

STATE OF MICHIGAN
COURT OF APPEALS

In re SHEARD/SHEARD NATHAN, Minors.

UNPUBLISHED
May 19, 2015

No. 323945
Ingham Circuit Court
Family Division
LC No. 13-000145-NA

In re SHEARD NATHAN, Minor.

No. 323946
Ingham Circuit Court
Family Division
LC No. 13-000146-NA

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

PER CURIAM.

In these consolidated cases, respondent-mother appeals the trial court's order that terminated her parental rights to K.S. and J.N. under MCL 712A.19b(3)(c)(i), (g), and (j). Respondent-father appeals the trial court's order that terminated his parental rights to J.N. under MCL 712A.19b(3)(g), (j), and (n)(i).¹ For the reasons stated below, we affirm.

I. FACTS AND PROCEDURAL HISTORY

In January 2013, the Department of Human Services (DHS) filed a petition to take jurisdiction over K.S. and J.N. DHS alleged that respondent-mother: (1) maintained a drug house, which was raided by the police while J.N. was present; (2) allowed respondent-father, who was a convicted felon and had pleaded no contest to a charge of child molestation,² to reside

¹ The trial court also terminated the parental rights of K.S.'s father. He did not participate in the proceedings below and has not appealed. Throughout the opinion, "respondent-father" refers exclusively to J.N.'s father.

² Specifically, respondent-father was convicted under MCL 750.520c(1)(a) for sexually abusing a child under the age of 13, which constitutes criminal sexual conduct in the second degree (CSC II).

in the house; (3) had substance abuse and mental health problems; and (4) had a criminal background. After a preliminary hearing, the trial court authorized the petition and the children were removed from the home. In March 2014, DHS asked the court to terminate respondent-mother's parental rights to K.S. and J.N. In June 2014, DHS filed a separate petition to take jurisdiction over J.N. and terminate respondent father's parental rights to him, to comply with the mandates of *In re Sanders*.³ Thereafter, the trial court separately declared respondent-father an adjudicated parent.

During the termination hearing, the trial court heard testimony from respondent-father, respondent-mother, and two foster-care workers who had worked with respondents and their children. In a thorough written opinion and order, the trial court terminated respondent-mother's parental rights under MCL 712A.19b(3)(c)(i) (failure to rectify conditions of adjudication), (g) (failure to provide proper care and custody), and MCL 712A.19b(3)(j) (likelihood of harm if returned). The court also terminated respondent-father's parental rights to J.N. under MCL 712A.19b(3)(g), (j), and (n)(i) (conviction of criminal sexual misconduct and continued relationship would be harmful). At the time of termination in September 2014, K.S., who has autism, was 10 years old, and J.N. was 2 years old.

On appeal, respondents argue, without merit, that the trial erred when it terminated their parental rights because: (1) DHS did not make reasonable efforts to reunify them with their children; (2) statutory grounds for termination were not shown by clear and convincing evidence; and (3) termination was not in the best interests of the children.⁴

II. STANDARD OF REVIEW

We review for clear error the findings and determinations of the trial court in termination proceedings. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). "A finding of fact is clearly erroneous 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 Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013) (internal quotation marks and citation omitted). We review a trial court's determination on a child's best interests for clear error. *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009).

III. ANALYSIS

A. REUNIFICATION EFFORTS

³ 495 Mich 394; 852 NW2d 524 (2014).

⁴ Respondent-father also wrongly contends that the trial court erred when it proceeded on DHS's request to terminate his parental rights at the initial dispositional hearing. A trial court may terminate a respondent's parental rights at the initial dispositional hearing. See MCL 712A.19b(4), MCR 3.977(E), and *In re Utrera*, 281 Mich App 1, 4–5; 761 NW2d 253 (2008) (affirming trial court's termination of respondent's parental rights at the initial dispositional hearing).

The Department of Human Services is generally obligated to “make reasonable efforts to rectify conditions, to reunify families, and to avoid termination of parental rights.” *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008). However, “[w]hile the DHS has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered.” *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). Respondents must demonstrate a benefit from, not mere compliance with, the services offered to them. *Id.*

1. RESPONDENT-FATHER

MCR 3.977(E) provides as follows:

The court shall order termination of the parental rights of a respondent at the initial dispositional hearing . . . , and shall order that additional efforts for reunification of the child with the respondent shall not be made if,

- (1) the original, or amended, petition contains a request for termination;
- (2) at the trial or plea proceedings, the trier of fact finds by a preponderance of the evidence that one or more of the grounds for assumption of jurisdiction over the children under MCL 712.A.2(b) have been established;
- (3) at the initial disposition hearing, the court finds on the basis of clear and convincing legally admissible evidence that has been introduced at the trial or plea proceedings, or that is introduced at the dispositional hearing, that one or more facts alleged in the petition:
 - (a) are true, and
 - (b) establish grounds for termination of parental rights under MCL 712A.19b(3)(a), (b), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), or (n);
- (4) termination of parental rights is in the child’s best interests.

