

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of A R FAY, Minor.

UNPUBLISHED
November 26, 2013

No. 314262
Iosco Circuit Court
Family Division
LC No. 11-006468-NA

Before: FORT HOOD, P.J., and SAAD and BORRELLO, JJ.

PER CURIAM.

Respondent claims an appeal from the order terminating his parental rights to his daughter (DOB 8/13/10) pursuant to MCL 712A.19b(3)(a)(ii) (child has been deserted for 91 or more days and parent has not sought custody of the child during that time), (c)(ii) (parent was a respondent in a proceeding brought under this chapter, and after 182 days has failed to rectify other conditions that caused the child to come under the court’s jurisdiction and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age), (g) (parent, without regard to intent, failed to provide proper care and custody and there is no reasonable expectation that the parent will be able to do so within a reasonable time considering the child’s age), and (j) (there is a reasonable likelihood, based on the conduct or capacity of the parent, that the child would be harmed if returned to the parent’s home).¹ For the reasons set forth in this opinion, we affirm.

We review for clear error the trial court’s decision to terminate parental rights. *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009); see also MCR 3.977(K). 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 Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010), quoting *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). We must give regard “to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.” *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011).

¹ Termination of the mother’s parental rights was also entered by the trial court but she is not a party to this appeal.

We review de novo the interpretation of statutes and court rules. *In re Mason*, 486 Mich at 152.

“[T]ermination of parental rights is appropriate when one or more statutory grounds for termination under MCL 712A.19b(3) is proven by clear and convincing evidence and termination is in the best interests of the child.” *In re HRC*, 286 Mich App 444, 452-453; 781 NW2d 105 (2009); see also MCL 712A.19b(5). “Only one statutory ground need be established by clear and convincing evidence to terminate a respondent’s parental rights, even if the court erroneously found sufficient evidence under other statutory grounds.” *In re Ellis*, 294 Mich App at 32.

Defendant argues that the trial court clearly erred by terminating his parental rights and maintains that the trial court based its decision on his use of marijuana under the Michigan Medical Marijuana Act (MMMA), MCL 333.26424. Defendant notes that the MMMA provides that “[a] person shall not be denied custody of visitation of a minor for acting in accordance with this act, unless the person’s behavior is such that it creates an unreasonable danger to the minor that can be clearly articulated and substantiated[,]” MCL 333.26424(c), and contends that the trial court made no such finding.

Assuming for purposes of this appeal that the trial court clearly erred in terminating respondent’s parental rights under MCL 712A.19b(3)(c)(ii), (g), and (j) based solely on respondent’s use of marijuana under the MMMA, we do not consider any of the grounds cited by the trial court for termination of his parental rights based on respondent’s marijuana usage. Nevertheless, we must conclude that the trial court properly found that termination was warranted under MCL 712A.19b(3)(a)(ii). Termination under MCL 712A.19b(3)(a)(ii) is proper where “[t]he child’s parent has deserted the child for 91 or more days and has not sought custody of the child during that period.” Respondent did not attend the preliminary hearing on August 2, 2011, or the dispositional review hearing on September 14, 2011. Kelli King was the DHS worker assigned to the case from September 14, 2011, until January 6, 2012. King testified that respondent did not attempt to contact her and did not return approximately three phone calls she made to him over a period of three months. Another review hearing was held on January 23, 2012, and again respondent did not appear. The first appearance respondent made in this case was on February 27, 2012, 209 days after the minor child was removed from her mother’s custody. The record reflects that while respondent had applied for a medical marijuana card, he did not possess a valid card as of April 11, 2012. As of the April 2012 hearing, respondent had not seen or sought custody of the minor child for more than nine months of her 20 months of life, and did not have a claim of protection under the MMMA at this time. Therefore, the trial court properly found the grounds for desertion under MCL 712A.19b(3)(a)(ii).

We therefore conclude that termination was proper under MCL 712A.19b(3)(a)(ii) as only one ground for termination need be established by clear and convincing evidence. *In re Ellis*, 294 Mich App at 32. Therefore, even assuming arguendo that the trial court erroneously found that the provisions of the MMMA had no effect on the instant proceedings, termination of respondent’s parental rights under MCL 712A.19b(3)(a)(ii) was supported by the requisite evidence. We also concur with the findings of the trial court that termination of respondent’s parental rights was in the child’s best interests.

Affirmed.

/s/ Karen M. Fort Hood

/s/ Henry William Saad

/s/ Stephen L. Borrello