

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of R. D. KNIGHT, III, Minor.

UNPUBLISHED
January 28, 2014

No. 315656
Wayne Circuit Court
Family Division
LC No. 01-400423-NA

Before: MURPHY, C.J., and DONOFRIO and FORT HOOD, JJ.

PER CURIAM.

Respondent appeals by right the order terminating his parental rights to his minor child (the child) pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

In June 2011, respondent and his child argued after the child accidentally locked respondent out of the family home. Respondent reportedly pushed the child and struck him with keys to the side of his head, causing injury. Approximately two days later, respondent saw the child on the porch of a neighbor. He exited his vehicle and came after the child, who fled the scene. The neighbor testified that respondent's demeanor indicated that he was intoxicated. After the child fled, respondent threatened the neighbor, and her nephew intervened on her behalf. Respondent left the neighbor's home, and the child returned. The neighbor called an ambulance for the child, who was taken to a hospital. In light of the child's explanation for the injury, authorities were called, and petitioner sought temporary wardship over the child.¹ Respondent had been investigated for prior complaints of abuse, and two claims of physical abuse were substantiated.

A treatment plan was created for respondent, but his participation was minimal. Although he completed parenting classes and had suitable housing, he failed to provide random drug screens, participate in substance abuse and individual therapy provided in his home, and failed to visit the child. Although the agency workers opined that respondent failed to comply with the terms of his agreement, respondent alleged that the agency failed to provide him with adequate bus transportation to visit his child and attend the drug screening facilities. He further alleged that his medical issues prevented him from providing random drug screens. The trial

¹ The child's mother was deceased.

court found that the statutory grounds for termination were met by clear and convincing evidence and that termination was in the child's best interests.

Respondent first argues that the trial court clearly erred in finding that petitioner proved at least one statutory ground for termination by clear and convincing evidence. We disagree.

This Court reviews for clear error the trial court's decision that a statutory ground for termination was proven by clear and convincing evidence. *In re Olive/Metts Minors*, 297 Mich App 35, 40-41; 823 NW2d 144 (2012). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). In reviewing the trial court's findings of fact, this Court gives due regard to the special opportunity of the trial court to judge the credibility of witnesses. *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005).

"A court may terminate a respondent's parental rights if one or more of the statutory grounds for termination listed in MCL 712A.19b(3) have been proven by clear and convincing evidence." *Olive/Metts*, 297 Mich App at 40. The trial court terminated respondent's parental rights to the child pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). MCL 712A.19b(3)(c)(i), (g), and (j) provide:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(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 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.

* * *

(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.

The trial court did not clearly err in finding that clear and convincing evidence supported the statutory ground under MCL 712A.19b(3)(c)(i). There is no dispute that 182 or more days had elapsed since the issuance of the initial dispositional order. Respondent physically abused the child when he punched the child, with keys between his fingers, in the child's head. The child and his friend ran to the friend's home. A few days later, respondent arrived at the friend's home and was "shouting and hollering" at the child and the friend's mother. Respondent appeared to be drunk. Respondent tried to grab the child, but the neighbor's nephew intervened while the child ran away. When EMS responded and the child returned, respondent again attempted to remove the child from the ambulance. The child also testified to additional physical abuse by respondent.

Respondent failed to address his anger and substance abuse throughout the proceedings. He was terminated twice from individual therapy due to noncompliance. The individual therapy was to occur in respondent's home and include anger and substance abuse therapy. Respondent completed only two out-of-court drug screens even though he was required to submit to random weekly drug screens. All missed drug screens were considered positive. At least one completed drug screen was positive for cocaine. Respondent refused to submit to a drug screen at the September 24, 2012, hearing. Respondent contends on appeal, as he did in the trial court, that he submitted a letter to substantiate his claim that he was unable to urinate due to issues with his prostate. However, there is no record evidence that supports his claim that his alleged prostate issues interfered with his ability to submit to random drug screens. In addition, respondent failed to provide evidence that his medication created a false positive drug screen. Moreover, respondent failed to consistently visit the child. There were periods when respondent did not visit the child for several months even though he was provided bus passes. Thus, there was clear and convincing evidence that 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.

