

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of B. FEAMSTER, Minor.

UNPUBLISHED  
November 12, 2013

No. 315816  
Oscoda Circuit Court  
Family Division  
LC No. 13-000557-NA

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Before: MURRAY, P.J., and DONOFRIO and BOONSTRA, JJ.

PER CURIAM.

Respondent-father appeals by right an order of the trial court terminating his parental rights to his minor child,<sup>1</sup> pursuant to MCL 712A.19b(3)(l) (prior termination of parental rights to another child).<sup>2</sup> We affirm.

As the result of an arrest on February 5, 2013, involving respondent's production of methamphetamines in a detached garage located at respondent's (and the child's) place of residence, petitioner filed a combined petition requesting that the trial court take jurisdiction over the child and terminate respondent's parental rights. At a later dispositional hearing, after taking testimony concerning best interests generally, the circumstances of the instant arrest, the circumstances surrounding the prior termination, and an informational home visit made by petitioner's caseworker shortly after the child's birth, the trial court found statutory grounds for termination, and that termination was in the child's best interests. Respondent does not contest the statutory basis for termination, but only whether the termination was in the child's best interests.

If the trial court determines that at least one statutory ground for termination exists, then the court must order termination if the trial court affirmatively finds termination is in the best interests of the children, by a preponderance of the evidence. MCL 712A.19b(5); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013); *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). The trial court may consider the child's needs for permanency, stability, and finality when making the best-interest determination. *In re Olive/Metts*, 297 Mich App at 41-42.

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<sup>1</sup> The child's mother continues to work with petitioner for eventual return of the child to her.

<sup>2</sup> The prior termination of respondent's rights occurred in 2009.

The trial court may also consider the bond between the child and the parent, the parent's ability to parent, and any advantages of a foster home over the parent's home. *Id.*

In the instant case, the trial court relied on the danger in which respondent had placed the child by manufacturing methamphetamines at the home, and respondent's failure to take advantage of services offered by DHS, both in his earlier case and in this case.

As to the danger posed by the methamphetamine production, the trial court stated that it had heard evidence that the "home represented an illegal substance abuse environment and activity." The trial court made reference to evidence that methamphetamine precursors and methamphetamine residue was "present in the home" and cited the risk of "potential explosion, potential chemical contamination, potential airborne transfer risk between a parent who has been in that environment and a child" and concluded that this evidence demonstrated that respondent "was not able to put that child's wellbeing and best interest above his own personal need to be involved in an illegal activity evidenced by the presence of the methamphetamine in the meth lab."

Respondent argues that the trial court's recollection of the evidence was erroneous, in that the methamphetamine product, precursors and residue was located in a detached garage, and not within the confines of the precise house structure in which the child resided. Respondent thus seeks to equate the trial court's use of the word "home" with the word "house," as contrasted with the detached garage adjacent to the house.

Evidence indeed was presented that the methamphetamine was being produced in a separate, detached garage. Only Coleman fuel was found in the house structure itself. However, in our view, this does not mean that the methamphetamine and related substances were not present in the "home," or that trial court was in error in finding it present in the home. We do not interpret the trial court's use of the word "home" so restrictively, nor do we find that such a restrictive interpretation would be appropriate. Whether the methamphetamine production was occurring within the confines of the house or the adjacent detached garage, we conclude that the trial court correctly found that it posed a danger to the child in the home.

Moreover, apart from such linguistic analysis, we find that the trial court did not err in finding danger to the child emanating from the manufacture of methamphetamine in the garage. It is conceivable that, for instance, the methamphetamine production occurring in the adjacent garage could lead to an explosion, which could then lead to a fire that could spread to the house, or result in the spreading of debris that could endanger the house or people in the vicinity of the garage. It is also conceivable that respondent could have exposed his child to toxic chemicals by interacting with him after manufacturing methamphetamine. The trial court heard evidence that the garage required a special "Meth Response Team" to safely clear it of hazardous chemicals. The trial court also heard testimony that petitioner would require that the home, including both the garage and the house, be tested for hazardous chemicals prior to the child's return to the home. Thus, notwithstanding the trial court's reference to methamphetamine precursor and finished product being found in "the home" rather than specifically "in the garage," we determine that the trial court did not err in finding, based on the risk to the child posed by respondent's methamphetamine and his disregard for the child's safety in producing drugs on the

property where the child resided, that it was in the child's best interests that respondent's parental rights be terminated.

The second reason given by the court was respondent's failure to benefit from services, both in the earlier proceeding and in the instant case. Notwithstanding respondent's claim that the trial court terminated his parental rights here simply for the reason that his parental rights to another child were previously terminated, this was not the thrust of the trial court's ruling. Rather, the trial court based its decision in part on respondent's prior failure to avail himself of services in the earlier proceeding.

Respondent nonetheless contends that reunification should be the goal, and that he should therefore be allowed to avail himself of services to that end. Indeed, while not referenced by respondent, our Supreme Court in *In re Mason*, 486 Mich 142, 159-161; 782 NW2d 747 (2010), held that reasonable efforts to reunify must be made in all cases, except those involving certain aggravated circumstances, and that incarcerated parents should receive reasonable reunification efforts. However,, the holding in *Mason* relates to a finding of statutory grounds for termination, not a trial court's best interests analysis. That holding is therefore inapposite to the issues presented in this appeal.

Further, while the record indeed suggests that respondent was not offered significant services during this pending proceeding, the reason was that petitioner decided to seek immediate termination of respondent's rights. Under such circumstances, services need not be offered. See *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009) ("Petitioner . . . is not required to provide reunification services when termination of parental rights is the agency's goal."). Petitioner was permitted to seek immediate termination if petitioner determined that "there is a risk of harm to the child and . . . [t]he parent's rights to another child were terminated." See MCL 712A.19a(2); MCL 722.638.

For these reasons, we find that the trial court did not err in determining that termination was in the child's best interests.

Affirmed.

/s/ Christopher M. Murray

/s/ Pat M. Donofrio

/s/ Mark T. Boonstra