

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of D. E. R. ROBINSON, Minor.

UNPUBLISHED

April 17, 2014

No. 318552

St Clair Circuit Court

Family Division

LC No. 12-000290-NA

Before: BORRELLO, P.J., and WHITBECK and K. F. KELLY, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j).¹ Finding no errors requiring reversal, we affirm.

I. BASIC FACTS

The child was originally brought to the court's attention after a domestic violence incident between her mother and her mother's partner. At the time, respondent was residing at the Huron House following his incarceration in jail due to domestic violence and fourth-degree child abuse after respondent accidentally sprayed the child with pepper spray during an incident with the mother. After the trial court assumed jurisdiction over the child, respondent was ordered to comply with and benefit from a case service plan that included: (1) random drug and alcohol screens; (2) a substance abuse assessment; (3) a psychological evaluation; (4) individual counseling; (5) parenting classes and a life skills program; (6) domestic violence classes; (7) anger management classes; and (8) parenting time. Respondent was also ordered to obtain and maintain suitable housing along with a legal income source sufficient to meet the family's needs for a minimum of three months and provide documentation on a bi-weekly basis. The child was placed with "fictive" kin.

The Department of Human Services petitioned to terminate respondent's parental rights due to non-compliance with the case service plan. Following a brief termination hearing, which

¹ The mother voluntarily relinquished her parental rights to the child, along with the child's half-sibling and is not a party to this appeal.

respondent did not attend, the trial court concluded that termination of parental rights was appropriate based on respondents lack of compliance. He now appeals as of right.

II. ANALYSIS

Before terminating a respondent's parental rights, the trial court must make a finding that at least one of the statutory grounds under MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). The trial court must then order termination of parental rights if it also finds that termination is in the child's best interests. MCL 712A.19b(5). This Court reviews orders terminating parental rights for clear error. *In re Rood*, 483 Mich 73, 90-91, 126 n 1; 763 NW2d 587 (2009). Clear error exists "if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

The trial court did not clearly err in finding that MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j) were established by clear and convincing evidence. These statutory grounds provide:

(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

(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.

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, 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 evidence presented at the termination hearing, which respondent chose not to attend, was relatively brief but clear. Respondent completed parenting classes and regularly attended supervised parenting time. While the termination petition was pending, respondent also

completed substance abuse and psychological evaluations. However, respondent did not complete anger management, counseling, and life skills classes despite three referrals. Respondent failed to complete the program that addressed parenting skills, substance abuse, and education. Thus, domestic violence and an inability to care for the child remained unresolved issues and there was no reasonable likelihood that the conditions that led to the child's removal would be rectified within a reasonable time.

The record also shows that, in addition to his domestic violence and anger issues, respondent failed to rectify his substance abuse issues, which were not directly raised in the original petition. He had a substance abuse history, including possible drug-related convictions, and his home was subject to a drug raid. He was to maintain a substance-free lifestyle and participate in a substance abuse assessment and random drug screens. Respondent provided an expired medical marijuana card but never provided a valid current medical marijuana card or any documentation from a doctor to show why he was prescribed the substance. Respondent missed 35 of the 42 drug screens. He tested positive on November 5, 2012. In March 2013, he also reported to his probation officer that he would test positive if he provided a drug screen. He tested positive for THC in April 2013. The case worker testified that respondent's substance abuse was a barrier to family reunification yet respondent had failed to resolve this issue during the time the child was in care, which was more than a year.

These proofs similarly establish that, without regard to fault, there was no reasonable expectation that respondent would be able to provide proper care and custody of his child within a reasonable time considering her age. Respondent did not make any progress in counseling and the life skills program. Although respondent received monthly social security benefits, he had insufficient income to meet his own needs much less his child's needs. Moreover, during the pendency of this case, respondent failed to obtain suitable housing. He failed to correct his anger and violence issues.

Respondent argues that he had not intended to harm the child in the pepper spray incident and, therefore, there was no basis for the trial court to find that the child would be at risk of harm in his care. However, respondent had a domestic violence history and while it was never alleged that he intentionally sprayed the child with pepper spray, his behavior was nonetheless reckless and dangerous and exhibited poor judgment. Respondent was given the opportunity to complete programs that would have addressed these issues, but he failed to do so. Therefore, there was a reasonable likelihood, based on respondent's lack of progress in his case treatment plan that, the child would be harmed if she was returned to his care.

The record also establishes that termination of respondent's rights was in the child's best interests. "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013).

The trial court should weigh all the evidence available to determine the children's best interests. To determine whether termination of a parent's parental rights is in a child's best interests, the court should consider a wide variety of factors that may include "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster

home over the parent's home." The trial court may also consider a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption. *In re White*, ___ Mich App ___; ___ NW2d ___ (2014), slip op p 16 (footnote omitted).]

The record established that, although respondent never missed a visit with the child, he did not avail himself of court-ordered services. During visits, his engagement with his daughter was limited primarily to watching movies and playing video games. The case worker opined that termination was in the child's best interests. The record showed that she had adjusted well to her placement with her half-brother and his relatives. The trial court reasonably concluded that the child needed permanence and that she was better off in her current placement where she could continue to have a relationship with her half-sibling.

Based on our review of the whole record, the trial court did not clearly err in terminating respondent's parental rights.

Affirmed.

/s/ Stephen L. Borrello
/s/ William C. Whitbeck
/s/ Kirsten Frank Kelly