

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
July 17, 2012

In the Matter of CARROLL, Minors.

No. 307213
Delta Circuit Court
Family Division
LC No. 10-000536-NA
10-000537-NA
10-000538-NA
10-000552-NA

Before: SHAPIRO, P.J., and HOEKSTRA and WHITBECK, JJ.

PER CURIAM.

Respondent K. Carroll appeals as of right the trial court order terminating his parental rights to his four minor children under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

I. FACTS

The trial court originally acquired jurisdiction over the children in June 2010, because Carroll physically abused one of his minor children in May 2010, which resulted in severe bruising and marks on the child's lower back and upper buttocks. During an investigative interview with petitioner, Department of Human Services (DHS), Carroll admitted to being under the influence of marijuana, using drugs in front of his children, and spanking the child. Carroll was charged with third-degree child abuse, but later pleaded to fourth-degree child abuse. Although the children remained with their mother, Carroll was ordered out of the home and was provided with counseling services designed to address his poor anger management skills and inappropriate parenting skills. Carroll never completed this service during the pendency of this case. Before adjudication, the trial court discovered that Carroll had previously abandoned his children in another state, resulting in CPS placing the children into foster care in Milwaukee, Wisconsin. Carroll also had a lengthy criminal record and a fifteen-year struggle with drug addiction, which resulted in him frequently being out of the home and unavailable to care for his children. Although Carroll only tested positive twice for drugs during the pendency of this case, he later admitted that he regularly spent approximately \$200 a month on drugs while the children were in foster care, in spite of the fact that his total monthly income was only \$100 to \$200 a month.

Following initial disposition, the DHS filed a supplemental petition in September 2010, to remove all the children from the mother's care because Carroll's newborn child was

discovered with suspicious and life-threatening injuries and the mother's explanations of the child's injuries were contradictory. The trial court discovered that the mother had allowed both a known drug addict and a convicted sex offender to babysit her children at the time the newborn child was injured. The trial court removed the children from the home, and the mother later pleaded no contest to failing to protect her children. Although the trial court permitted Carroll to return home because the children were no longer in the mother's care, the trial court required both parents to receive services designed to address their outstanding substance abuse problems.

For a period of time, Carroll demonstrated some progress in his services, as he utilized parenting time with his children and attended some sessions with his counselor. However, Carroll had also been incarcerated during that time for driving with a suspended license, and his caseworker noted that he acted in an aggressive and threatening manner towards his children during parenting time. Noting Carroll's progress, the trial court granted DHS discretion to hold the parenting time sessions at Carroll's home, and Carroll began doing so following a review hearing in February 2011.

In March 2011, DHS initiated a search of Carroll's home after staff received an anonymous tip that Carroll and the mother were operating a drug house. During the search, DHS located a substantial amount of drugs and associated paraphernalia, including: bags of pills, a spoon and razor covered in white residue, unused needles, a pipe, a jug of used needles, empty pill containers, a torch, cash, and a safe containing "further evidence." The condition of the home was also deplorable, with dirty dishes, empty boxes, and soiled clothes scattered throughout the home, and clothes dangerously concentrated around the furnace in the basement. Although the children were not at Carroll's home during this search, they were in the home two days before the search and had been scheduled for a visit on the day of the search. Although referred for a substance abuse evaluation in May 2011, Carroll denied that he had a drug problem to his evaluator.

During the permanency planning hearing, it was discovered that Carroll had completely failed to comply with his parent-agency agreement during the last reporting period, in spite of the fact that the trial court warned Carroll that he needed to show strong progress during this period to avoid the filing of a termination petition. Carroll had not been participating in parenting time sessions with his children and missed scheduled meetings without notifying them ahead of time. While he initially claimed this was due to the change in location of the meetings from his home to another county an hour away, the mother admitted that DHS provided them with gas money and their van was reliable until approximately seven days before this hearing. Carroll also failed to attend counseling sessions to address his anger management problems and lack of parenting skills, was being evicted for nonpayment of rent, was unemployed, and spent his limited income on tobacco and gambling at casinos.

