

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
July 31, 2012

In the Matter of M. SCHOOLCRAFT, Minor.

No. 307806
Cheboygan Circuit Court
Family Division
LC No. 10-008102-NA

Before: STEPHENS, P.J., and SAWYER and OWENS, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating his parental rights pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j).¹ We affirm.

Respondent first argues that the trial court erred in finding that the statutory grounds for termination were established by clear and convincing evidence. We disagree.

We review a trial court's decision that a ground for termination has been proven by clear and convincing evidence for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Riffe*, 147 Mich App 658, 671; 382 NW2d 842 (1985).

To terminate parental rights, the petitioner must prove a statutory ground for termination by clear and convincing evidence. *In re Trejo*, 462 Mich at 351; MCL 712A.19b(3). The petitioner is required to prove only one statutory ground for termination. *In re Powers*, 244 Mich App 111, 117; 624 NW2d 472 (2000). If the trial court erroneously relies on a statutory ground for termination, the error is harmless if at least one other statutory ground was proven by clear and convincing evidence. *Id.* at 118.

In this case, the trial court found that termination of respondent's parental rights was warranted under MCL 712A.19b(3)(c)(i), (3)(c)(ii), (3)(g), and (3)(j):

¹ The trial court also terminated the parental rights of the child's mother. That decision is not at issue in this appeal.

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The 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 either of the following:

(i) The 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.

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The 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.

* * *

(j) There 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.

The record supports the trial court's finding with respect to MCL 712A.19b(3)(c)(i). The parents' substance abuse problems formed the basis of the adjudication. Between the adjudication and the termination hearings, respondent tested positive for alcohol immediately before at least two scheduled visitations. A clinical psychologist testified that respondent refused to accept the reality of his problem with alcohol, which indicated an elevated risk of relapse. In addition, respondent had a poor history of attendance at mandatory counseling sessions. He also missed over 100 phone calls for random drug screens. Respondent was unable to substantially remedy his alcohol problem over the course of 14 months. This evidence indicates that respondent's substance abuse problem continued to exist and was unlikely to be corrected within the near future. The failure to control an alcohol addiction despite treatment is grounds for terminating parental rights under MCL 712A.19b(3)(c)(i). See *In re Conley*, 216 Mich App 41, 43-44; 549 NW2d 353 (1996). Furthermore, the child was four years old at the time of the termination hearing and needed a stable household environment as he approached school age. Accordingly, the trial court did not clearly err in finding that there was no reasonable likelihood

that respondent would be able to rectify his alcohol abuse within a reasonable time given the child's age.

Moreover, even if respondent had regularly attended counseling sessions, reversal would not be warranted. "[I]t is not enough to merely go through the motions; a parent must benefit from the services offered so that he or she can improve parenting skills to the point where the children would no longer be at risk in the parent's custody." *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005), superseded by statute on other grounds in MCL 712A.19b(5). Here, testimony indicated that respondent was unable to recognize his problem and accept the assistance of counselors, social workers, and therapists. He did not benefit from the services offered. For this additional reason, the trial court did not clearly err in finding that MCL 712A.19b(3)(c)(i) was proven by clear and convincing evidence.

The record also supports the trial court's finding with respect to MCL 712A.19b(3)(c)(ii). Testimony at the termination hearing indicated that respondent moved in with a new, unidentified girlfriend during the proceedings. Respondent refused to identify his new girlfriend, claiming that she was irrelevant to the case. However, as the trial court correctly observed, respondent's household status "need[ed] to be addressed" before the trial court could be satisfied that the child would not be at risk if returned to respondent's care. Due to respondent's lack of cooperation, petitioner was unable to investigate his girlfriend's background. Testimony also suggested that respondent had continuing issues with emotional stability and interpersonal relationships despite months of available counseling services. The trial court did not clearly err in concluding that clear and convincing evidence established that there was no reasonable likelihood that respondent would be able to provide a stable and safe household for the child within a reasonable time given the child's age.

The record also supports the trial court's finding with respect to MCL 712A.19b(3)(g). Respondent failed to make substantial progress during the 14-month proceedings. He did not consistently attend mandatory counseling and therapy sessions, in spite of the fact that he was offered accommodations such as gas cards to assist with travel. Witnesses testified that respondent had not yet addressed his substance abuse problem or inability to empathize with his child. Respondent did not demonstrate an ability to control his own personal issues for the benefit of his child. Respondent's failure to control his alcohol problem notwithstanding treatment supports grounds for termination under MCL 712A.19b(3)(g). See *In re Conley*, 216 Mich App at 43-44. The trial court did not clearly err in finding that there was no reasonable expectation that respondent-father would be able to provide proper care and custody for the child within a reasonable time given the child's age.

Finally, the record supports the trial court's finding with respect to MCL 712A.19b(3)(j). Respondent refused to attend counseling sessions as required by his service plan. A parent's failure to comply with a service plan is evidence that the child would be at risk of harm if he or she is returned to the parent's home. See *In re Rood*, 483 Mich 73, 100; 763 NW2d 587 (2009).

In addition, respondent refused to provide the name of his cohabiting girlfriend to social workers despite the fact that her name was necessary for a background check. Without this background check, petitioner was unable to return the child to respondent's care and custody. Additionally, respondent's documented inability to control his alcohol problem also suggests a

risk of harm to the child. MCL 712A.19b(3)(j) only requires a “reasonable likelihood” of harm, not an absolute certainty. The trial court did not clearly err in concluding that there was a reasonable likelihood that the child would be harmed if returned to respondent’s home.

Respondent argues that the trial court erred in determining that termination of his parental rights was in the child’s best interests. We disagree.

MCL 712A.19b(5) provides:

If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child’s best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.

Under this statute, “termination of parental rights may occur only if the court finds a statutory ground for termination *and* finds that the termination of parental rights is in the child’s best interests.” *In re Hansen*, 285 Mich App 158, 164; 774 NW2d 698 (2009), vacated on other grounds 486 Mich 1037 (2010) (emphasis in original).

We conclude that the trial court did not clearly err in determining that termination of respondent’s parental rights was in the child’s best interests. Testimony indicated that the child was successfully functioning in his new foster home. In contrast, respondent’s household situation was unstable and potentially violent. A trial court may compare households and consider the child’s success in the new foster home when considering the child’s best interest. *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004). Moreover, given respondent’s unwillingness to participate in counseling and his high potential for relapse, the child would again be at risk of neglect if returned to respondent’s household. The trial court did not clearly err in determining that termination was in the child’s best interests.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ David H. Sawyer
/s/ Donald S. Owens