

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of G. A. McBRIDE, Minor.

UNPUBLISHED
April 22, 2014

No. 318292
Monroe Circuit Court
Family Division
LC No. 12-022559-NA

Before: HOEKSTRA, P.J., and SAWYER and GLEICHER, JJ.

PER CURIAM.

Respondent K. McBride appeals as of right from the trial court's order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

Respondent argues that the trial court erred in finding that each of the statutory grounds for termination were established by clear and convincing evidence. We disagree. The petitioner bears the burden of establishing a statutory ground for termination in MCL 712A.19b(3) by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 351; 612 NW2d 407 (2000). A trial court's factual findings as well as its ultimate determination that a statutory ground for termination has been proven is reviewed for clear error. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). 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 was made. *Id.* Regard is given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011).

MCL 712A.19b(3)(c)(i) permits a court to terminate parental rights under the following circumstances:

(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.

This subsection requires a court to assess the circumstances that led to the child's adjudication and determine whether those circumstances have been resolved or are reasonably likely to be rectified within a reasonable time considering the child's age. The determination of

what is reasonable includes both how long it will take for the parent to improve and how long the child can wait for the improvement. *In re Dahms*, 187 Mich App 644, 647-648; 468 NW2d 315 (1991).

The initial dispositional order in this matter was issued on May 30, 2012. The termination hearing was conducted in June 2013, and respondent's parental rights were terminated in August 2013, both substantially beyond the necessary 182 days after the court issued the initial dispositional order. The principal conditions that led to the child's adjudication were respondent's substance abuse, criminal activity, lack of housing, and lack of financial resources to care for the child. Respondent was required to participate in a substance abuse assessment and follow the recommendations of the evaluation, acquire and maintain suitable housing for the child, participate in random drug screens, complete a psychological evaluation and follow the recommendations of the therapist, obtain a legal source of income, participate in a batterers' intervention program, participate in individual counseling and anger management, and participate in substance abuse treatment and attend AA/NA meetings.

The evidence showed that respondent made little progress in rectifying the reasons for the child's removal. The evidence clearly established that respondent had not resolved his substance abuse problem. He denied using illegal drugs, but he tested positive for marijuana and cocaine. He also denied having a problem with prescription drugs even though he admitted taking Flexaril, Mobic, and cannabis, and he had previously admitted abusing prescription drugs to support the trial court's exercise of jurisdiction over the child. He was referred for a second substance abuse assessment, but refused to attend. Respondent also was referred to both parenting classes and domestic violence classes, but he attended only one parenting class and two domestic violence classes, and failed to complete either course. He was sporadic about attending AA meetings, and he missed five of his scheduled parenting time visits in March, April and May 2013. Although respondent had housing at the time of the termination hearing, it was unsuitable for a child because it lacked appliances, furniture, and food. The evidence clearly and convincingly established that the conditions that led to the child's removal had not been rectified.

We reject respondent's argument that he was likely to rectify the conditions within a reasonable period of time. In light of respondent's positive drug tests and his refusal to attend a second substance abuse assessment, the trial court did not clearly err in discrediting respondent's claim that he did not have a substance abuse problem. In addition, the trial court had the benefit of a psychological evaluation to assess respondent's prognosis for improvement. Psychological evaluations of a parent are relevant and probative of the person's future ability to parent. *In re Johnson*, 142 Mich App 764, 766; 371 NW2d 446 (1985).

Dr. Thomas Muldary evaluated respondent on March 5, 2013. Dr. Muldary concluded that respondent "appears to be a chronically maladjusted person with an extensive history of alcohol dependence, drug abuse, antisocial conduct, criminal offenses, violent acting out, relationship problems, and pervasive neglect of adult, family and parental responsibilities." Dr. Muldary further concluded that respondent "is predisposed toward assaultive behavior, although the risk of violent acting-out would increase significantly when he is under the influence of alcohol" and that he "has not demonstrated an ability to maintain adequate parent-child relationships and effectively manage his parenting role and responsibilities." The trial court had the opportunity to measure Dr. Muldary's conclusions against the evidence of respondent's

progress with his case service plan. The caseworker testified that although respondent had partially complied with some of the elements of his service plan, he did not substantially participate in or benefit from the services that were offered to him.

