

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
January 20, 2011

In the Matter of R. MORROW, Minor.

No. 299096
Barry Circuit Court
Family Division
LC No. 09-007892-NA

Before: MARKEY, P.J., and ZAHRA and DONOFRIO, JJ.

PER CURIAM.

Respondent, R. Morrow’s legal father, appeals as of right from the trial court order terminating his parental rights to his daughter under MCL 712A.19b(3)(a)(ii) (deserted child for 91 or more days) and (g) (failure to provide proper care and custody). Because petitioner failed to make reasonable efforts to reunify the child with respondent, we reverse and remand.

A trial court’s decision regarding the best interests of the child is reviewed for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). Whether there were reasonable efforts to reunify the family is reviewed under the same standard. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A finding is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake has been made. *Id.* Regard is given to the special ability of the trial court to judge the credibility of the witnesses who appeared before it. *Id.*

“[R]easonable efforts to reunify the child and family must be made in all cases” except those involving aggravated circumstances not present in this case. MCL 712A.19a(2); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010); *Rood*, 483 Mich at 99-100. After reviewing the record in the present case, we conclude that petitioner failed to make reasonable efforts to reunify the child with respondent.

Respondent’s procedural due process right to notice and participation in hearings was not violated. He admitted so on the record at the termination hearing. Respondent received notice of all hearings and was permitted to appear by telephone at hearings from his Mississippi home. Respondent took advantage of the telephone privileges for only one hearing and appeared in person only at the termination hearing.

This case appears to have caused difficulty for petitioner because of respondent’s residence in Mississippi as well as respondent’s early indications that he was content with respondent’s placement of R. with a maternal aunt after R. came into care in early 2009 and there appears to be scant records of contact with respondent over the course of the proceedings.

Respondent testified that he believed that while R. was in state custody, R.'s mother was doing what she needed to do to regain custody of R. The circumstances changed drastically, however, when the parental rights of R.'s mother, Yolanda Morrow, were voluntarily terminated on May 18, 2010. Respondent's parental rights were terminated only two months later in July 2010.

This case is indistinguishable from *Rood* in that petitioner never gave respondent a case service plan at any time during the proceedings. Also, like the *Rood* respondent, respondent here believed his daughter would be reunited with her mother. Even when reunification with R.'s mother was no longer the goal in this case, petitioner did not contact respondent to establish a case service plan. More troubling is the fact that petitioner did not grant or even investigate respondent's request for a home study. There is evidence on the record that respondent had a stable home in Mississippi for the last five years and wanted R. to visit him. However, there is no evidence that petitioner ever visited the home.

Supervised visitation did occur early on in the case when respondent drove from Mississippi to Michigan to visit R. on three occasions. Another occasion was marked as a no-show because although respondent drove to Michigan to visit with R. he did not know that the visit had to be supervised and that he had to make an appointment in advance. In March and April 2009, respondent also had weekly telephone contact with R. Because of an abuse allegation waged by another child, that was later deemed unfounded, the trial court suspended respondent's visitation with R. After that, respondent never visited or attempted to contact R. The foster care worker testified that, in order to reinstate visits after the suspension, respondent had to do a psychological evaluation and a sex offender evaluation. But the record shows that petitioner never requested that respondent do either evaluation. There was also testimony from the foster care workers that no one ever asked respondent to take any action, despite having three meetings with him when he was in Michigan in March and April 2009. Surprisingly absent from the record are any referrals for services or parenting classes that petitioner provided to respondent to prepare him for possible reunification with R., especially when it appeared that R.'s reunification with her mother was less and less likely.

After reviewing the record, we cannot agree with the trial court's assessment that petitioner's four contacts with respondent in over a year, one request for a drug test, and three supervised visits with R., were reasonable efforts under the circumstances. While respondent did refuse to complete an initial drug test requested by petitioner at the initiation of proceedings, respondent's failure to participate in services, as in *Rood*, was evidence of neglect, not automatic grounds for termination. The lack of evidence of petitioner's efforts with respondent toward reunification with his daughter leaves us with the definite and firm conviction that a mistake has been made. *Rood*, 483 Mich at 112. Because petitioner failed to provide a case service plan to respondent, never evaluated his home for possible visitation, never referred him for services, and in general made no other efforts at reunification especially when circumstances changed and R.'s mother's parental rights were terminated, the trial court clearly erred in finding that petitioner established by clear and convincing evidence that respondent would not be able to provide proper care and custody for his daughter within a reasonable time. *Rood*, 483 Mich at 113-114. Although respondent's procedural due process rights were not violated because he received notice of hearings, the trial court clearly erred in finding that MCL 712A.19b(3)(g) was established where petitioner failed to make reasonable efforts at reunification.

With regard to the trial court's finding regarding MCL 712A.19b(3)(a)(ii), we must also disagree with its finding. A failure to make reasonable efforts at reunification may prevent petitioner from establishing the statutory grounds for termination. *In re Newman*, 189 Mich App 61, 67-68, 70; 472 NW2d 38 (1991). Under the specific circumstances of this case, a finding of abandonment in light of petitioner's failings is simply premature. Of particular importance is the fact that respondent regularly spoke to and visited R. before the trial court suspended visitation. When it appeared that visitation may be appropriate again sometime after the allegations were found to be untrue, petitioner did not equip respondent with the tools necessary to recommence visitation or even contact him. Also crucial is the fact that respondent's parental rights were terminated barely two months after R.'s mother's parental rights. When petitioner's focus changed in the mother's case, it became even more vital that petitioner seek out respondent, refer him for appropriate testing and services, and essentially give him a chance to succeed as a father to his child. We fall just shy of stating that petitioner in some ways placed roadblocks in the way of respondent's possible reunification with R., but we do observe that petitioner did not fulfill its statutory duty to make reasonable efforts at family reunification on this record. Again, the facts of this case direct that a finding of abandonment is premature and not supportable.

In addition, the trial court clearly erred in its best interests determination. There was scant information concerning the relationship between respondent father and his daughter and its potential harm or benefit to his daughter. The trial court had an insufficient basis on which to determine that custody with respondent was not in the child's best interests. Respondent and R. currently live in separate states and there was only evidence in the record of three supervised visits which according to the record went well. While the trial court's findings are entitled to great deference, they must be based on record evidence. Therefore, the trial court clearly erred in its best interests determination at this time. As a result, we reverse the trial court's order terminating respondent's parental rights and remand to the family court for further evaluation and services.

Reversed and remanded for further proceeding consistent with this opinion. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ Brian K. Zahra
/s/ Pat M. Donofrio