

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
April 21, 2011

In the Matter of S. PATRICK, Minor.

No. 300450
Allegan Circuit Court
Family Division
LC No. 07-042021-NA

Before: SHAPIRO, P.J., and FITZGERALD and BORRELLO, JJ.

PER CURIAM.

Respondent father appeals as of right from the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(c)(ii), (g), and (j). For the reasons set forth in this opinion, we affirm.

In termination proceedings, this Court must defer to the trial court's factual findings if those findings do not constitute clear error. MCR 3.977(K). Both the trial court's decision that a ground for termination has been proven by clear and convincing evidence and the best interests determination are reviewed for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009).

Given our standard of review, based on the evidence presented in this matter we conclude that the trial court did not clearly err in finding that sections (c)(ii) and (g) were established by clear and convincing evidence. Respondent father was not a party to the action at the time of adjudication because he was not the minor child's legal father at that time. Hence, the initial petition leading to adjudication did not contain allegations of neglect or abuse by respondent father. Respondent father later became the father of the minor child. A petition for termination of parental rights was eventually filed, alleging that respondent father had not benefited from services in the case, was unable to provide proper care and custody for his son, continued to test positive for illegal substances, and had a domestic violence incident involving police as recently as two months earlier. These conditions would cause the minor child to come within the trial court's jurisdiction, the termination petition provided notice to respondent father of the conditions, there were many dispositional hearings after the petition was filed in which respondent father's progress was discussed, and the termination hearing did not begin until six months later, which provided respondent father a reasonable opportunity to rectify the conditions.

At the time of the termination hearing, evidence revealed that respondent father had participated in parenting classes, therapy, and random drug screens. Although he attended visits

regularly, and had to do so by way of bicycle, and had become calmer during the pendency of the case, the mental health providers concluded that his mental illness was not at a level in which he could manage his own affairs and take care of a high maintenance young boy. His prescription drug use was not stable, he contacted the foster care worker with racing thoughts, and he showed anger toward the child's mother during his testimony at the termination hearing. Respondent father testified that he had different prescriptions from different doctors for the same purpose and used them interchangeably. He smoked marijuana a week before the hearing but thought that was acceptable because he had a prescription for Marinol, a synthetic marijuana. Further, his psychiatrist testified that she did not know about his prescriptions for pain killers, including Marinol, and that she prescribed the medication that she did despite respondent father's addiction history because he could not function at the time of her initial examination. Although respondent father made some progress during the pendency of the case, the other conditions leading to adjudication continued to exist. Respondent father continued to abuse prescription medication and, because of his mental illness and use of prescription medication, the trial court did not clearly err when it ruled that respondent could not provide proper care and custody for his son. Further, there was no reasonable expectation that the conditions would be rectified within a reasonable time, or that respondent father would be able to provide proper care and custody for his son, where respondent father's therapist testified that his issues were chronic and his progress was slow. Respondent testified that he had addiction issues since the age of 13, and his mental health and substance abuse issues were deemed intertwined. Further, testimony revealed that respondent was suffering from anxiety disorders and that the minor child in this matter was a source of great stress to respondent, causing him to have difficulty understanding how to interact with the minor. Respondent's mental health and substance abuse issues, coupled with his inability to effectively communicate and parent the minor, prohibited respondent from engaging in any unsupervised visitations during the pendency of these hearings. Given the record before us, and the problems associated with respondent and the parenting issues arising from the minor child's previous environment, we find that the trial court did not clearly err in finding that sections (c)(ii) and (g) were established by clear and convincing evidence.

The trial court also did not clearly err in finding that section (j) was established by clear and convincing evidence. Although respondent father correctly argues that there was no evidence that he ever abused or neglected his son, based on several factors revealed by case workers and mental health professionals, there was still a reasonable risk of harm if the minor child were returned to respondent father's home. Respondent father had a history of domestic violence with the child's mother, some of which he admitted occurred in front of his son. Despite respondent and mother's assertions that they were not together, the record revealed that both parties were unable to effectively remain apart, despite clear warnings from their respective mental health providers that their relationship was "toxic." The child's mother testified that respondent father could become angry if embarrassed, and his anger was evident in his testimony about her the next day. Respondent father's use of prescription drugs did not allow him to manage his own affairs well, let alone care for the physical and emotional needs of a four-year-old with many issues of his own. Therefore, the trial court did not clearly err in finding that section (j) was established by clear and convincing evidence.

The trial court also did not clearly err in its best interests determination. MCL 712A.19b(5). As alluded to earlier, the minor child's therapist testified that he was a very high maintenance child, that he needed stability and permanence as soon as possible, and that his

home needed to be really focused on treating his reactive attachment disorder. It is clear that respondent father would never be able to provide the type of stable home that his son required. Respondent father's mental illness and prescription drug use would not allow him to provide the minor child with permanence within any reasonable amount of time. Based on respondent's history of substance abuse and mental health issues, coupled with his lack of fundamental parenting skills and an inability to refrain from a highly destructive relationship with the minor's mother, we find that the trial court did not clearly err in finding that termination of respondent father's parental rights was in the minor child's best interests.

Affirmed.

/s/ Douglas B. Shapiro
/s/ E. Thomas Fitzgerald
/s/ Stephen L. Borrello