

Court of Appeals, State of Michigan

ORDER

In Re A Rinehart Minor

Docket No. 316905

LC No. 11-001795-NA

E. Thomas Fitzgerald
Presiding Judge

Henry William Saad

William C. Whitbeck
Judges

The Court orders that the motion for reconsideration is GRANTED, and this Court's opinion issued May 15, 2014 is hereby VACATED. A new opinion will be issued.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

JUL 01 2014

Date

Jerome W. Zimmer Jr.
Chief Clerk

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of A. Rinehart, Minor.

UNPUBLISHED
May 15, 2014

No. 316905
Ingham Circuit Court
Family Division
LC No. 11-001795-NA

Before: FITZGERALD, P.J., and SAAD and WHITBECK, JJ.

PER CURIAM.

Respondent appeals the trial court’s order that terminated his parental rights pursuant to MCL 712A.19b(3)(g). For the reasons stated below, we affirm.

I. STANDARD OF REVIEW

When a trial court terminates parental rights, its findings are reviewed for clear error. See MCR 3.977(K); *In re Rood*, 483 Mich 73, 90; 763 NW2d 587 (2009). “[T]he preponderance of the evidence standard applies to the best-interest determination.” *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013).

“A finding is ‘clearly erroneous’ [if] 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 Rood*, 483 Mich at 91, quoting *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). We must give regard “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).

“Only one statutory ground need be established by clear and convincing evidence to terminate a respondent’s parental rights, even if the court erroneously found sufficient evidence under other statutory grounds.” *Ellis*, 294 Mich App at 32. We review de novo a trial court’s interpretation of statutes and court rules. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

II. ANALYSIS

MCL 712A.19b(3)(g) allows a trial court to terminate a respondent’s parental rights when: “[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.” Here, the trial court properly found clear and convincing evidence to terminate Rinehart’s parental rights under this subsection

of the statute. The evidence clearly showed that over a period of years, Rinehart, without regard to intent, failed to provide proper care and custody for his child. He acknowledged at trial that he had not seen the child in four or five years. In addition, he has been incarcerated since 2011, and his maximum discharge date is 2026. Testimony revealed that the child did not have a relationship with her father, and that Rinehart has been in prison or county jail for most of her life.

Because Reinhart is unable to demonstrate that the trial court improperly terminated his rights under MCL 712A.19b(3)(g), he makes a number of frivolous procedural claims on appeal. Specifically, he asserts that the trial court: (1) violated his constitutional rights by applying the “one parent doctrine”; (2) erred by not providing him with an attorney at an early stage of the proceedings; (3) failed to require that petitioner provide services to him as an incarcerated parent; and (4) did not consider the child’s placement with a relative when it made its best interest determination. We address each claim in turn.¹

A. RESPONDENT’S ATTORNEY

A respondent in an abuse and neglect proceeding has the right to an attorney. *In re Hudson*, 483 Mich 928, 932; 763 NW2d 618 (2009); MCL 712A.17c(4) and c(5); MCR 3.915(B)(1); see also *Lassiter v Dep’t of Social Serv*, 452 US 18, 31–32; 101 S Ct 2153; 68 L Ed 2d 640 (1981). Reinhart failed to preserve this issue, so we review it for plain error affecting his substantial rights. *Hudson*, 483 Mich at 931.

Here, Reinhart alleges that the trial court did not provide him with an attorney sufficiently early in the proceedings. This assertion is untrue—as soon as respondent indicated that he wanted to contest the termination, the trial court appointed an attorney for him. The appointment took place one month prior to trial, which gave the lawyer ample opportunity for preparation. The trial court thus properly provided him with an attorney and his claim is without merit.

B. SERVICES TO PRISONERS

The state is obligated to engage and provide services to an incarcerated parent during a termination proceeding. *In re Mason*, 486 Mich at 152. “[P]etitioner must make reasonable efforts to rectify conditions, to reunify families, and to avoid termination of parental rights.” *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008).

Here, Reinhart’s assertion that he was ignored and excluded by the trial court is simply unfounded. He participated in every dispositional hearing via telephone. He asked questions of the court and answered the court’s questions throughout the hearings. And he indicated that he

¹ Reinhart’s argument that the “one parent doctrine” is unconstitutional has been flatly rejected by this Court, and thus lacks merit. *In re CR*, 250 Mich App 185, 205–206; 646 NW2d 506 (2001). We note that the constitutionality of the “one parent doctrine” is currently under review at the Michigan Supreme Court. *In re Sanders*, 493 Mich 959; 828 NW2d 391 (2013). Moreover, this doctrine simply does not apply here because respondent had the opportunity to directly contest this matter.

received letters and updated service plans from his caseworker. Respondent had no definite release date because of his lengthy prison term and denial of parole. The Department of Corrections does not make services available under such circumstances. His caseworker testified that she regularly contacted the correctional facilities where respondent was housed, but was repeatedly informed that respondent was not yet eligible for services. Such determinations are functions of the Department of Corrections, for which petitioner cannot be faulted.

C. BEST INTERESTS OF THE CHILD

Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court shall order termination of parental rights if it finds that termination is in the child's best interests. MCL 712A.19b(5); *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). When it determines a child's best interests, the trial court may consider the child's need for stability and permanency and whether the child is progressing in foster care. *In re VanDalen*, 293 Mich App 120, 141; 809 NW2d 412 (2011). A trial court must also "explicitly address whether termination is appropriate in light of the child[]'s placement with relatives." *Olive/Metts*, 297 Mich App at 43, citing *Mason*, 486 Mich at 163–165.

Here, the trial court considered and made an explicit finding on the fact that the child was living with a relative. Accordingly, it did not err when it determined that it was not in the child's best interests for respondent to retain custody.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Henry William Saad
/s/ William C. Whitbeck