

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of T. S. VINCENT, Minor.

UNPUBLISHED
April 22, 2014

No. 318172
St. Clair Circuit Court
Family Division
LC No. 12-000222-NA

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Before: HOEKSTRA, P.J., and SAWYER and GLEICHER, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right the trial court's order terminating their parental rights to the minor child under MCL 712A.19b(3)(c)(i), (g), and (j). Both respondents challenge the trial court's finding of statutory grounds to terminate their parental rights. Respondent mother also challenges the trial court's best-interest determination. Because we conclude that the trial court did not clearly err by finding at least one statutory ground for termination was proved by clear and convincing evidence or by finding that termination was in the child's best interests, we affirm.

Before terminating a respondent's parental rights, the trial court must make a finding that at least one of the statutory grounds under MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). The trial court must order termination of parental rights if it also finds that termination is in the child's best interests. MCL 712A.19b(5). This Court reviews orders terminating parental rights for clear error. *In re Mason*, 486 Mich at 152; MCR 3.977(K). Clear error exists "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." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

In this case, respondent's parental rights were terminated pursuant to MCL 712A.19b(3)(c)(i), (g), and (j), which provide in pertinent part:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(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.

* * *

(g) The 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.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

Regarding the termination of respondent mother's parental rights under MCL 712A.19b(3)(c)(i), the record shows that the conditions that led to petitioner's intervention were respondent mother's substance abuse issues. At birth, the minor child tested positive for morphine, codeine, oxycodone, hydrocodone, and hydromorphone. The minor child experienced withdrawal symptoms and received morphine treatment during a two-week hospital stay. He was made a temporary ward of the court shortly after his birth. Respondent mother's history of substance dependence and admitted use of medications for which she did not have prescriptions during her pregnancy were also conditions leading to the adjudication. She stated that she received these medications from respondent father. Respondent mother also disclosed to the case worker that together she and respondent father researched online the effects that the substances could have on their unborn child. Respondent mother was ordered to comply with and benefit from a treatment plan that included psychological evaluation, substance abuse treatment, therapy, parenting classes, and drug and alcohol screening.

The trial court's conclusion that respondent mother had not complied with or benefited from her treatment plan was supported by the evidence. The testimony during the termination hearing established that respondent mother failed to obtain a substance abuse-free lifestyle. She continued to miss screens or test positive for drugs for which she did not have a valid prescription or she tested at levels exceeding therapeutic limits. The trial court also heard ample testimony from the case worker that, despite support services, respondent mother's behaviors and drug dependence remained unchanged. Clearly, after more than a year of services, respondent

mother failed to rectify the issues that led to her child's removal from her care. Therefore, termination was proper under MCL 712A.19b(3)(c)(i) with regard to respondent mother.

While petitioner need only prove one statutory ground to support an order for termination of parental rights, *In re Frey*, 297 Mich App 242, 244; 824 NW2d 569 (2012), the proofs similarly proved by clear and convincing evidence the other statutory grounds for termination of respondent mother's rights. Respondent mother remained unable to properly provide for her child and keep him out of harm's way. She had more than a year to overcome her drug addiction, acquire necessary parenting skills, provide a stable home environment, and achieve financial stability. There was sufficient proof that respondent mother lacked appropriate parenting skills and emotional stability in addition to her substance abuse. Respondent mother was discharged from parenting classes for nonattendance and her life skills case was closed for noncompliance. Both instructors reported that she sometimes appeared to be under the influence of drugs. Further, testimony established that respondent mother attended parenting visits but was often late. During visits, she spent much of the time taking numerous photos of the young child rather than interacting with him and working on his developmental growth. She would swing the child around the room and lift him up over her head, contrary to the direction of multiple case workers. Respondent mother was referred multiple times for counseling but her case was closed because of noncompliance. She displayed poor judgment by continuing a toxic relationship with respondent father. After the relationship with respondent father ended, she immediately began a relationship with another man who had a substance abuse history. She did not heed the case worker's warning and chose to stay in that relationship over the best interests of her child. Moreover, at the termination hearing, respondent mother had minimal income as she was on social security disability. Throughout the case, she failed to maintain stable housing independent of the maternal grandmother. She was dishonest with her case worker. The maternal grandfather also opined that respondent mother's substance abuse affected her ability to be truthful and impaired her ability to care for herself and the child. This evidence supports the trial court's conclusion that there is no reasonable expectation that respondent mother will be able to provide proper care and custody within a reasonable time for the minor child and that there is a reasonable likelihood that the child would be harmed if returned to respondent mother's care. MCL 712A.19b(3)(g) and (j).

