

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* E. FLORIO, Minor.

UNPUBLISHED  
March 8, 2016

No. 329199  
Tuscola Circuit Court  
Family Division  
LC No. 13-010483-NA

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Before: RONAYNE KRAUSE, P.J., and SAWYER and STEPHENS, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating his parental rights to his child, EF, under MCL 712A.19b(3)(a)(ii) (desertion for 91 days or more), MCL 712A.19b(3)(g) (failure to provide proper care or custody), and MCL 712A.19b(3)(j) (reasonable likelihood of harm). We affirm.

Petitioner, the Department of Health and Human Services, initiated this case in March 2013 based on the conduct of JA, the mother of EF and EF's siblings. At that time, JA, the children, and CH (the father of EF's siblings) were living together. JA was found unresponsive in the home due to marijuana use, and the trial court subsequently ordered JA to vacate the home. CH retained custody of his children, and EF remained under his care. Kristopher Osborn, a Children's Services Specialist, testified that he received respondent's last known contact information from a prior caseworker and was able to contact respondent in April 2013. Osborn was able to discern from their communications that respondent would benefit from a treatment service plan. He testified that he mailed respondent the plan on several occasions. Osborn lost contact with respondent and learned from respondent in early July 2013 that he had moved to Indianapolis and was staying with his priest. Respondent testified that he then moved to Texas for work, where he was later arrested because his roommates were selling drugs, but he was apparently not charged with a crime.

Allison Grifhorst, a foster-care worker, testified that she had to follow absent-parent protocol. In July 2014, petitioner sought the termination of respondent's parental rights, and that petition was authorized in October 2014. Eventually Grifhorst learned that respondent had been in a Texas jail, and respondent indicated that he planned to travel by bus to Michigan in order to participate in these proceedings when he left jail. On January 30, 2015, respondent entered a plea, admitting allegations in the March 2013 petition that he had been living place to place, receiving substance abuse rehabilitation in Detroit, and was unable to provide care for EF. Respondent entered a court-ordered rehabilitation center, which he voluntarily left, and again

moved from place to place, attempting to secure housing and employment. In May 2015, respondent attempted to break into a restaurant, and the record indicates that he was serving a maximum sentence of one year in jail as a result of those criminal convictions.

Following the termination hearing, the trial court concluded that there was clear and convincing evidence to terminate respondent's parental rights under MCL 712A.19b(3)(a)(ii), (g), and (j), and that termination was in EF's best interests. On appeal, respondent argues that the trial court erroneously concluded that termination of his parental rights is in EF's best interests.

A trial court's conclusion that terminating a respondent's parental rights is in the child's best interests is reviewed for clear error. *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). If the trial court determines that clear and convincing evidence supports a statutory basis for the termination of parental rights, "it shall order termination of parental rights if it finds 'that termination of parental rights is in the child's best interests.'" *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009), quoting MCL 712A.19b(5); see also *In re Trejo*, 462 Mich 341, 364-365; 612 NW2d 407 (2000). Termination of a respondent's parental rights must be supported by a preponderance of the evidence on the whole record. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). The trial 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 . . . , 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. [*Id.* at 713-714 (citations and quotation marks omitted).]

Respondent argues that because he did not enter a plea admitting the allegations regarding his fitness until January 30, 2015, his conduct before that date is irrelevant to a best-interest analysis. Although "due process requires that every parent receive an adjudication hearing before the state can interfere with his or her parental rights," *In re Sanders*, 495 Mich 394, 415; 852 NW2d 524 (2014), " '[o]nce the petitioner has presented clear and convincing evidence that persuades the court that at least one ground for termination is established under [MCL 712A.19b(3)], the liberty interest of the parent no longer includes the right to custody and control of the children,' " *In re Foster*, 285 Mich App 630, 634-635; 776 NW2d 415 (2009), quoting *In re Trejo, Minors*, 462 Mich at 355 (alteration by *In re Foster*). Because the protection of the child is the state's concern in analyzing the child's best interests, *id.* at 635, respondent's contention is questionable. Indeed, in assessing the child's best interests, a respondent's past history is a proper consideration. *In re Jones*, 286 Mich App at 131. Certainly respondent's general behavior before he was adjudicated as unfit remains relevant, even if he cannot be specifically faulted for not participating in state-mandated services before that determination.

