

STATE OF MICHIGAN
COURT OF APPEALS

In re M. D. SAFFOLD, JR., Minor.

UNPUBLISHED
July 19, 2016

No. 330930
Wayne Circuit Court
Family Division
LC No. 13-515083-NA

Before: WILDER, P.J., and MURPHY and O'CONNELL, JJ.

PER CURIAM.

Respondent-father, M. Saffold, Sr., appeals as of right the trial court's order terminating his parental rights to his minor son under MCL 712A.19b(3)(c)(i) (conditions leading to the adjudication continue to exist), (c)(ii) (new conditions exist that would lead to adjudication), (g) (lack of proper care and custody), and (j) (risk of harm if the child is returned to the parent's home). We affirm.

I. FACTUAL BACKGROUND

This case arises from Saffold's failure to care for his children as a result of his alcohol abuse, incarceration, and criminal history. Children's Protective Services removed the child from Saffold's care after Saffold was drunk and aggressive at the hospital where the child's mother was being treated for an infection. Saffold was mishandling the child, who has fetal alcohol syndrome. During the pendency of the case, Saffold sexually assaulted the child's mother and was incarcerated. At the termination hearing, the child's caseworker testified that Saffold had done everything that he possibly could from prison to comply with his service plan.

The trial court terminated Saffold's parental rights on the basis that:

. . . Father did become incarcerated two months after the child was placed into care. Father was sentenced to 2 to 15 years in prison for Criminal Sexual Conduct (CSC). The CSC was against the mother. Father did not have any contact with his child while incarcerated. There was testimony that the father's relatives could not care for the child. Father never provided any money to support his child. Father stated that he hopes to be released from prison in the December 2015, his earliest release date. The release is not certain. Father has a long history of criminal convictions. He has at least six felony convictions. Father has a prior domestic violence case of hitting the mother with a baseball bat. Father has not had any contact with his child for two years. Father admitted to being an

alcoholic. Father stated that he does not have housing set up when he is released from prison. Father may have to go to transitional housing when released from prison and can not [sic] have child with him if that is the case. Father never completed the domestic violence classes.

The trial court also found that terminating Saffold's rights was in the child's best interests.

II. STANDARDS OF REVIEW

This Court reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). The trial court has clearly erred if this Court is definitely and firmly convinced that it made a mistake. *Id.*

III. STATUTORY GROUNDS

Saffold argues that the trial court improperly terminated his parental rights because it based its decision solely on his incarceration. We disagree.

Under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j), a parent's failure to comply with and benefit from their treatment plan may be evidence that the parent cannot properly care for the child. See *In re Williams*, 286 Mich App 253, 272-273; 779 NW2d 286 (2009); *In re White*, 303 Mich App 701, 710-711; 846 NW2d 61 (2014). However, the trial court may not terminate a parent's parental rights solely on the basis of parental incarceration. *Mason*, 486 Mich at 152. The trial court must offer incarcerated parents the opportunity to participate in proceedings involving their children. *Id.* The Department's failure to make reasonable efforts to reunify children with parents has a bearing on whether there was sufficient evidence to terminate a parent's rights. *In re Rood*, 483 Mich 73, 89; 763 NW2d 587 (2009) (opinion by CORRIGAN, J.).

We conclude that the trial court did not terminate Saffold's rights solely on the basis of his incarceration. In this case, the Department maintained contact with Saffold while he was in prison, monitored his progress, and discussed plans for the child with him. Saffold did participate in those programs that were available while he was in prison. However, Saffold had a lengthy criminal history that included a violent sexual assault against the child's mother. While Saffold was employed while in prison, he did not use any of his limited earnings to support the child. And while it is undisputed that Saffold and the child could not visit, there is no indication that he attempted to communicate with the child by other means. At the time of termination, Saffold had no definite release date and could not give any definite plans for his living situation after he was released from prison. Meanwhile, the child had special needs and deserved permanence.

We also note that Saffold did not provide any alternatives for the child's care. A parent need not personally care for a child. *Mason*, 486 Mich at 161. A parent may voluntarily grant legal custody to his or her relatives while incarcerated. *Id.* at 163; *In re Sanders*, 495 Mich 394, 420-421; 852 NW2d 524 (2014). However, Saffold did not have any relatives who could care for the child, and he did not come forward with any alternative safety plan for the child, other than that the child reside with his mother, whose rights were also terminated during the protective proceedings.

For these reasons, we are not definitely and firmly convinced that the trial court made a mistake when it terminated Saffold's parental rights.

We affirm.

/s/ Kurtis T. Wilder
/s/ William B. Murphy
/s/ Peter D. O'Connell