

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
September 16, 2010

In the Matter of WILLIAMS, Minors.

No. 296632
Oakland Circuit Court
Family Division
LC No. 07-739149-NA

Before: OWENS, P.J., and WHITBECK and FORT HOOD, JJ.

PER CURIAM.

Respondent father appeals as of right from an order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i).¹ We affirm.

The trial court did not clearly err in finding that the statutory ground for termination of respondent's parental rights was established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000).

The children were made temporary wards in October 2007 based on the mother's no contest plea, in which she acknowledged that she was homeless and had a history of domestic violence with respondent. Substance abuse was an issue for both parents. Respondent repeatedly violated a personal protection order, and some of the instances of domestic violence took place in front of the children. Respondent refused to participate in any services or make any plans for the children. Respondent was not incarcerated when the children were brought into care, but he was on probation for a 2006 home invasion conviction. In November 2007, respondent had two positive drug screens, which were violations of his probation, and he was sent to prison in January 2008, where he stayed until March 2009. Respondent may have completed numerous programs while incarcerated, but it was clear that he had not benefited from them. He knew the mother was not in compliance with her parent agency agreement (PAA), but he believed that it was a good idea for them to plan for the children together. Respondent claimed to be employed as an electrician, but he did not have adequate housing for all four children. The children had been in care from October 2007 until June 2009, and the conditions that led to adjudication continued to exist. The mother was still abusing drugs and the children

¹ The parental rights of the children's mother were also terminated in the same order. She is not participating in this appeal.

did not have a home to return to. Respondent's criminality continued as well, demonstrated by the fact that he did not become incarcerated until after the children came into care. His incarceration made it impossible for him to comply with a PAA and demonstrate any benefit.

As petitioner points out, this case is distinguishable from the recently decided case *In re Mason*, 486 Mich 142; 782 NW2d 747 (2010). In *Mason* it was determined that an incarcerated father was denied the right to participate in the child protective proceedings because he was denied the right to appear by telephone and was also denied the right to participate in a case services plan. *Mason*, 486 Mich at 154-154, 159-160. The Michigan Supreme Court held that incarceration alone is not a ground for terminating a respondent's parental rights. *Mason*, 486 Mich at 160. Unlike the father in *Mason*, respondent was not incarcerated before the children's removal. He was on probation following an October 2006 conviction for home invasion. It appears that between October 2006 and the children's removal a year later in October 2007, respondent had virtually no contact with the children. He claimed to be ignorant of the fact that they were homeless and that the mother continued to struggle with drug abuse. As the trial court pointed out, respondent either knew and did nothing or simply did not know. Either way, he failed to protect the children.

Unlike the father in *Mason*, respondent was offered services, but simply failed to avail himself of them. He provided no plan for the children. His inaction was one of the primary reasons the children were adjudicated temporary wards. Respondent attended the court hearings at the inception of the case. He understood what was happening, yet chose to use drugs and alcohol and violate the conditions of his probation only a month later. Also unlike the father in *Mason*, respondent appeared throughout the proceedings either by telephone or by writ. He was provided with a PAA and the worker made herself available to him. Although respondent completed many services while in prison, he did not present the certificates of completion to the worker. He also did not make any attempt to contact the worker until after the termination petition was filed in November 2008. Finally, unlike the father in *Mason* who offered relative placement as an option for his children, respondent in this case did nothing to provide a plan for the children. His plan consisted of asking the children to wait until he got out of prison and demonstrate an ability to effectively parent and provide for them, presumably with the children's drug-addicted mother. Incarceration was not, therefore, the basis for termination in this case, as respondent would ask us to believe. It was clear that the conditions leading to adjudication continued to exist with no reasonable likelihood that the conditions would have been rectified within a reasonable time considering the children's ages.

Having found the statutory ground proven by clear and convincing evidence, the trial court then had to determine whether it was in the children's best interests to terminate respondent's parental rights. MCL 712A.19b(5). At the time of the best interests hearing, it was discovered that respondent was once again imprisoned. Respondent was only in the community from March 2009 until July 2009, when he was arrested and convicted of his third drunk driving offense. He was sentenced to one to 15 years' imprisonment, and his earliest out date was in August 2010. As the children's attorney properly points out, the drunk driving offense highlighted at least two of the primary barriers to reunification -- respondent's criminality and his struggles with substance abuse. The offense was also an indication that, although respondent had completed many programs while in prison (including a substance abuse class), he had not benefited from them. In fact, the psychologist testified that respondent had not yet taken

responsibility for his substance abuse problem. Instead, he blamed his drinking on the fact that the children were not in his care. This lack of insight more than two years into the case demonstrates that respondent was not likely to change.

The children were faring well. The two oldest were in one foster care home and the two youngest in another. They had monthly sibling visits, and the two families also got together outside of the scheduled times to allow the children to be together. The four boys were thriving and well adjusted. They were fortunate to be in the same foster homes throughout the duration of the case. As the trial court pointed out, the children were experiencing permanence and stability, perhaps for the first time in their lives. Given respondent's lack of progress in the two years the children were in care, his continued criminality, and his continued substance abuse issues, there was little hope that he would be able to provide for the children within a reasonable amount of time. Even assuming that respondent would be released in August 2010, the children would have been in care for nearly three years. Respondent would then have to engage in services and demonstrate that he had acquired the skills necessary to manage his behavior. There was no telling how long that would take. Respondent re-offended *twice* while the children were in care. If he could not conform his behavior to acceptable standards while under the court's scrutiny, it is doubtful he would suddenly become a proper, law-abiding parent of society upon his release from prison. The children were content and enjoying what respondent had not and would not be able to provide -- permanence and stability. Given their young ages and the amount of time that had elapsed since respondent last saw them, the children did not even identify respondent as a father figure.

Affirmed.

s/ Donald S. Owens
/s/ William C. Whitbeck
/s/ Karen M. Fort Hood