Respondent-father’s claim that his parental rights could not be terminated before DHS provided him with reunification services is simply inaccurate. Pursuant to MCR 3.977(E), DHS requested that the trial court terminate respondent-father’s parental rights in its June 2014 petition to take jurisdiction over J.N. At the adjudication hearing, the trial court found by a preponderance of the evidence that respondent-father was an unfit parent, and then found that clear and convincing evidence showed the existence of grounds for termination of respondent-father’s parental rights under MCL 712A.19b(3). The court also held that termination was in J.N.’s best interests. Accordingly, the trial court followed the mandates of MCR 3.977(E), and it

was not required to attempt to reunify respondent father with J.N. Respondent-father's assertions to the contrary lack merit.⁵

2. RESPONDENT-MOTHER

Respondent-mother's claim that DHS failed to attempt to reunify her with her children is equally unavailing. DHS expended substantial amounts of taxpayer funds to reunify her with her children, including the provision of: a psychological evaluation, two substance abuse assessments, random drug screens, supervised parenting time, parent modeling, individual therapy, substance-abuse counseling, an intensive outpatient program to help her address her drug dependency, and parenting classes. Respondent-mother's complaint that these services were not helpful to her is legally inconsequential and factually inaccurate.⁶ Her claim is therefore without merit.

B. STATUTORY GROUNDS FOR TERMINATION

To terminate a respondent's parental rights, a trial court must find that DHS has shown the existence of at least one of the statutory grounds for termination set forth in MCL 712A.19b. *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). Here, respondents claim the trial court erred when it held that DHS had shown the existence of statutory grounds for termination.

1. RESPONDENT-FATHER

In relevant part, MCL 712A.19b(3) provides:

(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:

* * *

(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

⁵ In any event, the record indicates that DHS made substantial efforts to reunify respondent-father with J.N. before it decided to seek termination of his parental rights in June 2014. Caseworkers were in regular contact (in person and via phone) with respondent-father, and they investigated all of the possible relative placements respondent-father suggested. Moreover, the state transferred respondent-father to a new prison so that he could participate in the proceedings, and a caseworker contacted the Department of Corrections in an attempt to provide services to respondent-father while he was incarcerated. Far from making no effort to help respondent-father, DHS kept him actively involved in the case, informed him of the proceedings, and sought to provide services to him while he was in prison.

⁶ Contrary to respondent-mother's claims, the record shows that she was treated by a substance abuse counselor who held a master's level limited license. Respondent-mother was successfully discharged from counseling after five months of treatment.

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.

* * *

(n) The parent is convicted of 1 or more of the following, and the court determines that termination is in the child's best interests because continuing the parent-child relationship with the parent would be harmful to the child:

(i) A violation of section . . . MCL . . . 750.520c [second-degree criminal sexual misconduct].

Here, the trial court correctly held that DHS showed clear and convincing evidence to terminate respondent-father's parental rights under each of these subsections. Respondent father failed to provide "proper care or custody" for J.N. for an extended period of time, because he was imprisoned for child molestation, pursuant to MCL 750.520c(1)(a).⁷ Nor was he able to arrange for proper care or custody for J.N. with relatives, despite his efforts to do so. A caseworker testified that respondent-father suggested six possible relative placements, but that none turned out to be appropriate.⁸ More importantly, there was no indication that respondent-father would be capable of providing proper care or custody after his eventual release from prison. He received no sexual-abuse counseling, and there is nothing to suggest he would have been able to obtain employment or appropriate housing. For these reasons, the trial court properly terminated defendant's parental rights under MCL 712A.19b(3)(g).