Respondent mother asserts on appeal that terminating her parental rights was premature. She argues that she was addressing her substance abuse through counseling and weekly NA meetings and that her last positive drug screen was six months before the termination hearing. This argument is unpersuasive. The evidence indicated that respondent mother was "doctor shopping" because she had obtained a morphine prescription in July 2012 from one doctor, and on September 5, 2012, she received 14 prescriptions from another doctor in a different community. There was also ample testimony that respondent mother was overusing medications beyond therapeutic limits. While respondent mother testified that she was addressing her substance abuse issues by attending NA classes, the record shows that she attended only six therapy sessions. Moreover, respondent mother resisted inpatient treatment for her drug addiction despite efforts to have her treated. Further, when respondent mother did go to inpatient treatment, she was discharged after one week because she was caught with unauthorized prescription drugs. She never reentered another inpatient or outpatient treatment program, continued to miss or have positive drug screens, and did not provide any screens from April 2013 through the August 2013 termination hearing. Thus, it was reasonable for the trial court to

conclude that respondent mother's treatment efforts were insufficient to overcome her longstanding addiction within the foreseeable future. Giving her additional time was likely futile and contrary to the minor child's need for stability and permanency.

Regarding the termination of respondent father's parental rights under MCL 712A.19b(3)(c)(i), the record shows that respondent father had not complied with or benefited from his treatment plan. The petition alleged that respondent father had misdemeanor convictions for operating while intoxicated and possession of a controlled substance. Part of respondent father's treatment plan required him to participate in substance abuse treatment, and random drug and alcohol screens. The evidence presented at the termination hearing showed that respondent father missed random drug and alcohol screens and steadfastly denied that he had an alcohol abuse problem. However, the proofs showed that respondent father was alcohol dependent. Clearly, after more than a year of services, respondent father failed to rectify this issue that was part of the total circumstances that led to the court's intervention. Therefore, termination of his parental rights was proper under MCL 712A.19b(3)(c)(i).

The evidence also supported terminating respondent father's parental rights pursuant to MCL 712A.19b(3)(g) and (j). Respondent father received a "poor" evaluation of his emotional stability behavior progress and parenting skills progress. He attended the first half of his psychological evaluation and never scheduled an appointment to complete the second half. Respondent father reportedly was argumentative with service providers and was uncooperative in counseling. He lacked impulse control and coping skills. By June 2013, respondent father's therapist reported that he was not interested in attending AA and did not provide any drug screens. Respondent father did not appropriately interact with the child during supervised visits. He demonstrated exceedingly poor judgment by staying in contact with respondent mother, repeatedly violated the trial court's no-contact order, and was eventually incarcerated for six days after first receiving a court warning. He was also incarcerated for driving with a suspended license. He was jobless, had failed to acquire stable, independent housing, and relied heavily on his mother. Thus, the trial court did not clearly err in finding that respondent father remained unable to properly provide for his child and provide him with a safe environment.

On appeal, respondent father makes a three-fold argument that there was insufficient evidence to support any statutory grounds for terminating his parental rights. First, he contends that respondent mother's drug issues were the sole reason for court intervention. However, the initial petition, to which respondents pleaded no contest, alleged both respondent mother's and respondent father's substance abuse issues as a basis for removing the child from their care. Moreover, respondent mother reported that respondent father had provided her with drugs that she used during her pregnancy. Thus, respondent father was not an innocent bystander to the harm caused to the child by being exposed to a high level of drugs for which respondent mother did not have a medical prescription.

Second, respondent father asserts that he did not have a substance abuse problem. There was clear evidence that respondent father refused to accept responsibility for his child being placed in foster care and persistently minimized his alcohol issues. His unwillingness to acknowledge his problems was a barrier to benefiting from counseling. His driver's license had previously been suspended because of repeated drunk driving convictions. Case workers reported that respondent father had hand tremors during parenting visits. He missed ten drug

screens between November 6, 2012 and January 15, 2013. He tested positive for alcohol on November 29 and December 20, 2012. The screening facility reported that respondent father had the highest positive alcohol screen the lab had ever seen. Although respondent father completed inpatient treatment in February 2013, he failed to follow through with treatment that was recommended after discharge and refused to provide screens.

