

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of C. KOOP, JR., Minor.

UNPUBLISHED
December 12, 2013

No. 316491
Tuscola Circuit Court
Family Division
LC No. 12-010349-NA

Before: WILDER, P.J., and FORT HOOD and SERVITTO, JJ.

PER CURIAM.

Respondent-father appeals by right the family court opinion and order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), (j), and (h).¹ We affirm.

In 1999, respondent was convicted of criminal sexual conduct for digitally penetrating a three-year-old girl. Although paroled, respondent was required to follow multiple parole conditions which interfered with his ability to parent a child. He was required not to have any verbal, written, electronic or physical contact with any individual age 17 or under, including his own legal or biological children. In addition, he could not live in a residence where any individual age 17 or under stays or is cared for. After he was paroled, defendant married and had a child. The couple voluntarily placed this child in a guardianship with the maternal grandparents. Later, respondent's wife gave birth to a second child, but the child tested positive for narcotics. Ultimately, this child was removed from the care of his mother, respondent's wife.

Although respondent did complete parenting classes, he engaged in conduct that violated the terms of his parole, including harboring a convicted felon (the child's mother), possession of pornographic materials, and the commission of three new assaultive criminal offenses. Consequently, while this case was pending below, respondent was only "available" for one month because of his incarceration.

Respondent first argues that the conditions of his parole violate his constitutional right to parent. Despite the fact that this issue was not raised before the trial court, we address it and

¹ The minor child's mother voluntarily released her parental rights, and she is not a party to this appeal.

conclude that it is without merit. Although parents have a due process liberty interest to care for their children, the government has an interest in protecting the welfare of children, which includes the right to be free from an abusive or inappropriate environment. *In re VanDalen*, 293 Mich App 120, 132-133; 809 NW2d 412 (2011). In a proceeding to terminate parental rights, the interests affected consist of the parent's fundamental liberty interest in the care, custody, and management of the child and the child's interest in a stable family environment. *In re Moss*, 301 Mich App 76, 86-87; 836 NW2d 182 (2013). When the statutory grounds for termination are considered, the parent and the child share an interest in the prevention of an erroneous termination of their natural relationship until the petitioner established parental unfitness. *Id.* at 87.

Irrespective of the terms of respondent's parole precluding contact with minor children including his own, respondent was unable to care for his child. Respondent continued to engage in criminal conduct, and these new offenses precluded him from having contact with his child. Even though respondent contends that the conditions of his parole precluding child contact punish him again for an offense for which he served his sentence, in actuality, respondent abrogated his right to parent his child by continuing to engage in a lifestyle that resulted in his incarceration for his choices. Moreover, the family court had no power to change the terms of respondent's parole, see *In re Parole of Bivings*, 242 Mich App 363, 372-373; 619 NW2d 163 (2000), and his parole officer rejected the requested changes to the terms of parole. This issue does not entitle respondent to appellate relief.

Next, respondent alleges that the lower court erred in terminating his parental rights because petitioner failed to make reasonable efforts toward reunification. Generally, if a child is removed from the home, petitioner has a statutory obligation to make reasonable efforts to rectify the conditions that caused the removal in order to reunify the family. MCL 712A.19a(2). *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). However, in this case, petitioner was not obligated to provide respondent with reunification services because of his criminal sexual conduct conviction. MCL 712A.19a(2)(d). Respondent acknowledges this fact, but nonetheless argues that petitioner should have provided him with services because the lower court ordered it to do so.

Although the lower court indicated that petitioner should make efforts toward reunification, it never specifically ordered petitioner to provide specific services to respondent. Rather, in light of the terms of parole and the continued pattern of criminal conduct, the goal was to reunify the child with the mother. Pursuant to the clear directives of MCL 712A.19a(2)(d), petitioner was not required to provide services to respondent.

Finally, respondent contends that the lower court erred in finding termination in the best interests of the child. Again, we disagree. "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). In making the best-interests determination, the lower court must examine the record as a whole, and should consider a respondent's parenting ability, as well as the child's need for permanency, stability, and finality. *In re Olive/Metts Minors*, 297 Mich App 35, 42; 823 NW2d 144 (2012).

Here, the lower court did not err in finding termination in the best interests of the child. Since entering petitioner's custody, the child lived with his maternal grandparents, in the same home as his brother. Meanwhile, respondent had never met the child in issue, having been incarcerated for parole violations for nearly all of the child's life. At the earliest, respondent would be able to care for the child beginning in May 2014. Even then, respondent failed to show the ability to keep himself out of jail. As such, the lower court correctly found it in the child's best interests to be raised in a structured, supervised environment, free of drugs and criminality.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Karen M. Fort Hood
/s/ Deborah A. Servitto