Again, there is no dispute that respondent-father has been convicted of child molestation under MCL 750.520c(1)(a), which is a "listed offense" that permits termination under MCL 712A.19b(3)(n)(i). And, as the trial court correctly found, the evidence tends to show that termination of respondent-father's parental rights is in J.N.'s "best interests because continuing the parent-child relationship with the parent would be harmful to the child." In addition to his conviction for child sexual abuse—which suggests that respondent-father should be denied access to children in general, not just J.N.—the record demonstrates that respondent-father did not have a substantial relationship with J.N. before his incarceration. Moreover, during his incarceration he merely sent a single letter to J.N. professing his intent to care for him. The trial

⁷ Respondent-father's earliest possible release from prison is in October 2015.

⁸ Despite respondent-father's suggestions that J.N. should have been placed with respondent-father's mother, the record indicates that this relative was generally unresponsive when asked about caring for J.N.

court therefore properly terminated respondent-father's parental rights under MCL 712A.19b(3)(n)(i).

Respondent-father's conviction for child molestation under MCL 750.520c(1)(a), also suggests that there is a "reasonable likelihood" J.N. would be harmed if he was returned to respondent-father's custody. Accordingly, the trial court did not err when it terminated his parental rights under MCL 712A.19b(3)(j).

2. RESPONDENT-MOTHER

In relevant part, MCL 712A.19b(3) provides:

(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.

Here, the trial court correctly held that DHS presented clear and convincing evidence to terminate respondent-mother's parental rights under each of these subsections. Respondent-mother's substance abuse and residence in a drug house led to DHS's assertion of jurisdiction over the children. Though respondent-mother received substance-abuse counseling and completed an intensive anti-drug outpatient program, in the months before the termination hearing she tested positive for alcohol on three occasions. She was also: (1) facing criminal charges related to the sale of crack cocaine to an undercover police officer; (2) on probation for drug-related charges in multiple counties; and (3) at the very least, continuing to associate with individuals involved in the sale and/or use of drugs. Respondent-mother's caseworker also expressed concern over respondent-mother's ability to maintain appropriate housing for the

children, in light of her limited financial resources and lack of stable employment. The trial court thus appropriately terminated her parental rights under MCL 712A.19b(3)(c)(i).

The trial court's decision to terminate respondent-mother's parental rights under MCL 712A.19b(3)(g) and (j) was equally well founded. Respondent-mother failed to consistently interact with the children during supervised visitation, and voluntarily chose to stop attending counseling services even though she was offered an extension of those services. Her criminal record also indicates that she continues to associate with individuals who sell and/or use drugs. In light of the fact that respondent mother lived in a drug house before DHS asserted jurisdiction, her failure to amend her dangerous behavior in this regard is particularly distressing. The trial court therefore correctly terminated respondent-mother's parental rights under MCL 712A.19b(3)(g) and (j).

C. BEST INTERESTS

“[W]hether 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 at 90. “In deciding whether termination is in the child's best interests, 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.” *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (internal citations omitted).

1. RESPONDENT FATHER

In this case, the trial court correctly found that termination of respondent-father's parental rights was in J.N.'s best interests. The record shows little indication of any bond between them, nor does it contain evidence that respondent-father could parent J.N.—in fact, respondent-father admitted that he did not feed or bathe J.N., and only occasionally stayed with the child overnight. It is unlikely that respondent-father would have been able to financially support and house J.N. immediately upon his release from prison, nor is it certain he will be released on the earliest possible date. And, most importantly, were he nonetheless able to provide a proper residence, respondent-father's criminal conviction for child sexual abuse suggests that placing J.N. in his care would endanger J.N.'s safety. Furthermore, the trial court heard evidence that J.N. was flourishing in foster care. Accordingly, the trial court rightly held that termination of respondent-father's parental rights was in J.N.'s best interests. *Olive/Metts*, 297 Mich App at 41-42.

2. RESPONDENT-MOTHER

The trial court also properly found that termination of respondent-mother's parental rights was in the best interests of J.N. and K.S. The children did not look to respondent-mother as their primary caregiver, and the evidence demonstrated that she was incapable of handling the needs of both children for extended periods of time. Despite nearly 15 months of assistance from the state, respondent-mother was unable to fully resolve her issues with substance abuse, and she faced felony charges and probation for various drug-related offenses. The trial court also accurately noted the need for both children—who were doing well in foster care—to possess permanence and stability in their living arrangements, especially in light of K.S.'s autism. The

trial court therefore correctly found that termination of respondent-mother's parental rights was in the best interests of J.N. and K.S.

Affirmed.

/s/ Mark T. Boonstra

/s/ Henry William Saad

/s/ Christopher M. Murray