

STATE OF MICHIGAN
COURT OF APPEALS

In re D.R. SANCHEZ, Minor.

UNPUBLISHED
June 11, 2015

No. 324301
Dickinson Circuit Court
Family Division
LC No. 13-000511-NA

Before: HOEKSTRA, P.J., and O'CONNELL and MURRAY, JJ.

PER CURIAM.

Respondent appeals as of right from the order terminating his parental rights to his minor son pursuant to MCL 712A.19b(3)(a)(ii) (desertion for 91 or more days), (c) (failure to rectify conditions), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood of harm if returned). We affirm.

The initial petition was filed the day the child was born, and an ex parte order was entered ordering that the child be taken into protective custody. Respondent does not challenge the trial court's findings with respect to the statutory grounds. Instead, respondent only argues that the court erred in finding that it was in the best interests of the child to terminate his parental rights. "A trial court's finding that termination is in a child's best interests is reviewed under the clearly erroneous standard," *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000), as are the court's factual findings, MCR 3.977(K). "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).

"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 deciding whether termination is in the child's best interests, the court may consider, amongst other things, the parent's parenting ability, *In re Jones*, 286 Mich App 126, 129-130; 777 NW2d 728 (2009), the child's bond to the parent, *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004), the child's safety and well-being, *In re VanDalen*, 293 Mich App 120, 142; 809 NW2d 412 (2011), whether the parent can provide a permanent, safe, and stable home, *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012), and the

child’s “need for permanency, stability, and finality,” *In re Gillespie*, 197 Mich App 440, 446-447; 496 NW2d 309 (1992). “The trial court should weigh all the evidence available to determine the children’s best interests.” *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014).

Relying on *In re Mason*, 486 Mich 142; 732 NW2d 747 (2010), respondent argues that termination of his parental rights was not in the best interests of the child in light of the court’s permanency plan to reunify the child with his mother, to whom respondent was not married and with whom he did not reside; he contends that such a plan is analogous to relative placement and that placement with relatives weighs against termination.

“[A] child’s placement with relatives weighs against termination” and the fact that a child is living with relatives when the case proceeds to termination is a factor that must be explicitly addressed by the trial court in determining whether termination is in the child’s best interests. *Id.* at 164; see also *In re Olive/Metts*, 297 Mich App 35, 43; 823 NW2d144 (2012). The relative-placement factor is based on MCL 712A.19a(6)(a). *In re Mason*, 486 Mich at 164. For purposes of § 19a, the term “relative” is defined by MCL 712A.13a(1)(j) as someone other than a parent. Thus, as the trial court recognized, the child’s mother is not a relative for purposes of § 19a. Further, as defendant concedes, the child was not living with his mother or with relatives at the time of the termination hearing; he was in foster care. The court noted that respondent had offered no alternative placements for the child. Thus, respondent’s reliance on *In re Mason* is misplaced.¹

Respondent also contends that he was denied an opportunity to comply with a case-service plan due to his incarceration in violation of *In re Mason*, 486 Mich at 159-161, which held that reasonable efforts to reunify must be made in all cases, except those involving certain aggravated circumstances, and that incarcerated parents should receive reasonable reunification efforts. However, the holding in *In re Mason* relates to a finding of statutory grounds for termination, not a trial court’s best-interest analysis. That holding is therefore inapposite to the issue presented in this appeal.²

Respondent does not offer any other challenges to the trial court’s best-interest determination.

¹ Nonetheless, the trial court explicitly addressed the possibility of reunifying the child with his mother in determining whether termination of respondent’s parental rights was in the child’s best interests and found that the potential reunification of the child with his mother did not weigh against termination.

² We note, however, that respondent was not incarcerated at the time the petition in this case was filed, that a case-service plan was prepared, and that numerous services were offered to respondent and he chose not to comply with services.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Peter D. O'Connell

/s/ Christopher M. Murray