

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of Ralph, Minor.

UNPUBLISHED
April 22, 2014

No. 317623
Eaton Circuit Court
Family Division
LC No. 11-017973-NA

Before: BORRELLO, P.J., and WHITBECK and K. F. KELLY, JJ.

PER CURIAM.

Respondent-appellant, R. Baker, appeals as of right the circuit court's order terminating his parental rights to his son under MCL 712A.19b(3)(c)(i) and (g). The child's mother, A. Ralph, agreed to the termination of her parental rights, and she is not a party to this appeal. Because Baker failed to demonstrate that he could provide a safe and stable home for the child, we affirm.

I. FACTS

A. BACKGROUND FACTS

The child was born in 2004. Baker, A. Ralph, and the child lived together as a family in Florida from 2004 to 2005. In 2005, a family court in Florida took jurisdiction over the child as a result of Baker's domestic violence toward A. Ralph, in the child's presence. Baker pleaded guilty to third-degree felony battery and culpable negligence involving a child and was incarcerated for one year. The Florida family court did not terminate Baker's parental rights. In 2006, A. Ralph and the child moved to Michigan without Baker. Baker has not seen the child since 2006.

In 2008, Child Protective Services received multiple referrals regarding A. Ralph's care of the child in Michigan, including filthy conditions in the home. In 2010, Child Protective Services found that A. Ralph lacked stable housing, tested positive for cocaine and other drugs, and was involved in domestic violence. Further, the child was getting himself up and around in the morning, his physical appearance was poor, and his clothing was dirty. In 2011, Child Protective Services found that A. Ralph was assaulted by her roommate, that drug dealers frequented her home, and that dangerous and unsanitary conditions existed in the home.

In 2011, Child Protective Services petitioned the trial court for protective custody over the child. The trial court assumed jurisdiction on the basis of A. Ralph's plea. The child was

placed in foster care with his maternal aunt and uncle. The trial court ordered A. Ralph and Baker to comply with and benefit from their respective case service plans. The Department of Human Services (DHS) made efforts to locate Baker. In August 2012, the DHS foster care worker made contact with Baker, who was living in Vermont.

B. BAKER'S PROGRESS WITH SERVICES

Baker's case service plan required him to address barriers to reunification in the areas of housing, employment, domestic violence, and parenting skills. Although Baker had been participating in counseling services at an agency in Vermont, his therapist left the agency and referred Baker to another therapist. Baker failed to follow up on the referral to the new therapist. Baker told the foster care worker that he was waiting to get sentenced for an aggravated domestic assault conviction in Vermont before continuing his therapy.

Between February 2013 and April 2013, the foster care worker referred Baker to agencies in Vermont that could provide a psychological evaluation and parenting classes, which his case service plan required him to complete. Baker did not complete a psychological evaluation, although he had previously obtained a psychiatric evaluation. In addition, the foster care worker received no indication that Baker had completed parenting classes, but he told the foster care worker that he was in the process of taking the classes when he was sentenced for the domestic assault conviction.

On April 27, 2013, Baker was sentenced to jail time on the Vermont aggravated domestic assault conviction. At the time of his incarceration, Baker was unemployed, had no legal source of income, and was living with his brother. The Michigan trial court authorized the prosecutor to petition to terminate Baker's parental rights.

C. TERMINATION HEARING

After A. Ralph voluntarily relinquished her parental rights, the Michigan trial court held a termination hearing concerning Baker's parental rights. At the termination hearing, Baker testified by telephone from a jail in Vermont. Baker remembered nothing about the 2005 domestic violence incident with A. Ralph because he claimed to have blacked out during that incident due to the influence of drugs and alcohol. Baker was again incarcerated in 2007 for a probation violation, and he then moved to Vermont. Baker worked in Vermont as a cook for approximately five years, earning approximately \$15,000 a year. When employed, he paid child support pursuant to a Florida support order, but he was at least \$12,000 in arrears at one point. In April 2012, Baker suffered a serious injury in a motor vehicle accident, rendering him unable to work for some time. The accident occurred while Baker was intoxicated, and he pleaded guilty to driving under the influence.

In July 2012, Baker was charged in Vermont with criminal sexual conduct, and he pleaded guilty to aggravated domestic assault. In connection with this conviction, Baker was required to participate in an intense domestic violence program for one year. Baker's fiancée was arranging an apartment for him. Baker had written only one letter to the child since moving to Vermont, and the child had written him a letter as well. He had no recent telephone contact with the child.

The child's therapist, Stephanie Gardner, testified that she had diagnosed the child with attention deficit hyperactivity disorder and post-traumatic stress disorder (PTSD). Because he was not adequately fed by his mother, the child hoarded food. Gardner testified the child did not talk to her about Baker. According to Gardner, if the child moved to Vermont to live with Baker, it would be very disruptive because the child's aunt and uncle had created and maintained a structure for the child. Gardner has seen the child clinically improve under the care of the aunt and uncle. In Gardner's view, it was in the child's best interests to remain in the home of his aunt and uncle, given his past trauma and need for stability.

