

STATE OF MICHIGAN
COURT OF APPEALS

In re R. L. TROTMAN, JR., Minor.

UNPUBLISHED
February 18, 2016

No. 328795
Kalamazoo Circuit Court
Family Division
LC No. 2014-000156-NA

Before: HOEKSTRA, P.J., and METER and M. J. KELLY, JJ.

PER CURIAM.

Respondent-father appeals as of right the order terminating his parental rights to the minor child under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist), (g) (failure to provide proper care and custody), (h) (parent incarcerated), and (j) (reasonable likelihood that child will be harmed if returned to the parent). Because the trial court did not clearly err by finding that termination was in the child's best interests, we affirm.

The child was born in August of 2008. When the child was approximately two years old, respondent was incarcerated for 30 days for violating his probation by resisting and obstructing a police officer. Around the same time, the minor child's mother moved to New York, leaving the child behind. After moving, mother never supported the child and never visited him.¹ During respondent's incarceration, respondent's sister cared for the child. After respondent was released, he cared for the minor child for six or seven months. However, he was again incarcerated on May 22, 2011, after being convicted of first-degree home invasion and third-degree fleeing and eluding. His earliest release date is May 22, 2019.

During respondent's incarceration, respondent's sister initially cared for the child and she established a guardianship over the child in 2012. However, in April of 2014, she petitioned for dissolution of the guardianship because she was unable to care for the child due to financial difficulties and her obligations toward her own children. As a result, the guardianship was dissolved, the matter was referred to the Department of Health and Human Services (DHHS), and the minor child was placed in foster care. DHHS made numerous attempts to find a family member to care for the child; but these efforts proved unsuccessful for various reasons and the child remained in foster care. During the pendency of this case, the child exhibited aggressive,

¹ Mother's parental rights were terminated on July 14, 2015. She is not a party to this appeal.

disruptive, and sexualized behavior, both at school and at home. With the aid of counseling and medication, the child's behavior showed significant improvement, but those involved with his care continued to emphasize the ongoing necessity of permanency, predictability, and stability. DHHS workers recommended adoption.

On July 14, 2015, the trial court found clear and convincing evidence that grounds for terminating respondent's parental rights had been met under MCL 712A.19b(3)(c)(i), (g), (h), and (j). The trial court also concluded that termination would be in the child's best interests. In making the best interests determination, the trial court noted respondent's efforts to communicate with the child via letters from jail; but the trial court concluded that the child needed "so much more," including basic "day to day interactions," permanency, stability, and someone to regularly provide basic care and support. The trial court concluded that the child's basic needs were not being met by respondent or anyone in the family, particularly given his behavioral issues. Further, given the child's age and the length of respondent's incarceration, the trial court found that respondent did not have "a great relationship" with the child. In light of this minimal bond, the trial court concluded that this is not a situation where the child should be made "to wait" and that instead the child's best interests would be served by termination. Having determined that statutory grounds for termination existed and that termination would be in the child's best interests, the trial court terminated respondent's parental rights. Respondent now appeals as of right.

On appeal, respondent maintains that the trial court clearly erred by terminating his parental rights. In making this argument, respondent does not dispute that clear and convincing evidence was presented to establish at least one statutory ground for termination under MCL 712A.19b(3). Rather, respondent argues only that termination was not in the child's best interest. In particular, respondent emphasizes the child's behavioral difficulties, which may pose an obstacle to adoption. Defendant also notes that, so far, the child's foster parents have been unwilling to adopt the child. According to respondent, the trial court erred by failing to weigh the unlikelihood of adoption against termination and by failing to consider alternatives to termination, such as long-term foster care.

"In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). "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." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012) (citations omitted); MCL 712A.19b(5). "[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, 90; 836 NW2d 182 (2013). This Court reviews the trial court's best interests determination for clear error. *In re Olive/Metts Minors*, 297 Mich App at 40.

