

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
November 29, 2012

In the Matter of C. TOWN, Minor.

No. 310658
Jackson Circuit Court
Family Division
LC No. 12-000107-NA

Before: BORRELLO, P.J., and FITZGERALD and OWENS, JJ.

PER CURIAM.

Respondent father appeals as of right the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(g), (h), (j), and (n)(i). We affirm in part, vacate in part, and remand for further proceedings.

The trial court did not clearly err in finding that the statutory grounds for termination, were established by clear and convincing evidence. *In re Trejo Minors*, 462 Mich 341, 354, 356-357; 612 NW2d 407 (2000). Regarding subsection (j), respondent had been incarcerated for all but approximately a year of the seven-year-old female minor child's life. Respondent is serving a sentence for second-degree criminal sexual conduct involving a five-year-old female and his earliest release date is in 2018, when the child will be 12 years old. Although "a criminal history alone does not justify termination," *In re Mason*, 486 Mich 142, 165; 782 NW2d 747 (2010), in this case termination was also justified by the lack of bond between respondent and the child, respondent's current sentence for second-degree criminal sexual conduct against a minor female child, and the risk of exposure of the minor child to respondent's recidivist criminal behavior. The trial court did not clearly err when it determined there was a reasonable likelihood of harm if the child was released to respondent at some point in the future. Regarding subsection (n)(i), respondent was previously convicted of second-degree criminal sexual conduct, MCL 750.520c, which is a listed offense under MCL 712A.19b(3)(n). Additionally, continuing the parent-child relationship would be harmful to the child because respondent did not have a bond with the child.

The trial court also terminated respondent's parental rights pursuant to MCL 712A.19b(3)(g) and (h). We agree that termination was improper on those grounds. There was no clear and convincing evidence that respondent failed to provide proper care and custody. He requested the child be placed with his mother and her boyfriend, who had another relative minor child placed with them under a guardianship. See *In re Mason*, 486 Mich at 161 n 11 (citations omitted) ("Michigan traditionally permits a parent to achieve proper care and custody through

placement with a relative.”). Similarly, although respondent’s earliest release date is in 2018, and he would not be able to provide a normal home for more than two years, he had requested placement with a relative and may have provided proper care and custody in this manner had that placement been considered. Thus, the trial court clearly erred in finding the statutory grounds of MCL 712A.19b(3)(g) and (h) were established by clear and convincing evidence. However, because the trial court properly found termination was appropriate under MCL 712A.19b(3)(j) and (n)(i), any error with respect to (g) and (h) is harmless. *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

Respondent further argues that the trial court erred in finding that termination was in the child’s best interests. MCL 712A.19b(5). A trial court’s decision regarding a child’s best interests is reviewed for clear error. *In re Trejo Minors*, 462 Mich at 356-357; MCL 712A.19b(5). Respondent argues that the trial court erred because it failed to consider that the child was placed with a relative when deciding whether it was in the child’s best interests to terminate respondent’s parental rights. Our Supreme Court explained in *In re Mason*, 486 Mich at 164, that a child’s placement with relatives “was an explicit factor to consider in determining whether termination was in the children’s best interests.” Our Supreme Court reaffirmed the requirement of explicit consideration of placement with relatives at the time of termination in *In re Mays*, 490 Mich 993; 807 NW2d 307 (2012). In that case, the Court stated that the trial court’s failure to consider the children’s placement with relatives at the time of the termination resulted in a factual record “inadequate to make a best interests determination.” *Id.* at 994.

Here, the child was placed with her maternal great aunt. There is no evidence that the trial court considered the child’s placement with a relative in determining whether termination of respondent’s parental rights was in the child’s best interests. The trial court’s entire consideration of the best interests of the child consisted of the following comment:

The Court then will find that termination of [respondent’s] parental rights is in the best interest of the minor child given her age, given the fact that he sexually offended another young child, given the fact that there is no bond between [the minor child] and [respondent] and given the fact that his earliest release date is in 2018.

Consequently, the factual record in this case is inadequate for the purposes of the best interests determination, *In re Mays*, 490 Mich at 994, and we remand for reconsideration of the child’s best interests in light of the fact that the child is placed with a relative.

Affirmed in part, vacated in part, and remanded for further proceedings consistent with this opinion. Jurisdiction is retained.

/s/ Stephen L. Borrello
/s/ E. Thomas Fitzgerald
/s/ Donald S. Owens

Court of Appeals, State of Michigan

ORDER

In re C Town Minor

Docket No. 310658

LC No. 12-000107-NA

Stephen L. Borrello
Presiding Judge

E. Thomas Fitzgerald

Donald S. Owens
Judges

Pursuant to the opinion issued concurrently with this order, this case is REMANDED for further proceedings consistent with the opinion of this Court. We retain jurisdiction.

Proceedings on remand in this matter shall commence within 56 days of the Clerk's certification of this order, and they shall be given priority on remand until they are concluded. As stated in the accompanying opinion, we remand the case to the trial court to consider the effect of the child's placement with relatives as it related to the best-interest analysis. The proceedings on remand are limited to this issue.

The parties shall promptly file with this Court a copy of all papers filed on remand. Within seven days after entry, appellant shall file with this Court copies of all orders entered on remand.

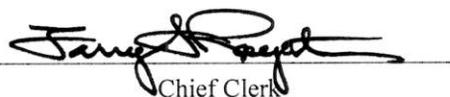
The transcript of all proceedings on remand shall be prepared and filed within 21 days after completion of the proceedings.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

NOV 29 2012

Date


Chief Clerk