

STATE OF MICHIGAN
COURT OF APPEALS

In re D M OSBORNE, Minor.

UNPUBLISHED
December 11, 2014

No. 321811
Macomb Circuit Court
Family Division
LC No. 2012-000001-NA

Before: RIORDAN, P.J., and BECKERING and BOONSTRA, JJ.

PER CURIAM.

Respondent father appeals as of right from an order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood of harm to the child if returned to the parent). We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

The trial court assumed jurisdiction over the minor child in April 2012. The petition alleged that the child's mother, with whom he had resided, had recently died, and that respondent was incarcerated and had substance abuse issues. Respondent was ordered to comply with a treatment plan and the minor child was placed with his maternal grandparents. Respondent was released from jail in July 2012. He began participating in various services and having supervised visits with the child. At the September 2013 permanency planning hearing, the court was informed that respondent was not in compliance with his treatment plan. Specifically, respondent had failed to comply with drug screens, had recently tested positive for cocaine and marijuana, had missed counseling sessions, and had been intoxicated during telephone visitations with the child. The court authorized a petition seeking termination of respondent's parental rights. Shortly thereafter, respondent was incarcerated again in the Oakland County jail, with various charges pending. Although that petition was subsequently withdrawn, another termination petition was authorized in February 2014. After a hearing, the court entered an order terminating respondent's parental rights.

II. STATUTORY GROUNDS FOR TERMINATION

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). The trial court's decision is reviewed for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

A decision is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake was made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

Here, the trial court found that the statutory grounds for termination set forth in MCL 712A.19b(3)(c)(i), (g), and (j) were proven by clear and convincing evidence:

(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.

The trial court did not clearly err in finding that these grounds were established by clear and convincing evidence. The primary conditions of adjudication were respondent's criminality and substance abuse. The evidence established that respondent continued to engage in criminal behavior throughout the course of the proceedings and was in fact incarcerated again at the time of the termination hearing. Aside from his continued criminality, respondent failed to resolve his substance abuse issue by engaging in services designed to address it. Respondent failed to comply with the requirements of weekly substance abuse counseling, random drug testing (respondent having missed 25 drug and alcohol tests), NA/AA meetings, and mental health counseling. Although respondent completed a 21-day residential substance abuse program in July 2013, he thereafter tested positive for alcohol and marijuana. The foster care worker involved in this case felt that respondent did not successfully demonstrate that he was able to maintain a substance-free lifestyle.

Furthermore, although respondent completed individual counseling in December 2012 meant to address social behavior skills and emotional stability, additional counseling was recommended and respondent failed to follow up with referrals for that and had not demonstrated that he had achieved emotional stability. Additionally, the foster care worker testified that respondent had not benefited from his parenting class and would expose the child to risks such as leaving the child unattended or giving the child inappropriate items such as a razor or lighter.

The foster care worker felt that respondent did not have the adequate tools necessary to properly parent the child and would not be able to provide proper care for his child within a reasonable period of time. The child's maternal grandfather, who was the child's current caregiver, had had dealings with respondent over the past eight or nine years, and he felt that it would take at least ten years for respondent to resolve his issues and that respondent was incapable of providing emotional support for the child.

Thus, the record evidence supports the trial court's decision to terminate respondent's parental rights under subsections (3)(c)(i), (g), and (j). Although respondent did receive many services and did complete certain requirements of his treatment plan, he failed to demonstrate sufficient compliance with or benefit from those services—particularly the services targeted to address one of the primary bases for the adjudication in this matter, respondent's problems with substance abuse. It is not enough to merely participate in or complete services; a respondent must show that he benefitted from the services provided. See *In re Gazella*, 264 Mich App 669, 676-677; 692 NW2d 708 (2005).

III. BEST-INTEREST DETERMINATION

Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court shall order termination of parental rights if the court also finds that termination of parental rights is in the best interests of the child. MCL 712A.19b(5). Whether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). We review a trial court's best-interest determination for clear error. *Trejo*, 462 Mich at 356-357.

The trial court did not clearly err in its best-interest determination. MCR 3.977(K). In deciding a child's best interests, a court may consider the child's bond to his parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the suitability of alternative homes. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014); *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). The trial court may also consider a child's well-being while in care. *White*, 303 Mich App at 714. The trial court should weigh all the available evidence to determine the child's best interests. *Id.* at 713.

In this case, while there was evidence of a bond between respondent and child, respondent had unresolved issues with continued criminality and substance abuse. The child was doing well in his placement and his caregivers were interested in adopting the child. The foster care worker felt that the child needed stability and that termination was in the child's best interests because respondent had not resolved the issues that prevented him from properly parenting his child. Given these circumstances, the trial court did not clearly err in concluding that termination was in the child's best interests.

Affirmed.

/s/ Michael J. Riordan
/s/ Jane M. Beckering
/s/ Mark T. Boonstra