When considering best interests, the focus is on the child rather than the parent. *In re Moss*, 301 Mich App at 87. The trial court should weigh all available evidence and may consider a wide variety of factors. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). Relevant factors include, for example, "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 at 41-42 (citations omitted). In addition, the court might also consider the length of time a child has spent in foster care or with relatives, the parent's visitation with the child, the possibility of adoption, and the likelihood that "the child could be returned to [the] parents' home within the foreseeable future, if at all." *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012); *In re White*, 303 Mich App at 714.

In this case, as discussed, the trial court found that termination was in the child's best interests in this case because (1) there was no real bond between the child and respondent and because (2) the child needed a stable environment. These findings were not clearly erroneous. In particular, respondent was incarcerated in May 2011, when the child was less than three years old. After his incarceration, respondent did not see the child again. Although respondent sent the minor child letters and cards from prison, the fact remains that, at the time his rights were terminated, respondent had been incarcerated for the majority of the child's life and had not seen the child for more than four years. During that time, the child was cared for by several other adults, including relatives and eventually foster parents. Given the child's young age at the time of respondent's incarceration and their minimal contact thereafter, the trial court did not clearly err in finding that there was not a strong bond between the child and respondent.

In addition, as described by the trial court, the evidence plainly showed that the child was greatly in need of permanency and stability, which respondent could not provide. The child had numerous behavioral issues that began when the child was approximately two years old, but which showed some improvement following his foster care placement. This improvement was brought about by medication, counseling, and other services, which were enabled by the stable environment the foster parents provided. Indeed, those involved with the child's care repeatedly emphasized the importance of stability, permanency, and structure in the child's life, which respondent cannot provide given his ongoing incarceration, his continuous history of criminal behavior, and his poor behavior while incarcerated. As the trial court discussed, the child's behavioral issues evince his need of stability at the present time; and it would not serve the child's interests to be made to wait for defendant's release in 2019 at the earliest. On this record, the trial court did not clearly err in finding that termination was in the child's best interests.

In contrast, respondent argues that the trial court erred by finding that termination was in the child's best interests because the child's behavioral problems made adoption unlikely and a long-term foster care placement could serve as an alternative to termination of respondent's rights. However, whether there was a possibility of adoption, whether that possibility weighed in favor of termination, and whether long-term foster care constituted a preferable alternative to termination were ultimately decisions for the trial court, and we see no clear error in the trial court's findings. That is, although it is true that an adoptive family had not been identified and that the child has behavioral issues which might make adoption more challenging, the child had shown significant improvement while in foster care and adoption is by no means impossible. The trial court plainly understood the child's behavioral issues and in no way suggested a certainty of adoption that could be considered clearly erroneous. Rather, to the extent the trial court considered adoption, it merely indicated that "hopefully" the child would be adopted. Given respondent's minimal bond with the child, his history of criminality, and his inability to provide for the child in the foreseeable future, we do not think the trial court clearly erred by finding that the child's best interest would be served by termination of respondent's parental rights with the hope that the child would be adopted. Indeed, quite simply, for the child to have

any hope of adoption, it was first necessary to terminate respondent's rights. See *In re Handorf*, 285 Mich App 384, 387-388; 776 NW2d 374 (2009).

Likewise, respondent's attorney raised the possibility of a long-term foster care placement in the trial court, meaning that the trial court was plainly aware of such an alternative. And, as discussed, we find no clear error in the trial court's determination that the child should not be made "to wait" any longer for respondent. In other words, as evident from the trial court's findings, the child had a demonstrated need for finality, stability, and permanency which would not be served by maintaining the status quo in which the child remained in foster care while waiting indefinitely for a father he barely knows. In short, the trial court was plainly aware of the various alternatives and we see no clear error in the trial court's best interests determination.

Thus, given that statutory grounds for termination were proven by clear and convincing evidence and that termination was in the child's best interests, the trial court did not clearly err by terminating respondent's parental rights. MCL 712A.19b(5).

Affirmed.

/s/ Joel P. Hoekstra
/s/ Patrick M. Meter
/s/ Michael J. Kelly