Considering respondent's history of criminal activity and substance abuse, his continued use of drugs during the proceedings, his failure to participate in many services and failure to benefit from the services provided, and the unfavorable psychological evaluation, the trial court did not clearly err in finding that there was no reasonable likelihood that respondent would be able to rectify the conditions that led to the child's adjudication within a reasonable period of time considering the child's age. Therefore, the trial court did not clearly err in finding that § 19b(3)(c)(i) was established by clear and convincing evidence.

The trial court also terminated respondent's parental rights pursuant to MCL 712A.19b(3)(g), which provides that parental rights may be terminated if

[t]he 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.

This subsection requires clear and convincing evidence of both a failure and an inability to provide care and custody. *In re Hulbert*, 186 Mich App 600, 605; 465 NW2d 36 (1990). A parent's failure to comply with a case service plan can be evidence of the parent's inability to provide proper care and custody. *In re Trejo*, 462 Mich at 360-361 n 16.

Respondent failed to substantially comply with the requirements of his case service plan. He attended just one parenting class and two domestic violence classes and failed to complete either program. He refused to comply with a referral for a second substance abuse assessment. He missed numerous drug screens and tested positive for marijuana and cocaine as recently as May 2013. He failed to regularly attend AA meetings as ordered by the court. He also missed five scheduled visits with his child in March, April, and May 2013. The caseworker testified that respondent did not benefit from the limited services in which he did participate. Respondent also continued to lack the necessary financial resources to care for the child and failed to obtain suitable housing. Given respondent's lack of progress and failure to benefit from services, the trial court did not clearly err in finding that there was no reasonable expectation that respondent would be able to provide proper care and custody within a reasonable period of time, thereby also justifying termination under § 19b(3)(c)(i).

The trial court also terminated respondent's parental rights pursuant to MCL 712A.19b(3)(j), which provides that parental rights may be terminated if

[t]here 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 demonstrated that respondent continued to abuse drugs and missed several other scheduled drug screens. He also missed several scheduled visits with the child. He failed to complete parenting classes and a domestic violence program, and his psychological evaluation

indicated that he was predisposed toward assaultive behavior. The evidence also indicated that the child had special medical needs that respondent did not fully understand or appreciate. He continued to smoke until two days before the termination hearing, he intended to rely upon public transportation to take the child to daycare and her medical appointments, and he intended to take the child to AA meetings despite the risks that these environmental conditions presented to physical well-being. In light of this evidence, the trial court did not clearly err in finding that termination of respondent's parental rights was also justified under § 19b(3)(j).

Respondent lastly argues that the trial court erred in finding that termination of her parental rights was in the child's best interests. "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). Whether termination is in the child's best interests is determined by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013).

Respondent failed to demonstrate sufficient compliance with or benefit from services that were specifically targeted to address the primary basis for the adjudication, his substance abuse issues. He continued to use drugs and failed to submit to several other drug screens. He also failed to attend parenting classes, domestic violence classes, or substance abuse therapy, and failed to regularly visit the child. The child had been in foster care for more than 13 months, but was not any closer to being reunited with respondent. The child required permanency. Compare *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012). Furthermore, the child had special medical needs that respondent did not fully appreciate or understand, or show that he was capable of providing the care she required. Conversely, the child's care providers had adapted their home to accommodate the child's special medical needs and were willing to adopt her. The trial court did not clearly err in finding that termination of respondent's parental rights was in the child's best interests.

Affirmed.

/s/ Joel P. Hoekstra
/s/ David H. Sawyer
/s/ Elizabeth L. Gleicher