DHS thereafter filed a petition to terminate Carroll's parental rights based on MCL 712A.19b(3), subparts (c)(i), (g), and (j). Hearings were held on two dates in September 2011, and October 2011. Since the permanency planning hearing, Carroll had spent most of his time incarcerated for various crimes, including maintaining a drug house and attempted possession of a controlled substance in March 2011, as well as shoplifting and possession of marijuana in May 2011. Carroll took sole responsibility for maintaining the drug house and pleaded guilty to the charges stemming from the March raid on his home. Based on his sentence, it appeared that he would be released from jail in November 2011. He claimed that this recent arrest gave him the

motivation to change his life, and he noted that he had been using his weekly visits while incarcerated to visit with his children. However, Carroll acknowledged that, based on his lack of employment, home, and transportation, he was unsure when he would be able to provide a stable and safe home for his children. DHS also opined that, in light of Carroll's substantial noncompliance with the parent-agency agreement and the children's need for permanence, it would be in the best interests of Carroll's children to terminate Carroll's parental rights. The trial court agreed and terminated his parental rights. Carroll now appeals.

II. STATUTORY GROUNDS FOR TERMINATION

A. STANDARD OF REVIEW

Carroll argues that the trial court committed clear error by finding that DHS proved, by clear and convincing evidence, the three cited statutory grounds to terminate Carroll's parental rights. To terminate parental rights, the trial court must find that the DHS has proven at least one of the statutory grounds for termination by clear and convincing evidence.¹ We review for clear error a trial court's decision terminating parental rights.² A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made.³ We give regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.⁴

B. MCL 712A.19b(3)(c)(i)

MCL 712A.19b(3)(c)(i) provides a statutory ground for termination when

[t]he parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds [that] . . . [t]he conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

Carroll argues that he made progress regarding the only issue on which he was named a respondent, which was his physical abuse of his older child. However, the fact that Carroll was not a named respondent in the supplemental petition in September 2010, for failing to protect the newborn from harm is irrelevant because he failed to adequately comply with the services addressing his physical abuse. Carroll was a named respondent in the initial petitions leading to adjudication based on physical abuse, and the date of initial disposition for that matter was

¹ MCL 712A.19b(3); MCR 3.977(H)(3)(a); *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999).

² MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Sours Minors*, 459 Mich at 633.

³ *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

⁴ MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

June 2, 2010. Carroll was removed from the home on May 5, 2010, for his abuse, and he has not provided proper care or supervision for his children since that time. Carroll was offered counseling services designed to address his anger management problems and lack of parenting skills, but he failed to complete this critical service as of the date of the order terminating his parental rights on October 18, 2011, which was more than 182 days since the initial dispositional order. Further, the record also establishes that Carroll's anger and violence problems remain unresolved, evidenced by the fact that he got into two fights while incarcerated and acted aggressively towards his children during parenting time. Based on Carroll's history of noncompliance and violent tendencies, clear and convincing evidence existed to find that MCL 712A.19b(3)(c)(i) justified termination of his parental rights.

C. MCL 712A.19b(3)(g)

MCL 712A.19b(3)(g) provides a statutory ground for termination when “[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.” A parent’s failure to comply with the required services in their parent-agency agreement may be used as evidence of his or her failure to provide proper care and custody for the children.⁵

Carroll failed to comply with his services plan. The record clearly established that Carroll was a habitual criminal and longtime, unreformed drug addict who refused to acknowledge that he had a substance abuse problem up until the date of the termination hearing. Carroll also failed to complete his anger management counseling classes, stopped using his parenting time with his children, missed scheduled visits with the children without informing DHS, and continued to abuse drugs and commit crimes to feed his habit. He also repeatedly demonstrated that his children were not a priority. He spent all of his reported monthly income on drugs, tobacco, and gambling. He also decided to maintain a drug house and bring the children into this environment for the parenting time sessions, and failed to clean up the home and make it appropriate for home visits, which was the only barrier cited by DHS to resuming home visits after the March 17 search of his home. Further, Carroll had no meaningful employment skills, was homeless and unemployed, and had no means of transportation. In light of the young age of the children and Carroll's history of noncompliance during the lengthy pendency of this case, the totality of the evidence in this case establishes that the trial court's findings were not clearly erroneous.

Carroll asserts that DHS should be estopped from seeking termination because DHS intentionally changed the location of parenting time sessions in order to effectively prohibit Carroll from participation. Before termination, absent aggravating circumstances, DHS is required to make reasonable efforts to reunify the children with the parents.⁶ DHS provided several different services to Carroll, including parenting time, substance abuse therapy, and counseling designed to address parenting skills and anger management issues. Although the

⁵ *In re JK*, 468 Mich at 214; *In re Trejo Minors*, 462 Mich at 360-363, 361, n 16.