Candy Brandon-Watters testified that she has been the Court Appointed Special Advocates worker for the child since June 2011. The only time the child ever spoke with her about Baker was in March 2013, when he received a letter from Baker. Brandon-Watters testified that the child struggled with hoarding food, but this problem had improved due to the structure put in place by the aunt and uncle. The child did not appear to look to Baker as a role model or for emotional assistance, and the child was happy because his life was more stable.

The child's maternal aunt testified that she and her husband had cared for the child as foster parents for the past two years. The aunt testified that the child initially hoarded food but that the problem had improved. She and her husband were interested in adopting the child, but not in having a guardianship given the animosity between A. Ralph and Baker. The aunt testified that the child now had consistency and stability; he knew his daily routine, he knew that food would be provided to him, and he knew that he could count on his foster parents. The aunt testified:

He [the child] wants the judge to know that he's living the good life. . . . he overheard us saying that we had to come here today and he asked why. And we said well, the judge just wants to check in and see how things are going for you and [he] goes well, tell the judge that I'm living the good life, so.

Foster care worker Faith Wilkins testified that according to the parent-agency treatment plan, the barriers to reunification were housing, employment, domestic violence, and parenting skills. Wilkins testified that Baker did not follow up with a referral for services because he was awaiting sentencing, but she told Baker he should participate in services even while he was awaiting sentencing. Yet Baker failed to follow up on multiple referrals. Wilkins did not believe Baker could effectively parent the child given the child's special needs, the lack of a relationship between Baker and the child, Baker's criminality, and other barriers. Wilkins testified that the child had thrived under the care of his foster parents and that he needed permanency.

D. THE TRIAL COURT'S FINDINGS AND CONCLUSIONS

The trial court found that Baker's four original barriers to reunification were still present. Although Baker had made some improvement in the areas of housing, employment, domestic violence, and parenting, "it's been extremely minor." The trial court observed that Baker was still incarcerated, had no definite job arranged, had a serious history of domestic violence in two states, and had not completed a parenting course. The trial court found the conditions that led to adjudication continued to exist and there was no reasonable chance that they would be rectified within a reasonable time. Thus, termination was warranted under MCL 712A.19b(3)(c)(i).

The trial court also found that MCL 712A.19b(3)(g) provided a ground for termination. The trial court noted that when Baker worked, his wages were garnished and some child support payments were made. But Baker made no arrangements for support, care, or custody during the significant periods of time when he was not working. Moreover, the trial court noted that Baker last saw the child in 2006 and had written only one letter to the child since a no-contact provision was lifted.

Regarding the child's best interests, the trial court found that Baker had been absent for most of the child's life and the child was not bonded with Baker. As for Baker's parenting ability, the trial court stated that Baker had failed to put his relationship with the child on "the front burner;" in addition, Baker had a serious felony record and domestic violence issues. According to the trial court, the child's need for permanence and stability weighed heavily in favor of termination. The trial court stated that the child had an extremely difficult childhood initially; but after being placed with his foster parents, "he has thrived," and "that stability and permanency and finality [have] made him improve dramatically." Finally, regarding the advantage of the foster home over a parent's home, the trial court stated:

I guess [the child] probably said it best in this case and that is he's living the good life. . . . I think the evidence in this case shows that he's living a great life where he is right now. The situation has been a dramatic improvement.

The trial court found that it was in the child's best interests to terminate Baker's parental rights.

II. STATUTORY GROUNDS

A. STANDARD OF REVIEW

This Court reviews for clear error a trial court's factual findings and its ultimate determination that a statutory ground for termination has been proven by clear and convincing evidence.¹ Clear error exists when, although evidence supports the finding, we are definitely and firmly convinced that a mistake has been made.² We must give regard "to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it."³

B. LEGAL STANDARDS

Under MCL 712A.19b(3)(c)(i), the trial court may terminate a parent's rights if

[t]he 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.

¹ MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

² *In re Mason*, 486 Mich at 152.

³ *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011); see also MCR 2.613(C).

This statutory ground is met when the conditions that brought a child into foster care remain “despite time to make changes and the opportunity to take advantage of a variety of services.”⁴

A trial court may terminate parental rights under MCL 712A.19b(3)(g) if

[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.

“A parent’s failure to participate in and benefit from a service plan is evidence that the parent will not be able to provide a child with proper care and custody.”⁵

C. APPLYING THE STANDARDS

Baker contends that the trial court clearly erred in finding that clear and convincing evidence supported the statutory grounds for termination. According to Baker, he lacked adequate time to participate in services, and he made sufficient progress by locating an apartment through his fiancée, attending some parenting classes, planning to find a job when released from jail, and planning to attend a domestic violence program. We disagree.