In any event, respondent's actions taken after he entered a plea demonstrate that he did not participate in and was unable to benefit from the services offered. See *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005)<sup>1</sup> (stating that "a parent must benefit from the services offered so that he or she can improve parenting skills to the point where the children would no longer be at risk in the parent's custody"). By the time respondent entered his plea, he had made his way from Texas back to Detroit and was residing at a rehabilitation center for some time before leaving due to a physical altercation. Respondent testified that he then went to a Detroit hospital to receive treatment for his opiate dependency and lived in a shelter in Warren. Respondent testified that during this time he was attending AA meetings, but Grifhorst was unable to reach respondent after he left the rehabilitation center in order to substantiate respondent's efforts.

It appears that during March and April 2015, respondent was able to find some form of employment using his carpentry skills and landed in a halfway house in Pontiac. Grifhorst testified that respondent informed her of his employment progress and that he found housing, but she never received any verification. Respondent admits that he lost his employment, but blames that on petitioner's level of required services. Grifhorst's testimony reveals that respondent's communications with petitioner was sporadic during this period, and there is no indication that respondent addressed this subject with her in an effort to rectify a problem.

Respondent's admitted long history of addiction to prescription medications was seemingly the root of his problems in maintaining stability in his own life, let alone caring for a child. As a result, participation in substance abuse counseling was vital to establish reunification. Aside from his claimed participation in AA meetings, respondent only attended an initial intake meeting for the required substance abuse and counseling services. Respondent testified at trial that he was waiting for his Medicaid benefits to transfer from Detroit, but Grifhorst stated that respondent had never made her aware of that roadblock to services. Nonetheless, respondent's dedication to sobriety waned during this time, evidenced by his admission that he used cocaine while residing in Pontiac and Grifhorst's testimony that he failed four out of ten drug screens. In addition, respondent admitted to relapsing in May 2015 when he was found intoxicated and breaking into a restaurant with pill bottles and blank prescription pads in his possession.

These circumstances show that respondent "failed to demonstrate sufficient compliance with or benefit from those services specifically targeted to address the primary basis for the adjudication in this matter—[respondent's] historical problems with . . . substance abuse." *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). Further, if respondent had legitimate concerns regarding his ability to comply with the offered services, it is reasonable to expect respondent to bring such issues to the attention of those supervising his progress, which he seemingly failed to do. See *id.* (stating that "there exists a commensurate responsibility on the part of respondents to participate in the services that are offered").

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<sup>1</sup> Superseded in part on other grounds as stated in *In re Hansen*, 285 Mich App 158, 163; 774 NW2d 698 (2009), vacated on other grounds 486 Mich 1037 (2010).

Respondent also argues that he only received six months to show progress, whereas the child's mother failed to comply with petitioner's service plan since the case began in 2013, and yet her parental rights have not been terminated. Comparison to the mother is inappropriate because her ability to properly care for the child was not at issue during trial. Respondent's argument is without merit.

In addition to substance abuse, lacking employment and housing, and the failure to sufficiently participate in services, the trial court focused on the fact that the child has virtually no relationship with respondent. The trial court concluded that respondent's communication with EF "has been sporadic at best." Respondent testified that he was present for EF's first one and a half years. However, he did not have contact with his child since 2010, with exception of eight days' visitation before the case was commenced in March 2013. Osborn and Grifhorst testified that respondent's absence from EF's life for this period of time is an obstacle toward reunification. At trial, respondent indicated that his attempted communications with EF were thwarted by the mother's insistence that respondent tell petitioner that she is a good parent and her and Hervert's desire to exclude respondent from EF's life. However, as the trial court noted, respondent failed to pursue custody.

Respondent also argues that he should be credited with the fact that EF has been provided for and is currently developing well. However, even if EF's basic needs have been met throughout the years—without out any formal child support being paid by respondent—the child still came under the jurisdiction of the court based on the mother's conduct. As the trial court explained, respondent was aware of EF's general living situation, and he should not be excused from properly exercising his parental rights to ensure that EF's home environment remained safe. Nevertheless, respondent even admitted that he was aware that the mother was using marijuana when he testified that he could recognize in her voice when she was high.

The trial court did not clearly err in finding that a preponderance of the evidence established that termination was in the child's best interests.

Affirmed.

/s/ Amy Ronayne Krause  
/s/ David H. Sawyer  
/s/ Cynthia Diane Stephens