⁶ MCL 712A.19a(2); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

change of location placed an additional difficulty on Carroll, the record clearly demonstrates that the change had no effect on Carroll's ability to participate in the parenting time. The mother testified that DHS was supplying gas money to them for the visits, and their vehicle did not become problematic until one week before the permanency planning hearing. Although Carroll claims that his participation with parenting time while he was incarcerated demonstrates his willingness and ability to become a parent upon his release, his limited, last-minute participation in a controlled environment is insufficient to establish Carroll's capacity to parent.

Therefore, the trial court did not clearly err by finding that DHS proved by clear and convincing evidence that termination was justified under MCL 712A.19b(3)(g).

D. MCL 712A.19b(3)(j)

MCL 712A.19b(3)(j) provides a statutory ground for termination when "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent."

As noted above, Carroll never addressed the anger issues that led to adjudication. He also has a lengthy history of substance abuse and criminal activity that has resulted in him either being out of the home while incarcerated, and thus unavailable to care for the children, or incapacitated and unable to provide proper care for his children. Carroll's noncompliance with his services proved his unwillingness to change and provide a safe home for the children. Because Carroll was incarcerated and had no home or job to return to upon his release, it is highly likely that returning the children to Carroll's care would subject them to a substantial risk of abuse or neglect. Therefore, the trial court's finding that DHS established MCL 712A.19b(3)(j) by clear and convincing evidence was not clearly erroneous.

In sum, we conclude that the trial court did not clearly err in finding that DHS established by clear and convincing evidence sufficient grounds for termination of Carroll's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j).

III. BEST INTERESTS DETERMINATION

A. STANDARD OF REVIEW

Carroll claims that the trial court clearly erred by finding that termination of his parental rights was in the best interests of his minor children. Once DHS has established a statutory ground for termination by clear and convincing evidence, if the trial court also finds from evidence on the whole record that termination is in the child's best interests, then the trial court is required to order termination of parental rights.⁷ There is no specific burden on either party to present evidence of the children's best interests; rather, the trial court should weigh all evidence

⁷ MCL 712A.19b(5); MCR 3.977(H)(3)(b); *In re Trejo Minors*, 462 Mich at 351.

available.⁸ We review for clear error the trial court's decision regarding the child's best interests.⁹

B. LEGAL STANDARDS

In determining the child's best interests, a trial court may consider a variety of factors including the parent's history, unfavorable psychological evaluations, the child's age, inappropriate parenting techniques, and continued involvement in domestic violence.¹⁰ A trial court may also consider the strength of the bond between the parent and child, the visitation history, the parent's engaging in questionable relationships, the parent's compliance with treatment plans, the child's well-being while in care, and the possibility of adoption.¹¹ A trial court may also consider the child's need for permanence and the length of time the child may be required to wait for the parent to rectify the conditions, which includes consideration of the child's age and particular needs.¹² "[W]hile it is inappropriate for a court to consider the advantages of a foster home in deciding whether a statutory ground for termination has been established, such considerations are appropriate in a best-interests determination."¹³

C. ANALYSIS

When the evidence in the record is considered as a whole, the trial court did not commit clear error by finding that termination of Carroll's parental rights was in the best interests of the children. Carroll had been an active drug addict for approximately 15 years, lacked employment, was incarcerated, and lacked a home in which to reside upon his release. Based on Carroll's failure to comply with his services agreement and his failure to provide proper care for his children for more than one year, the trial court did not believe Carroll's claim that his recent arrest changed his outlook on life and gave him the motivation to become a proper parent for his children. Clearly, Carroll lacked the ability to provide for his children's physical and emotional needs, and their potential placements had the capacities to meet their needs. As a permanent placement is clearly in the best interests of children and as Carroll was either unable or unwilling to provide a stable and permanent home environment for his children within the foreseeable

⁸ *In re Trejo Minors*, 462 Mich at 353.

⁹ *Id.* at 356-357.

¹⁰ See *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009).

¹¹ See *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004); *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001).

¹² See *In re McIntyre*, 192 Mich App 47, 52-53; 480 NW2d 293 (1991).

¹³ *In re Foster*, 285 Mich App 630, 635; 776 NW2d 415 (2009).

future, the trial court's determination was not clearly erroneous. We conclude that the trial court did not clearly err in finding that termination of Carroll's parental rights was in the children's best interests.

We affirm.

/s/ Douglas B. Shapiro
/s/ Joel P. Hoekstra
/s/ William C. Whitbeck