

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JACOB VIETA, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

TIMOTHY GODDARD,

Respondent-Appellant,

and

MELISSA VIETA,

Respondent.

UNPUBLISHED

May 6, 2008

No. 281003

Jackson Circuit Court

Family Division

LC No. 06-005208-NA

Before: White, P.J., and Hoekstra and Smolenski, JJ.

PER CURIAM.

Respondent father appeals as of right from the trial court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (g) and (j).¹ We affirm. This appeal is being decided without oral argument under MCR 7.214(E).

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). If a statutory ground for termination is established, the trial court must terminate parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 353; 612 NW2d 407 (2000). The trial court's decision terminating parental rights is reviewed for clear error. MCR 3.977(J); *Trejo, supra* at 355-357. A finding is clearly erroneous if, although there is evidence to support it, this Court is

¹ Melissa Vieta, the child's mother, voluntarily released her parental rights so she is not a party to this appeal.

left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

There was clear and convincing evidence to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i). At the time of the adjudication, respondent was incarcerated and serving time for three criminal convictions. He pleaded guilty to operating a motor vehicle while under the influence with an occupant less than 16 years old (second offense), MCL 257.625(7)(a)(ii), fleeing a police officer (third-degree), MCL 750.479a(3), and operating a motor vehicle while under the influence causing serious injury, MCL 257.625(5). Respondent committed these offenses on November 22, 2002, and was sentenced to two years ten months to ten years in prison. Although respondent was released from prison at the end of January 2007, only five weeks later, he was arrested and charged with another alcohol-related offense. By the time of the permanent custody hearing, respondent was again incarcerated and had entered a plea as a second habitual offender to operating a motor vehicle while intoxicated (third-degree), MCL 257.625(9)(c) and MCL 769.10. Because respondent was sentenced to two to seven-and-a-half years in prison, the condition of respondent's incarceration continued to exist at the time of the permanent custody hearing. Hence, the conditions that led to the adjudication continue to exist and will be not be resolved in a reasonable time considering Jacob's age.

Termination of respondent's parental rights pursuant to MCL 712A.19b(3)(g) was also appropriate. Respondent was unable to provide proper care to Jacob, and was unable to demonstrate that he had suitable housing or employment. His incarceration prevented him from being able to offer Jacob a home and financial support. Due to respondent's tendency to drink and drive and his repeated incarcerations, he has never provided care for Jacob or showed that he was able to do so. Respondent never demonstrated that he had stopped abusing alcohol or that he could maintain a stable lifestyle devoid of crime and alcohol use.

Finally, the court did not err in terminating respondent's parental rights under MCL 712A.19b(3)(j). Given respondent's history of repeatedly driving while intoxicated, Jacob would have been at risk of harm in his care, and as a passenger when driven by respondent. Because respondent was unable to demonstrate he could control his drinking and because he showed poor judgment in driving while intoxicated, respondent could not safely parent Jacob. Respondent's impaired judgment during periods of intoxication would likely have exposed Jacob to risk of harm in other circumstances as well.

Respondent minimizes his drinking and driving, arguing that it was merely a "setback" common to all recovering alcohol addicts. Contrary to respondent's contention, there is no evidence that respondent participated in alcohol treatment or rehabilitation during his incarceration. Respondent's drinking was an ongoing, untreated problem from which he never demonstrated improvement. Placement of Jacob with respondent, who was prone to intoxication and impaired judgment, would therefore be inappropriate and unsafe.

Respondent also argues that petitioner failed him by not referring him to more intensive programs and, therefore, it is impossible to determine if Jacob would have been harmed in his care. Respondent overlooks the fact that he did not have the opportunity to participate in services because he was incarcerated for all but five weeks of the case. In those five weeks, there was not enough time for respondent to resolve his alcohol abuse. Having just been released from prison, respondent knew what was at stake if he was arrested again. Further, services are

not mandated in all situations, but MCL 712A.18f(1)(b) requires petitioner to state the reasons why services were not provided to the child and parent. *In re Terry*, 240 Mich App 14, 25 n 4; 610 NW2d 563 (2000). In this case, petitioner explained that services would be provided by respondent's parole officer upon his release from prison. There was no evidence that those services were different, insufficient, or less intense than the treatment programs to which petitioner could have referred him.

Finally, the trial court did not clearly err in its best interests determination. There was no evidence in the record that it was not in Jacob's best interests to terminate respondent's parental rights. To the contrary, the evidence established there could not have been a significant bond between respondent and Jacob because Jacob had only seen respondent during weekly visits, which were limited to the five-week period when respondent was not incarcerated. In failing to avoid criminal behavior and in drinking while driving, respondent demonstrated that making himself available to care for and parent Jacob was not his priority.

Respondent's argument that he shares a bond with Jacob, and that he was neither inappropriate nor unable to parent during visitation, does not support a finding that termination was contrary to Jacob's best interests. A best interest finding requires more than not being inappropriate during visits. *Trejo, supra* at 356-357. Respondent's limited interaction with Jacob during supervised visitation did not demonstrate parental fitness or that termination was not in Jacob's best interests.

Affirmed.

/s/ Helene N. White

/s/ Joel P. Hoekstra

/s/ Michael R. Smolenski