Third, respondent father contends that he did not need parenting classes because he had adequate parenting skills and was financially stable, as evidenced by the fact that he had shared custody of his two older children. In support of his claim that he has adequate parenting skills, respondent father asserts that his alcohol use did not affect his parenting as he did not drink around the children. This claim ignores the lower court record. The maternal grandfather testified that he recalled times when he picked the child up from respondent father and could smell alcohol. During the pendency of this case, respondent father got into a drunken altercation involving a knife with another man. This occurred in the home he shared with his two older children who were present. The case worker testified that respondent father had completed parenting education classes but was unwilling to change his parenting style because he had two other children and continued to rely on the paternal grandmother. Thus, the trial court's conclusion that respondent father lacked parenting skills and did not benefit from services was not clearly erroneous.

Respondent father also asserts that he would be able to financially provide for the minor child because he would receive student loans as a student at Baker College. The record does not support this assertion, showing instead that respondent father was financially unstable. Moreover, respondent father failed to consistently attend parenting time appointments and blamed his poor attendance on transportation issues. Respondent father also missed drug and alcohol screens because he was unable to pay the \$20 fee. He then became ineligible for financial aid after he moved from full-time to part-time student status because of his incarceration. In July 2013, respondent father reported to the trial court that he had no income sources and assets. At the termination hearing, he had not yet secured student loans. On September 3, 2013, respondent father reported in a request for a court-appointed attorney that he had no income sources and was residing in a house owned by his mother. In short, respondent father repeatedly offered money woes as an excuse for not complying with court-ordered services. Thus, the trial court's conclusion that respondent father had not demonstrated an ability to provide for the minor child financially was not clearly erroneous.

Respondent mother also argues that the trial court clearly erred by finding that termination of her parental rights was in the child's best interests. We review the trial court's best-interest determination for clear error. MCR 3.977(K). "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.19(b)(5). A trial court may consider evidence on the whole record in making its best-interest determination. *In re Trejo Minors*, 462 Mich 341, 353-354; 612 NW2d 407 (2000). "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013).

At the termination hearing, respondent mother offered some proof that she was able to care for her child. She testified that she loved her child. She attended weekly parenting time and for the most part did not act in a manner that was harmful to the child. However, the case worker opined that it was in the child's best interests to terminate respondent mother's parental rights because she was unwilling to address her substance abuse issues and did not follow through with the recommendations of her service providers. The maternal grandfather also testified that it was in the child's best interests to terminate his daughter's parental rights because she was unable to care for herself much less a child.

Respondent mother argues that the best-interest determination must be reversed because placement with a relative weighs against termination when considering the child's best interests. "A trial court's failure to explicitly address whether termination is appropriate in light of the children's placement with relatives renders the factual record inadequate to make a best-interest determination and requires reversal." *In re Olive/Metts*, 297 Mich App 35, 43; 823 NW2d 144 (2012). However, in this case, the trial court made an explicit finding on the record that relative guardianship was inappropriate. That finding was supported by the testimony of the case worker and the maternal grandfather, the prospective adoptive parent. The case worker testified that guardianship with a relative was not an appropriate alternative to terminating respondents' parental rights. Respondents were unable to acknowledge their substance abuse issues would not be able to provide the child with a healthy and safe living environment. Also, the maternal grandfather and step-grandmother, with whom the child had been placed since he was two weeks old, expressed a clear preference for adoption rather than guardianship because of the child's young age and need for permanency. Accordingly, we conclude that the trial court did not clearly err by finding that termination was in the best interests of the child despite the fact that the child was placed with relatives.

In his brief on appeal, respondent father also argues that the trial court's best-interest determination was clearly erroneous; however, he did not include this issue in his statement of questions presented and offers no specific evidence in support of his argument regarding the child's best interests. Thus, his claim of error is not properly before this Court. *In re CR*, 250 Mich App 185, 199; 646 NW2d 506 (2001). Nonetheless, the trial court did not clearly err by finding that terminating respondent father's parental rights was in the child's best interests. Respondent father had a tenuous bond with his child as demonstrated by his ambivalent behavior throughout the proceedings. He repeatedly stated that he was considering relinquishing his parental rights. Additionally, the record showed that the child was thriving in his foster care placement with the maternal grandfather and step-grandmother, and they were willing to adopt him.

Therefore, based on a review of the whole record, we cannot conclude that the trial court clearly erred by terminating both respondents' parental rights.

Affirmed.

/s/ Joel P. Hoekstra
/s/ David H. Sawyer
/s/ Elizabeth L. Gleicher