

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
March 8, 2011

In the Matter of J. A. ELLIS-DOWNING, Minor.

No. 299086
Washtenaw Circuit Court
Family Division
LC No. 2008-000023-NA

Before: FITZGERALD, P.J., and O'CONNELL and METER, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(a)(ii), (g), and (j).¹ We affirm.

Respondent argues that the trial court clearly erred in finding that petitioner made reasonable efforts at reunification. When a child is removed from a parent's custody, petitioner is required to make reasonable efforts at reunification. MCL 712A.18f(1), (2), (4). 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).

First, respondent asserts that petitioner failed to make reasonable efforts to notify him of his potential paternity. Respondent admitted to the psychologist that he knew of the proceedings and did not get involved until the court ordered him to do so. The fact that respondent responded to a court summons months after receiving at least one letter from petitioner at the same address does not show petitioner's lack of effort but respondent's lack of interest in participating in the proceedings. Additionally, respondent further delayed his participation in reunification services when he failed to sign the affidavit of parentage for two and one-half months after learning the result of the DNA paternity test. Petitioner's efforts in this regard were reasonable.

Respondent also contends that petitioner failed to make reasonable efforts at reunification in the areas of housing and employment. Respondent never requested assistance in obtaining housing and testified at the termination hearing that he was waiting to find out whether he needed to obtain a two-bedroom or one-bedroom apartment. Similarly, respondent claimed to be

¹ The parental rights of the child's mother were previously terminated. She is not a party to this appeal.

employed doing odd jobs like roofing and cab driving but did not show documentation of employment. Although respondent stated that he was employed by the Blue Cab Company beginning in January 2010, respondent provided the foster care worker with a telephone number for his employer only the day before the termination hearing, and the foster care worker was unable to reach anyone there to confirm respondent's employment. Respondent did not follow through with petitioner's housing resource guide or referral to Michigan Works for employment. Overall, petitioner's efforts in these areas were reasonable.

Additionally, respondent maintains that that petitioner's effort to assist respondent in obtaining individual counseling or anger management were unreasonable. Petitioner referred respondent to ACCESS to obtain counseling, but ACCESS was unable to assist respondent because he did not have Medicaid. Respondent applied for Medicaid but did not receive Medicaid benefits until shortly before the termination hearing and promptly scheduled counseling to begin after the termination hearing. However, the foster care worker testified that respondent told her that ACCESS provided respondent with information regarding several counseling programs that were available for those without Medicaid. Respondent denied that ACCESS gave him any referrals or that he told the foster care worker that they did. The foster care worker further testified that she referred respondent to a free anger management class and would have considered completion of that class as an acceptable substitute for counseling but respondent refused to attend the class, stating that he did not need anger management treatment. The trial court found the foster care worker's testimony to be credible. In termination proceedings, this Court must defer to the trial court's factual findings if those findings do not constitute clear error. MCR 2.613(C); MCR 3.977(K).

Finally, respondent asserts that petitioner failed to provide transportation assistance to respondent for drug screens. Respondent requested that the location of drug screens be changed because he did not believe the first location's results were reliable and, when asked about changing again to a location closer to his home, he stated that he did not want the location changed. Petitioner's efforts regarding transportation to drug screens were not unreasonable. The trial court did not clearly err in finding that petitioner's efforts to reunify the minor child with respondent were reasonable.

Respondent next argues that the trial court clearly erred in finding that the statutory grounds for termination were established by clear and convincing evidence. The trial court did not clearly err in finding that sections (g) and (j) were established. MCL 712A.19b(3). In termination proceedings, this Court must defer to the trial court's factual findings if those findings do not constitute clear error. MCR 2.613(C); MCR 3.977(K). Both the trial court's decision that a ground for termination has been proven by clear and convincing evidence and the best interests determination are reviewed for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). "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 Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The trial court did not clearly err in finding that sections (g) and (j) were established by clear and convincing evidence. In the 13 months after respondent's first court appearance and before the termination hearing, respondent did not obtain housing or stable employment. Respondent had many positive drug screens, at three different screening locations, and denied using marijuana or cocaine when confronted with positive results. His explanations for his

positive drug screens were nonsensical. The trial court did not clearly err in finding that respondent was unable to provide proper care and custody for his daughter where he had no housing or stable employment and where he used drugs. As no progress was made during the 13 months the case was pending, the trial court did not clearly err in finding that respondent would not be able to provide proper care and custody within a reasonable time.

The same conditions also support the trial court's finding that there was a reasonable probability that the young child would be harmed if placed in respondent's custody (she had never lived with respondent and therefore could not be returned to him). Respondent had no home. He slept in his car or stayed with a family in Canton and did not allow foster care workers to have his Canton address or see the home. Even assuming that respondent could obtain housing within a month as he testified, there was still the more concerning issue of his positive drug screens and his denial of any use or need for treatment. Considering respondent's lack of housing and drug use, the trial court did not clearly err in finding that section (j) was established by clear and convincing evidence.

Finally, respondent contends that the trial court clearly erred in finding that termination of his parental rights was in the minor child's best interests. "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). As discussed above, the trial court did not clearly err in finding statutory grounds for termination. The trial court also did not clearly err in its best interests determination. The minor child met respondent only twice, once at the hospital shortly after her birth and again at the one visit respondent attended before visits were suspended for positive drug screens. Therefore, there was no bond between respondent and the child. Although respondent did well at his visit and the child responded well to respondent, respondent failed to obtain stable housing and had many positive drug screens in the year after his paternity test and before the termination hearing. Respondent steadfastly denied any drug use and refused treatment. Therefore, the trial court did not clearly err in its best interests determination.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Peter D. O'Connell

/s/ Patrick M. Meter