

STATE OF MICHIGAN
COURT OF APPEALS

In re G. NEBREN, Minor.

UNPUBLISHED
September 15, 2015

No. 326820
Dickinson Circuit Court
Family Division
LC No. 14-000504-NA

Before: BOONSTRA, P.J., and MURPHY and MARKEY, JJ.

PER CURIAM.

Respondent appeals by right the trial court's order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(g) (failure to provide proper care and custody). For the reasons set forth below, we affirm.

Sometime in 2013, the child's mother placed her in the care of the mother's sister and brother-in-law. In early 2014, petitioner sought to remove the child from their care based, in part, on allegations of domestic violence between them, marijuana and alcohol abuse, and safety hazards in their home. At the time, respondent was, and remains, incarcerated in Illinois, having been convicted of delivery of cocaine. According to respondent, he had not seen the child since April 2013 and had only been sporadically involved in her life before then. Respondent admitted that he had not consistently provided financial support for the child. In April 2014, an affidavit of parentage was executed establishing respondent as the child's legal father. It is undisputed that respondent is the child's biological father.

A case-service service plan was implemented in September 2014 to address the barriers that prevented the child from being placed in respondent's care, including his lack of parenting skills, substance abuse, and resource availability management. Over the next several months, while incarcerated, respondent participated in a parenting class, a substance abuse class, and a program teaching employment skills. He also wrote the child three letters that were not immediately given to the child based on her mental health counselor's recommendation.

In January 2015, the trial court authorized petitioner to file, and petitioner filed, a petition seeking the termination of respondent's parental rights based on MCL 712A.19b(3)(g) and (j) (reasonable likelihood of harm). The trial court concluded that petitioner had not proven by clear and convincing evidence that termination was warranted under § 19b(3)(j), but that it had proven that respondent failed to provide proper care and custody for the child and that there was no reasonable likelihood of his being able to do so within a reasonable amount of time considering the child's age, § 19b(3)(g). The trial court also found that termination was in the child's best

interests based, in part, on the child's need for permanency and stability. Thus, the trial court terminated respondent's parental rights. The child's mother's rights were terminated on the same day; she is not a party to this appeal.

On appeal, respondent contends that the trial court erred in determining that MCL 712A.19b(3)(g) was proven by clear and convincing evidence. Section 19b(3)(g) provides as follows:

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:

* * *

(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.

This Court reviews a trial court's order terminating parental rights under the clearly erroneous standard. MCR 3.977(K); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). "A finding is 'clearly erroneous' when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Riffe*, 147 Mich App 658, 671; 382 NW2d 842 (1985). "To be clearly erroneous, a decision must be more than maybe or probably wrong." *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011). On appeal, deference must be accorded to the trial court's findings of fact because of that court's special opportunity to judge the credibility of the witnesses appearing before it. *In re Miller*, 433 Mich at 337.

A petitioner seeking termination of parental rights must establish by clear and convincing evidence at least one statutory ground for termination. *In re Trejo Minors*, 462 Mich 341, 350-351; 612 NW2d 407 (2000); *In re LE Minor*, 278 Mich App 1, 22; 747 NW2d 883 (2008). Evidence is "clear and convincing" when it will produce a firm belief or conviction in the fact finder regarding the truth of the allegations sought to be established. *Kefgen v Davidson*, 241 Mich App 611, 625; 617 NW2d 351 (2000).

The record before us, including respondent's own admissions, supports the conclusion that respondent has failed to provide any significant financial support for the child throughout a large portion of her young life. Moreover, his relationship with his child has also been sporadic. Indeed, it took over four years for respondent to be designated the child's legal father.

The record also supports the finding that respondent will not be able to provide proper care and custody to the child within a reasonable time based on the child's age. While respondent has, to his credit, participated in parenting classes and substance abuse classes, it is unclear when respondent will be released from prison. It is even less clear as to when he will be able, if ever, to independently care for the child. Additionally, while he indicated that he does have housing and employment available upon his release, he also has four children, including the child at issue in this case. Two others are currently in foster care, and one is an infant. He has generally failed to provide for any of them throughout their lives.

The trial court did not clearly err in concluding that MCL 712A.19b(3)(g) was established.

Once a statutory ground has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights. MCL 712A.19b(5). Respondent argues that the court erred in concluding that termination was in the child's best interests. We disagree.

Whether terminating parental rights is in the best interests of the child must be proved by a preponderance of the evidence. *In re Moss Minors*, 301 Mich App 76, 90; 836 NW2d 182 (2013). In determining whether termination is in the child's best interests, the trial court should weigh all evidence available. *In re White Minors*, 303 Mich App 701, 713; 846 NW2d 61 (2014). This determination should be made considering a wide variety of factors, such as the bond between the child and the parent, the parent's ability to parent, the child's need for permanency and stability, the advantages of a foster home over the parent's home, the parent's compliance with his or her service plan, the parent's visitation history with the child, the children's well-being, and the possibility of adoption. *Id.* at 713-714.

The evidence shows that no substantial bond has been established between respondent and the child. Neither has had physical contact in approximately two years based on respondent's own testimony, and respondent was only intermittently involved in her life before that period of time. It is also evident that that child needs permanency and stability. Throughout the pendency of this case, she demonstrated behavior problems that her mental health counselor attributed to the uncertainty in her life. Moreover, a foster-care worker testified at the termination hearing that the child was likely to be adopted by either her current foster parents or respondent's mother. In sum, the trial court did not clearly err in concluding that terminating respondent's parental rights was in the child's best interests.

We affirm.

/s/ Mark T. Boonstra
/s/ William B. Murphy
/s/ Jane E. Markey