

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
October 16, 2012

In the Matter of K. A. HUFFMAN, Minor.

No. 310132
Branch Circuit Court
Family Division
LC No. 10-004334-NA

Before: SAAD, P.J., and WHITBECK and M. J. KELLY, JJ.

PER CURIAM.

Respondent father appeals by right the trial court's order terminating his parental rights to the minor child under MCL 712A.19b(3)(c)(i), (g), and (j). Because we conclude that there were no errors warranting relief, we affirm.

The trial court did not clearly err in finding that the statutory grounds for termination had been established by clear and convincing evidence. *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

The principal conditions that led to adjudication were that respondent had the child in a car with methamphetamine components, respondent's incarceration, and his criminality. Respondent was incarcerated throughout the approximately two years that the case proceeded. The child was about six months old when the trial court first took jurisdiction. While in prison, respondent received some services, including drug abuse treatment, narcotics anonymous meetings, and education for his GED. At an initial termination hearing in November 2011, the trial court found the statutory grounds for termination had been met, but also found that termination was not in the child's best interests. For that reason, it did not terminate respondent's parental rights. Thereafter, respondent knowingly broke a prison rule and his anticipated release date was changed from February to August 2012. The trial court terminated respondent's parental rights in April 2012.

Even if respondent were a model prisoner, he would still have to complete a treatment plan and demonstrate progress after his August release. Given the child's age, it would not be feasible for respondent to complete his plan within a reasonable time. Further, respondent's inability to follow the prison rules strongly suggested that he would continue to have issues with criminality even after his release. Thus, there was clear and convincing evidence that the conditions that led to adjudication remained and there was no reasonable likelihood that they would be rectified within a reasonable time considering the child's age. MCL 712A.19b(3)(c)(i).

Respondent also did not see, support, or arrange for support for the child during the two years that this case proceeded. Although the child was ultimately placed with the paternal grandmother, there was no evidence that respondent requested or facilitated the placement. The trial court did not clearly err in finding that respondent had not provided proper care and custody for the child and that there was no reasonable expectation that respondent would do so in a reasonable time considering the child's age. MCL 712A.19b(3)(g).

Finally, there was evidence that the child needed permanence and stability and that respondent was unwilling or unable to provide that stability. The record also showed that the child did not recognize respondent and would be traumatized if reunited with respondent. Accordingly, the trial court did not clearly err when it determined that there was a reasonable expectation that the child would be harmed if he was returned to respondent. MCL 712A.19b(3)(j).

Respondent makes cursory arguments that incarceration is not a sufficient basis to terminate parental rights and that the services offered to him were insufficient. Our Supreme Court has explained that “[t]he mere present inability to personally care for one’s children as a result of incarceration does not constitute grounds for termination.” *In re Mason*, 486 Mich 142, 160; 782 NW2d 747 (2010). Further, “[t]he state is not relieved of its duties to engage an absent parent merely because that parent is incarcerated.” *Id.* at 152. In this case, respondent was offered services. He was provided a case service plan, met with the caseworker, and participated in services offered in prison. Further, respondent’s rights were not terminated because he was incarcerated, but because he continued to have issues with criminality and he did not provide proper care and custody for the child at any time during the lengthy proceeding. There was also no indication he would be able to within a reasonable time.

Respondent also argues that the focus of the proceedings was on the child’s mother. However, the record supports that respondent was offered services, participated in services, and was present and testified at hearings. His parental rights were terminated on grounds independent from the issues involving the child’s mother and his argument in this regard does not have merit.

Further, the evidence established that termination of respondent’s parental rights was in the minor’s best interests. *In re Trejo Minors*, 462 Mich at 356-357; MCL 712A.19b(5). The evidence supported that the child needed permanency and stability and that reunifying with respondent would be traumatic. This was a lengthy proceeding and it was unclear how long the child would have to continue to wait for respondent to be ready to parent. Additionally, the child was doing well in his placement.

Respondent also relies on the argument that placement of the child with relatives weighs against termination. Our Supreme Court explained in *In re Mason*, 486 Mich at 164, that “a child’s placement with relatives weighs against termination” and relative placement “was an explicit factor to consider in determining whether termination was in the children’s best interests” Recently, this Court held that the fact that the child is living with relatives at the time of termination must be considered in determining the child’s best interests. *In re Olive/Metts*, ___ Mich App ___, slip op at 4; ___ NW2d ___ (Docket No. 306279, issued June 5, 2012). In this case, the trial court considered the relative placement before finding that it was in the child’s best

interests to terminate respondent's parental rights. Consequently, the trial court did not err by failing to consider this factor. *Id.*

There were no errors warranting relief.

Affirmed.

/s/ Henry William Saad
/s/ William C. Whitbeck
/s/ Michael J. Kelly