

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
April 28, 2011

In the Matter of J. N. YOUNG, Minor.

No. 300431
Washtenaw Circuit Court
Family Division
LC No. 2009-000079-NA

Before: METER, P.J., and SAAD and WILDER, JJ.

PER CURIAM.

Respondent appeals a trial court order that terminated his parental rights to the minor child under MCL 712A.19b(3)(g) and (j). For the reasons set forth below, we affirm.

Respondent argues that the trial court clearly erred by terminating his parental rights without offering him a chance to meaningfully participate in a case service plan to reunify him with his child. Respondent cites *In re Mason*, 486 Mich 142; 782 NW2d 747 (2010), but the case is distinguishable. In *Mason*, the incarcerated father was largely ignored by DHS and the court. He was not allowed to participate (even by telephone) in hearings until the last permanency planning and termination hearing, and it was unclear whether he even received the case service plan. Respondent Mason had been convicted of “comparatively minor offenses,” *Mason*, 486 Mich at 165, and the record showed that he supported his family, shared in the child’s care before his incarceration, and he arranged for work and housing for after his release. Mason also sent cards to his children and his earliest release date was seven months after the termination petition was filed.

Unlike the incarcerated parent in *Mason*, respondent was provided with a parent agency agreement and was brought to nearly all hearings from prison. While some services were unavailable to him as an incarcerated person, respondent did participate in some comparable services in prison. Respondent is correct that the caseworker did not visit him in prison. However, *Mason* does not require this. It merely requires that the respondent be afforded meaningful participation. See also *In re DMK*, 289 Mich App 246; ___ NW2d ___ (2010). It is also not dispositive that respondent did not receive the parent agency agreement until five months before the final hearing, because the court ruled that respondent participated in relevant services in prison, including during his earlier terms of incarceration, but did not benefit. A parent must benefit from services in order to be able to provide a nurturing home. *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005).

Other factors also distinguish *Mason*. Here, respondent was twice denied parole, the crime involved injury to the victim, there was a similar crime involving use of a weapon, and

respondent previously failed at probation and parole. Further, respondent had a long criminal history and minimized his responsibility for his most recent crime. He had assaulted the child's mother when she was pregnant and was convicted of domestic violence four times. One of these incidents occurred in the presence of another of respondent's children, and in the home of his fiancée, which was one of the places he expected to live after his release. Respondent had taken anger management classes but evidently did not benefit from them. Respondent also had serious mental health issues, which continued to plague him. Respondent reasoned that his convictions for possession of drugs are not problematic because he was "only" a dealer and not a user. Respondent's assertion is false, as shown by his positive cocaine screens, but it is also illogical because, clearly, it is dangerous for a child to be around drug dealers. Moreover, unlike *Mason*, respondent's criminal history was not for minor crimes unrelated to his ability to care for a child. The trial court did not clearly err when it held that DHS proved by clear and convincing evidence that respondent failed to provide proper care and custody, and that the child would likely suffer harm in his care. MCL 712A.19b(3)(g), (j); *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000); *In re B & J*, 279 Mich App 12, 17; 756 NW2d 234 (2008).

The trial court also did not clearly err when it ruled that termination was in the child's best interest. MCL 712A.19b(5); MCR 3.977(K); *Trejo*, 462 Mich at 356-357; *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009). Respondent behaved appropriately with his daughter and he visited her consistently in a prior case. However, respondent had serious problems with drugs, mental health, and domestic violence, and he did not see the child for several years, primarily because of his own actions and choices. He testified that he wrote the child ten letters from prison, but caseworkers testified that they received one or two, and the trial court did not find respondent's testimony credible. This Court gives deference to the trial court's opportunity to see the witnesses firsthand and judge their credibility. *Mason*, 486 Mich at 152; *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Here, the child is now six years old and starting school. She needs a stable, safe, permanent home, which respondent cannot provide. The trial court did not clearly err in its best interest ruling.

Affirmed.

/s/ Patrick M. Meter
/s/ Henry William Saad
/s/ Kurtis T. Wilder