

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED  
July 31, 2012

In the Matter of J. J. MAXWELL, JR, Minor.

No. 308303  
Isabella Circuit Court  
Family Division  
LC No. 2010-000143-NA

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Before: STEPHENS, P.J., and SAWYER and OWENS, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating his parental rights to the minor child under MCL 712Ab(3)(c) and (g). The child's biological mother voluntarily released her parental rights and is not a party to this appeal. We affirm.

On appeal, respondent alleges that the trial court erred when it found that it had statutory grounds to terminate his parental rights and that it was in the child's best interests. We review both a trial court's finding of whether a statutory ground for termination has been proven by clear and convincing evidence and a trial court's decision regarding the child's best interests for clear error. *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *Id.* at 296-297.

The trial court terminated respondent's parental rights under MCL 712A.19b(3)(c) and (g), which provide for termination under the following circumstances:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

(ii) Other conditions exist that cause the child to come within the jurisdiction of the court, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent

has received notice, a hearing, and been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child.

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(g) The parent, without regard to intent, fails to provide care or custody for the child and there is no reasonable expectation that the parent will be able to provide care and custody within a reasonable time considering the child's age.

Based on the record before this Court, we conclude that the trial court was not clearly erroneous when it found that these statutory grounds had been proven by clear and convincing evidence.

At the adjudication, respondent and the biological mother waived their right to a jury trial and consented to the court assuming jurisdiction over the newborn child. While the bulk of the admissions were made by the biological mother, respondent admitted that he was on probation for domestic violence and drunk driving. Although respondent successfully completed the terms of his probation, there is little evidence showing that he addressed the underlying issues that resulted in the convictions as he failed to participate in at least the individual counseling and relapse program that it was determined that he needed to complete. He also failed to participate in most of the services that were recommended for him, in part because he believed that he was being punished for the biological mother's failures. The troubling issue is that respondent waited until the weeks immediately preceding the termination hearing to participate in a handful of the recommendations that were made.

Respondent emphasizes for this Court the steps he has taken to gain custody of the child. The trial court either discounted or disbelieved each, which the record adequately supports. At the termination hearing, respondent alleged that he was attending Alcoholics Anonymous (AA). But, respondent did not provide any documentation to substantiate his claim. Even if he was attending AA, his own testimony established that he only attends out of routine. The habit started as a child when his father took him to AA to alleviate his need for a babysitter.

Similarly, the trial court did not believe respondent's assertion that he had obtained adequate housing approximately two weeks before the termination hearing. Housing had been a concern throughout the pendency of this case, because respondent had been living with his father and younger brother in a two-bedroom apartment once his relationship with the biological mother ended. However, this arrangement was unacceptable because of his father's criminal history. Yet respondent did not attempt to remedy this and provide a living situation in which he could raise the child. The timing of respondent's sudden change of address may have played a role in the trial court's anxiety over whether respondent had actually moved into his own apartment, because a copy of the lease was not provided for the court's review.

Respondent also emphasizes for this Court that he attended the parenting classes that were recommended for him. While he ultimately completed the classes, there was evidence to show that he was not utilizing what he had learned during his supervised visits with the child. Even as recent as the week of the termination hearing, respondent failed to change the child's diaper and returned him to his foster parents soaking wet, so much so that it had soaked through

his clothes. There was also evidence showing significant concerns about respondent's ability to engage and interact with the child. Observers described respondent's interaction with the child as cold and stiff. The child does not appear to enjoy their visits.

Even if the trial court fully acknowledged respondent's last-minute attempts, it does not diminish his lack of participation in the other services that were offered to him that were crucial to his being reunited with the child. Respondent did not participate in counseling or relapse prevention, which were the services that would have addressed the underlying issues in this case, particularly with respect to repeated instances of domestic violence involving respondent and the child's mother. Based on respondent's history of ignoring services that were offered to him, it is reasonable to find that his behavior will continue, even if he were given additional time. Accordingly, we are unable to conclude that it was clear error for the trial court to find that statutory grounds for termination under MCL 712A.19b(3)(c) and (g) had been proven by clear and convincing evidence.

Next, respondent argues that the trial court erred when it found that it was in child's best interest to terminate respondent's parental rights. Under MCL 712A.19b(5), termination is mandatory once a court has found that a statutory ground for termination exists and it is in the child's best interest to do so. *In re Trejo*, 462 Mich 341, 350-351; 612 NW2d 407 (2000). "In deciding whether termination is in the child's best interests, the court may consider 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." *In re Olive/Metts*, \_\_\_ Mich App \_\_\_, \_\_\_; \_\_\_ NW2d \_\_\_ (Docket No. 306279, issued June 5, 2012, slip op at 3) (internal quotation and citations omitted). In this case, the child has been in foster care since shortly after he was born. He needs permanency. Although the child may obtain some comfort from his time with respondent, the evidence shows that the bond between the two is weak at most, while the child has bonded with his foster parents. Thus, it was not clearly erroneous to find that termination was in the child's best interest.

Affirmed.

/s/ Cynthia Diane Stephens  
/s/ David H. Sawyer  
/s/ Donald S. Owens