When one ground for termination is established by clear and convincing evidence, we need not address the other grounds for termination. *In re Utrera*, 281 Mich App 1, 24; 761 NW2d 253 (2008). However, for purposes of completeness, we may analyze the other grounds. *Id.* For many of the same facts delineated in addressing MCL 712a.19b(3)(c)(i), there was also clear and convincing evidence to support termination pursuant to MCL 712A.19b(3)(g). Respondent physically abused the child when he punched him in the head while holding keys. Respondent failed to address his substance abuse and anger through individual therapy. The child testified that the abuse occurred on multiple occasions and that respondent was intoxicated the majority of the time when it occurred. In addition, respondent failed to comply with the court's order that he submit to weekly drug screens. Respondent was given nearly a year and a half to address his anger and substance abuse, but failed to do so. Therefore, there was clear and convincing evidence that respondent failed to provide proper care or custody for the child and there was no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

Furthermore, there was clear and convincing evidence to support termination pursuant to MCL 712A.19b(3)(j). The child testified to multiple instances where respondent would physically abuse him. Most recently, respondent punched the child in his head while holding keys in between his fingers. Respondent failed to complete therapy to address his anger issues.

During the September 24, 2012, dispositional review hearing, respondent left the courtroom in anger and was apparently disruptive during the hearing. Respondent did not comply with the trial court's order requiring weekly drug screens, and all missed screens were presumed positive. Consequently, clear and convincing evidence existed for the trial court to conclude that there was a reasonable likelihood that the child would be harmed if he returned to respondent's home.

Respondent next argues that the trial court clearly erred in determining that termination was in the child's best interests. We disagree.

This Court reviews for clear error the court's decision regarding the child's best interest. *Olive/Metts*, 297 Mich App at 40. "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *Hudson*, 294 Mich App at 264. In reviewing the trial court's findings of fact, this Court gives due regard to the special opportunity of the trial court to judge the credibility of witnesses. *Fried*, 266 Mich App at 541.

Once a statutory ground for termination has been proven, the trial court must determine whether petitioner has proven by the preponderance of the evidence that termination is in the child's best interests. MCL 712A.19b(5); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013); *Olive/Metts*, 297 Mich App at 40. In determining whether termination is in the child's best interests, the court may consider the age of the child, the respondent's history, psychological evaluation, parenting techniques during parenting time, family bonding, participation in the treatment program, the foster environment and possibility for adoption, and the parent's continued involvement in situations involving domestic violence. *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009); *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004); *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001). A court may also consider the child's need for permanency, stability, and finality. *Olive/Metts*, 297 Mich App at 42.

Respondent pushed the child against the brick wall of respondent's home and punched the child in the head while holding keys. The child also testified to previous physical abuse in which respondent would punch him in the chest. Respondent further exhibited anger when he arrived at the neighbor's home and attempted to grab the child. Respondent was swearing, walking "sideways," and appeared to be drunk.

Respondent failed to comply with the majority of his parent-agency agreement. Respondent never successfully completed individual therapy and was terminated twice due to noncompliance. The individual therapy was to include anger management and substance abuse therapy. Respondent completed only two out-of-court drug screens throughout the year and a half proceeding. At least one completed drug screen was positive for cocaine. The assigned Department of Human Services (DHS) foster care worker opined that there had been no improvement in the relationship since the child came into care and recommended that respondent's parental rights be terminated. She testified that the child informed her that he wanted respondent's parental rights terminated. Therefore, the trial court did not clearly err in

determining that petitioner proved by a preponderance of the evidence that termination of respondent's parental rights was in the child's best interests.²

Lastly, respondent alleges that the trial court violated his due process rights. We disagree. "Whether proceedings complied with a party's right to due process presents a question of constitutional law that [the appellate court] review[s] de novo." *In re Rood*, 483 Mich 73, 91; 763 NW2d 587 (2009) (Opinion by CORRIGAN, J.).

