

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
August 2, 2012

In the Matter of STARR, Minors

No. 306505
Midland Circuit Court
Family Division
LC No. 10-003735-NA

Before: STEPHENS, P.J., and SAWYER and OWENS, JJ.

PER CURIAM.

Respondent-appellant Kevin Starr appeals by right the trial court's September 20, 2011, order terminating his parental rights to the above children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j).¹ We affirm.

On appeal, respondent first argues that the trial court erred when it determined that petitioner had presented clear and convincing evidence of the existence of grounds for termination. We disagree.

The petitioner has the burden of proving a statutory ground for termination by clear and convincing evidence. MCL 712A.19b(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). This Court reviews the trial court's findings of fact under the clearly erroneous standard. MCR 3.977(K). A finding of fact is clearly erroneous when the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Deference is accorded to the trial court's assessment of the credibility of the witnesses who appeared before it. *Id.*; MCR 2.613(C). An order terminating parental rights needs to be supported by only a single statutory ground. MCL 712A.19b(3).

MCL 712A.19b(3)(c)(i) provides that the court may terminate a parent's parental rights if:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial

¹ The parental rights of the children's mother, Janet Harris, were also terminated. She is not a party to the instant appeal.

dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

The initial reasons the court assumed jurisdiction over the children were respondent's lack of suitable housing and his chronic substance abuse while in the children's presence. He had been evicted from one residence and began living with his parents. His residence with his mother and stepfather was particularly problematic due to their past conduct and criminal issues. Respondent was told that he had to find an alternative, suitable place to live before his children would be returned to him. However, respondent failed to rectify this situation. Respondent admitted at his plea hearing that he had been evicted from his house in July 2010, and did not have suitable housing for his children. He was aware that his step-father's criminal sexual conduct case, alone, rendered his parent's residence unsuitable for the minors. The record reflects that DHS assisted respondent in locating housing but that he continued to reside with his parents. As late as the termination hearing, when he was being held in the county jail, respondent still resided with his mother.. However, he maintained that he would move and his mother was helping him find suitable housing. Given this evidence and the length of time involved for respondent to obtain suitable housing, the trial court did not err when it found that this condition continued to exist at the time of the termination hearing and would likely not be rectified within a reasonable time.

The record also supports the trial court's finding that respondent continued to have a substance abuse problem, and would likely continue to do so for the foreseeable future. A summary of respondent's drug test results established that his progress on his substance abuse problem was very poor. To his credit, respondent did appear for all of the scheduled drug tests. However, out of the drug tests taken between February 16, 2011 and August 12, 2011, there were numerous positive screens for illegal hydrocodone and other substances, including cocaine, opiates and THC (marijuana). In addition, the September 9, 2011 court report indicated that the levels of cocaine and opiates in his system during the August 4, 2011 test were particularly concerning because the levels were so high. As to any attempt to reduce his dependency on controlled substances, the foster care worker testified that respondent had last attended counseling with J&A Counseling on July 6, 2011, almost three months before the termination hearing. Prior to that, he had not attended counseling since April 6, 2011. She opined that respondent had not made any progress.² Coupled with respondent's latest drug arrest, the trial court's finding concerning this factor is supported by the evidence presented.

² She testified that she had offered a referral to a different counseling service, but respondent declined.

In connection with this determination, we find that respondent's assertion that petitioner did not properly attempt to reunite him with the children to be without merit. Respondent specifically argues that petitioner should have considered inpatient substance abuse treatment, and maintains that he was unable to find or attend such treatment on his own, possibly because of his learning disabilities. At the termination hearing, the foster care worker testified that, apart from asking respondent whether he would like a referral to the different substance abuse counseling service, she did not make any other referrals, or have any other interventions, for him. The record reflects that in-patient services were discussed with respondent. Respondent has provided no support for a finding that petitioner was required to enroll him in inpatient treatment or argued that he made a request to enter in-patient treatment that the department failed to facilitate. That this type of treatment may have been more effective does not render petitioner's use of other treatment options unreasonable, particularly in light of the need for respondent to enter such programs voluntarily. Moreover, the evidence shows that, contrary to respondent's contention on appeal, he was aware of the existence of inpatient treatment programs and their possible benefit to him, yet he chose not to follow through with assertions that he planned to enter into such treatment programs.

Respondent's continued drug use reflected an inability to provide basic care for the children and also supported a finding that grounds for termination existed under MCL 712A.19b (g) and (j). These provisions provide that grounds for termination exist when:

(g) 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.

* * *

(j) 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.

Regarding MCL 712A.19b(3)(g), respondent again argues that the case services plan should have been more tailored to his individual needs, and contends that he did comply in part with his treatment plan, which thus evidenced an ability to provide proper care and custody. Regarding MCL 712A.19b(3)(j), respondent contends that termination based on this ground was erroneous because the underlying drug use allegations have nothing to do with respondent's placing the children in danger. As of the date of the termination hearing, respondent was incarcerated, homeless, and still addicted to controlled substances. Respondent does not acknowledge that the children were suffering from psychological harm when the court took jurisdiction of them. If the children were returned to his care they would likely suffer further. We thus find that plaintiff supported these grounds for termination with clear and convincing evidence.

Next respondent argues that the trial court erred when it found that termination of respondent's parental rights was in the children's best interests. We disagree. Once a statutory ground for termination has been proven, the trial court shall order termination of parental rights if it finds "that termination of parental rights is in the child's best interests." MCL 712A.19b(5).

This Court reviews the trial court's best interests finding for clear error. *In re Trejo*, 462 Mich at 356-357.

The focus of this analysis is on the best interests of the children. The love, affection and connection of biological parents often serve those best interests. However the court must look at the children's overall mental, physical and emotional needs. A therapist with community mental health testified that she had been working with the children since 2010, and described the children's mental and physical problems when they arrived in foster care, and the considerable progress they and their foster parents had been able to make during the time the children were in placement. She recommended that the children be in a stable, secure home such as the one in which they currently resided. According to the court report, the foster parents wanted to adopt the children and the therapist agreed that the children should stay in that household.

Respondent argues that the trial court should not have taken the foster care placement into account, but this is only true for determining whether grounds for termination have been proven. When reviewing the best-interest decision, the trial court may look at the current placement of the children and may consider the suitability of alternative homes. *In re Foster*, 285 Mich App 630, 635; 776 NW2d 415 (2009).

It is clear that respondent loves his children, and they love him. However, he cannot take care of them, and they were suffering because of it. We thus affirm the trial court's best interest decision.³

Affirmed.

/s/ Cynthia Diane Stephens
/s/ David H. Sawyer
/s/ Donald S. Owens

³ We note that this Court has recently decided *In re Olive/Metts*, ____ Mich App ____; ____ NW2d ____ (Docket No. 306279, issued June 5, 2012), which held that the trial court must evaluate whether termination is in the best interest of each child separately, and which reiterated that the trial court is to specifically evaluate the impact of relative placement in reaching its termination decision. *Id.* at slip op pp 3-4. Here, although the trial court did not specifically break down its findings to discuss its decision concerning each child separately, nothing in the facts lead us to determine that the analysis would have been different had the trial court done so. And because the children were not placed with relatives here, the remaining discussion in *In re Olive/Metts* is inapplicable.