The record established that Baker failed to substantially participate in or benefit from the services that were offered. Baker failed to follow a referral to a new therapist to continue his counseling. Despite referrals to agencies in Vermont, he failed to complete parenting classes or a psychological evaluation. Although Baker testified he had taken some parenting classes, the foster care worker had no documentation that Baker completed the course or benefitted from it.

Baker failed to make adequate progress in securing employment. He testified that he would find a job when he was released from jail, but he had no definite plans for doing so. He would need financial security in order to provide for the child, and he could not demonstrate he had that security. In addition, Baker failed to find adequate housing suitable for him and the child. He testified his fiancée had arranged for an apartment for him to live in upon his release from jail, but this home had not been approved by caseworkers, and there was no assurance that it would be sufficient or appropriate for the child.

Finally, Baker has not overcome the barrier of domestic violence. As the trial court noted, Baker has a history of serious domestic assault convictions, and he was only beginning a year-long intensive domestic violence program. The trial court properly found that waiting another year to see if Baker could turn this aspect of his life around was not a viable option for the child. Accordingly, we are not definitely and firmly convinced that the trial court erred when

⁴ *In re White Minors*, ___ Mich App ___; ___ NW2d ___ (Docket No. 316749, issued January 16, 2014) (slip op at 4) (internal quotation marks and footnote omitted).

⁵ *Id.* (footnote omitted), citing *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003) and *In re Trejo Minors*, 462 Mich 341, 358-360; 612 NW2d 407 (2000).

it found that the evidence supported terminating Baker's parental rights under MCL 712A.19b(3)(c)(i).

The trial court also did not clearly err in finding clear and convincing evidence supporting termination under MCL 712A.19b(3)(g). The evidence showed that, for years, Baker failed to provide proper care and custody for the child. Although he did pay child support intermittently through garnished wages when he was working, he provided no other care or support for the child. The trial court correctly noted that when Baker was permitted to correspond with the child after a no-contact order was lifted, Baker wrote only one letter. The child wrote a letter back, but Baker failed to send another letter. This is noteworthy given that Baker and the child had not seen each other for approximately seven years. Baker had a great deal of catching up to do with the child, but when given the opportunity to do that, he declined. This illustrates Baker's low level of commitment to provide proper care. Baker's failure to comply with and benefit from his case service plan demonstrates that he is unlikely to provide proper care and custody within a reasonable time.

III. THE CHILD'S BEST INTERESTS

A. STANDARD OF REVIEW

We review for clear error the trial court's determination regarding whether termination of parental rights is in the child's best interests.⁶ The preponderance of the evidence standard applies to the trial court's best-interests determination.⁷

B. LEGAL STANDARDS

"Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights."⁸ In making its best-interests determination, "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."⁹ "The trial court may also consider a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of

⁶ *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012).

⁷ *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013).

⁸ *In re Olive/Metts Minors*, 297 Mich App at 40, citing MCL 712A.19b(5) and MCR 3.977(E)(4).

⁹ *In re Olive/Metts Minors*, 297 Mich App at 41-42 (internal quotation marks and citations omitted).

adoption.”¹⁰ A child’s placement with relatives weighs against termination and should be considered in determining whether termination is in the child’s best interests.¹¹

C. APPLYING THE STANDARDS

Baker argues that the trial court erred when it found that termination was in the child’s best interests because no one asked the child if he loved Baker or wanted to live with him, Baker was not offered parenting time during the pendency of this case, the trial court improperly applied the best-interest factors, and the court failed to consider that the child was placed with relatives. We disagree.

In making its best-interest findings, the trial court noted that Baker had essentially been absent for most of the child’s life, and that the two had not seen each other face to face since 2006. Baker himself testified that he was unaware of 90 percent of what had been going on with the child for the past six to seven years. This fact, combined with the child’s intense need for stability, Baker’s criminal activity, and Baker’s inability to demonstrate he could support the child, supported the trial court’s finding on this issue. The trial court considered the fact that the child was placed with relatives. The court explained that the maternal aunt and uncle had no relationship with Baker and were interested in adoption rather than a guardianship given the poor relationship between A. Ralph and Baker. The trial court did not clearly err in finding that termination of Baker’s parental rights was in the child’s best interests.

IV. CONCLUSION

We conclude that the trial court did not clearly err when it found that the evidence supported terminating Baker’s parental rights under MCL 712A.19b(3)(c)(i) and (g) because Baker failed to participate in and benefit from his service plan. In particular, Baker failed to complete parenting classes and a psychological evaluation and failed to obtain adequate housing and employment needed to support the child. We also conclude that the trial court did not clearly err when it found that terminating Baker’s parental rights was in the child’s best interests.

We affirm.

/s/ Stephen L. Borrello
/s/ William C. Whitbeck
/s/ Kirsten Frank Kelly

¹⁰ *In re White Minors*, ___ Mich App at ___ (slip op at 6) (footnote omitted).

¹¹ *In re Olive/Metts Minors*, 297 Mich App at 43, citing MCL 712A.19a(6)(a) and *In re Mason*, 486 Mich at 164.