

Court of Appeals, State of Michigan

ORDER

In re Green Minors

Docket No. 313344

LC No. 11-501916-NA

Michael J. Riordan
Presiding Judge

Michael J. Talbot

Karen M. Fort Hood
Judges

The Court orders that the June 13, 2013 opinion is hereby AMENDED. The opinion contained the following clerical error: The Wayne Circuit Court Family Division Lower Court Number should read 11-501916 NA.

In all other respects, the June 13, 2013 opinion remains unchanged.



A true copy entered and certified by Angela P. DiSessa, Acting Chief Clerk, on

JUN 19 2013

Date

Angela P. DiSessa

Acting Chief Clerk

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
June 13, 2013

In the Matter of GREEN, Minors.

No. 313344
Wayne Circuit Court
Family Division
LC No. 11-201916-NA

Before: RIORDAN, P.J., and TALBOT and FORT HOOD, JJ.

PER CURIAM.

Respondent appeals by right the order terminating his parental rights to the minor children, a then thirteen-year-old daughter and eleven-year-old son, pursuant to MCL 712A.19b(3)(a)(ii), (g), and (j). We affirm.

The children's biological mother was ejected from a homeless shelter because of drug use, and the children's sibling, an infant not at issue in this appeal, tested positive for opiates at birth. Consequently, the minor children were removed from their mother's care in July 2011. Although the children's mother was willing to participate in services, she passed away in August 2011. Petitioner sought to reunify the minor children with respondent, their biological father. However, respondent had little contact with the children for several years, and he failed to provide financial or other support for the children, creating a child support arrearage. Additionally, respondent had outstanding warrants for his arrest. He refused to participate in services or even to provide an address other than a post office box to the agency. He told the foster care manager that he lived with his girlfriend and four children, three of which respondent claimed paternity. Respondent provided the only source of income to that family through social security income, but he failed to provide proof of legal income to the foster care manager. He feared that if he came to court proceedings or the agency for visitation that he would be arrested, despite assurances from the foster care manager that she was only interested in reunifying the family.

Because of his unwillingness to participate in services with the agency, the agency allowed supervised visits at a local mall and a restaurant. However, the children were disappointed with the visits because respondent spoke of his other family and did not express an interest in the minor children. He did not bring any presents to the children and refused to buy food for his son at the mall's food court despite displaying a "wad of money." However, the foster care manager and team feared that respondent could be arrested while visiting in public with the children. In December 2011, the court ordered that petitioner not make extra efforts to

allow visitation with respondent, and he could come to the agency for visitation, but he did not appear. Although respondent was allowed to call the foster home to speak to the children, an extraordinary measure not ordinarily provided, the foster mother asked that the calls stop because it was disruptive to the minor children. The minor daughter received a cellular telephone and called respondent, but she refused to call him after her phone broke. The minor children requested termination of respondent's parental rights, opining that respondent did not "step up" to care or provide for them.

Respondent requested that his parental rights not be terminated and offered three relatives to obtain a guardianship over the minor children. However, a paternal uncle never entered the paperwork stage. A maternal cousin took steps to place the children with her, but she refused to release her psychiatric records and removed herself from consideration. A maternal aunt then expressed an interest in taking the children. The maternal aunt acknowledged a history of substance abuse and outstanding warrants. However, she was able to clear the warrants to petitioner's satisfaction and had been drug-free for at least seven years. The only barriers to placement were minor, a modification to the home and a first-floor fire alarm, but the aunt also removed herself from consideration. The foster care manager was questioned regarding her efforts to place the minor children with relatives. Attorneys for respondent alleged that agency employees feared that a relative placement would undermine the termination of respondent's parental rights, an assertion that the foster care manager denied. The trial court denied co-counsel's request to testify to contradict the manager's testimony, holding that the issue was moot because all relatives had withdrawn from consideration for placement and the testimony was a collateral issue. Rather, the trial court found statutory grounds for termination of respondent's parental rights and that termination was in the minor children's best interests.

