper care and custody for the child within a reasonable time, and that there exists a reasonable likelihood that the child could be returned to respondents' home. Because the statutory bases for termination were not satisfied, the trial court properly refrained from determining whether termination was in the child's best interests. MCL 712A.19b(5); *In re Rood*, 483 Mich 73, 102 n 43; 763 NW2d 587 (2009).

II. RETURNING CHILD TO RESPONDENTS

The minor child next challenges the trial court's decision to return the child to respondents' care following the denial of the petition to terminate their parental rights. Under MCR 3.975(G)(1), a trial court, "following a dispositional review hearing," may "order the return of the child home[.]" The use of the term "may" "is permissive and therefore indicative of discretion." *In re Forfeiture of Bail Bond*, 276 Mich App 482, 492; 740 NW2d 734 (2007). An abuse of discretion occurs when the trial court's decision falls outside the range of reasonable and principled outcomes. *In re Jones*, 286 Mich App 126, 130; 777 NW2d 728 (2009).

In addition, MCL 712A.19(8) states:

At a review hearing . . . the court shall determine the continuing necessity and appropriateness of the child's placement and shall order the return of the child to the custody of the parent, continue the dispositional order, modify the dispositional order, or enter a new dispositional order.

At the time of the June 11, 2010, review hearing, respondents were participating in a family reunification program to help the child transition to their home. Petitioner informed the trial court that respondents would no longer be eligible to participate in the program unless the child was returned before June 20, 2010. The trial court found this factor important to its decision.

Evidence was presented at the hearing that the child had sustained an apparent cigarette burn during a previous unsupervised visit with respondents. The caseworker characterized this matter as the "only one questionable incident" that occurred during visitation. The foster mother asserted that she noticed the mark on the child's hand the day after the child returned from an unsupervised visit. However, the foster mother admitted that she did not seek medical attention or report the wound to Child Protective Services. Further, she did not inform the caseworker about the mark until approximately a week after she noticed it. Respondents maintained that the

child had the injury when Green picked her up for visitation. They were unsure what caused the mark, but claimed that it did not appear to be serious. Burnett opined that it appeared similar to a mosquito bite. The trial court found that it was not unusual for a child to receive some minor “bumps and bruises,” and that the wound did not appear serious enough to warrant medical attention.

The trial court did not abuse its discretion by returning the child to respondents’ care despite the mark. The caseworker was apparently aware of the mark, and nonetheless recommended that unsupervised day and weekend visitation be continued. Given the foster mother’s delay in reporting the mark and the caseworker’s recommendation to continue unsupervised visitation despite the mark, the trial court was within its discretion to conclude that the child could return to respondents’ custody.

The minor child also contends that respondents failed to inquire about an illness that required her hospitalization. However, the record fails to disclose that respondents were aware of the hospitalization or that they failed to take appropriate steps to care for the child. Accordingly, the trial court’s decision to return the child to respondents’ care was not outside the range of reasonable and principled outcomes.

Affirmed, and remanded for further scheduling of one or more dispositional review hearings by the trial court. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ David H. Sawyer
/s/ Peter D. O’Connell