"Parents have a significant interest in the companionship, care, custody, and management of their children, and the interest is an element of liberty protected by due process." *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003). "In order to comply with the guarantees of substantive due process, the state must prove parental unfitness by at least clear and convincing evidence before terminating a respondent's parental rights." *In re B & J*, 279 Mich App 12, 23; 756 NW2d 234 (2008) (internal quotation omitted).

Respondent first argues that his due process rights were violated because "proper notice of the [January 14, 2013,] hearing was not given resulting in half of the hearing taking place with half of the required parties on the 14th and others on the 15th." Respondent mischaracterizes the record. A dispositional review hearing and permanency planning hearing was held on January 14, 2013. Respondent was present. However, the hearing was adjourned because respondent's attorney had apparently lost his appointment book and was not in attendance. After the hearing, the referee realized that new court procedures required authorization of the supplemental petition. Consequently, all parties, except respondent whose cell phone was not receiving calls, were contacted that day to return on January 15, 2013, for the limited purpose of authorization of the supplemental petition. The court procedures required the referee to procedurally either grant or reject the petition, no testimony or other evidence was admitted. Although counsel for respondent objected to the authorization of the supplemental petition in respondent's absence, counsel noted that it was a discretionary matter for which the referee could proceed. Accordingly, there was no violation of the notice provisions of MCL 712A.19a(4). Rather, the

² Within the discussion of this issue, respondent alleges that it was erroneous to consider the hearsay testimony of the child that he wanted respondent's parental rights to be terminated. Although the rules of evidence apply to the adjudicative phase of a child protective proceeding, the rules of evidence do not apply to the dispositional phase of the proceeding. *In re Gilliam*, 241 Mich App 133, 136-137; 613 NW2d 748 (2000). Therefore, all relevant and material evidence may be received. *Id.* at 137. Additionally, child protective hearings are considered to be a single continuous proceeding, and evidence admitted at one hearing is considered in all subsequent hearings. *In re LaFlure*, 48 Mich App 377, 391; 210 NW2d 482 (1973). We note that at the adjudicative phase, the child, a teenager, testified that he did not want to return to respondent's care unless he received some form of treatment, describing respondent as "abusive and alcoholic." This testimony was not hearsay, and respondent did not address his anger and substance abuse issues in treatment. Although respondent contends on appeal that the child's wishes were the only factor considered in determining the child's best interests, that contention is not supported by the record.

permanency planning hearing of January 14, 2013, was rescheduled and held on February 1, 2013.

Respondent also argues that his due process rights were violated because the trial court ordered that a petition for permanent custody be filed, which acted as a sanction for his refusal to submit to an in-court drug screen during the September 24, 2012, hearing. However, record evidence does not support respondent's claim. As early as June 7, 2012, the trial court advised respondent that if he did not choose the child over cocaine, a permanent custody petition would be filed. Respondent completed only two out-of-court drug screens throughout the proceedings. At least one completed drug screen was positive for cocaine. During the September 24, 2012, hearing, the trial court ordered respondent to complete a drug test, but he refused, citing an inability to urinate due to issues with his prostate. Respondent presented no evidence to support this claim. Respondent also contended that he could not complete the drug screen because he had another court appearance and then needed to "catch the bus." The trial court gave respondent an opportunity to complete the drug screen after the other court proceeding, but responded refused. The trial court's order that DHS file a petition for permanent custody was not based solely on respondent's refusal to submit to the in-court drug screen. Rather, it was based on the collective failure by respondent to fully comply with the parent-agency agreement. In addition to the drug screens, respondent never successfully completed individual therapy and was terminated twice due to noncompliance. Respondent also failed to consistently visit the child, and, at times, did not visit the child for several months. Therefore, the trial court did not violate respondent's due process rights because petitioner proved parental unfitness by clear and convincing evidence. See *In re B & J*, 279 Mich App at 23.

Affirmed.

/s/ William B. Murphy
/s/ Pat M. Donofrio
/s/ Karen M. Fort Hood