Respondent first argues that the trial court clearly erred in finding clear and convincing evidence to terminate his parental rights. We disagree. Termination of parental rights is appropriate when petitioner proves by clear and convincing evidence at least one ground for termination, and that termination is in the children's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 355; 612 NW2d 407 (2000); *In re B & J*, 279 Mich App 12, 17; 756 NW2d 234 (2008). This Court reviews the lower court's findings under the clearly erroneous standard. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake was committed, giving due regard to the trial court's special opportunity to observe the credibility of the witnesses. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The evidence justified a finding that there was no reasonable expectation that respondent could provide proper care and custody within a reasonable time considering the children's ages. MCL 712A.19b(3)(g). Respondent refused to clear his warrants, come to court, participate in a court-ordered treatment plan, or visit his children at the agency. Failure to comply with a treatment plan is evidence of the parent's failure or inability to provide proper care and custody. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003); *Trejo Minors*, 462 Mich at 360-363. He also refused to provide information regarding his income or have his home evaluated. Respondent apparently feared that his other children would be removed from his care if there was an investigation. Consequently, the trial court did not clearly err in finding that MCL 712A.19b(3)(g) was satisfied. Although only one subsection need be proven by clear and

convincing evidence to support termination, *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000), the above cited evidence also was sufficient to support MCL 17A.19b(3)(j).¹

Respondent next alleges that there was insufficient record evidence to support the best interests determination because the trial court failed to address the agency's deliberate failure to place the children with suitable relatives to obtain termination of respondent's parental rights and failed to allow co-counsel to testify regarding this issue. We disagree. A trial court's decision regarding the admission of evidence is reviewed for an abuse of discretion. *In re Utrera*, 281 Mich App 1, 15; 761 NW2d 253 (2008). A court abuses its discretion when its decision falls outside the range of principled outcomes. *Id.* The trial court did not abuse its discretion by excluding this testimony. When questioned, the foster care manager denied co-counsel's version of events, and the credibility of that assertion presented an issue for resolution by the court. *Miller*, 433 Mich at 337. Furthermore, respondent could have called the manager's supervisor or respondent's relatives to support this theory, but did not do so. The factual record does not support the assertion that agency employees thwarted placement with the maternal cousin or aunt. Both women had issues in their past that warranted investigation. This type of investigation was common. In fact, the foster care manager testified that a pre-adoptive placement was being considered, but the pre-adoptive parent would be ineligible until she received a home of her own instead of living with a relative. Moreover, as the trial court noted, the issue was moot because both relatives removed themselves from consideration. The trial court complied with the requirement that relative placement be considered before ordering termination. *Mason*, 486 Mich at 164; *In re Olive/Metts*, 297 Mich App 35, 43; 823 NW2d 144 (2012). "If it is in the best interests of the child, the trial court may properly terminate parental rights instead of placing the child with relatives." *In re McIntyre*, 192 Mich App 47, 52; 480 NW2d 293 (1991). Here, respondent made no effort to reunify with the minor children, and the relatives he offered for placement withdrew from consideration. There was sufficient record evidence to support the trial court's holding that termination was in the children's best interests

Affirmed.

/s/ Michael J. Riordan
/s/ Michael J. Talbot
/s/ Karen M. Fort Hood

¹ Although only one statutory ground to support termination is necessary, *Powers*, 244 Mich App at 118, for purposes of completeness, we note that the evidence was insufficient to terminate pursuant to MCL 712A.17b(3)(a)(ii), addressing desertion for 91 days or more. Respondent participated in the proceedings through his attorneys, and he was in constant communication with the foster care manager. The foster care manager testified that she had a good rapport with respondent. Respondent participated in three visits with his children, contacted the children by telephone, and offered three relatives for placement. The children eventually refused to continue to communicate with respondent. Although respondent did not participate in the manner that the foster care manager would have preferred, the evidence did not support the ground that he deserted the children for 91 days or more.