

STATE OF MICHIGAN  
COURT OF APPEALS

---

*In re* VF WALLER, Minor.

UNPUBLISHED  
July 21, 2015

No. 324985  
Oakland Circuit Court  
Family Division  
LC No. 12-794731-NA

---

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

PER CURIAM.

Respondent-father appeals as of right the order terminating his parental rights to the minor child, VW, pursuant to MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist). We affirm.

In this case, VW, born August 31, 2010, was first removed from his mother's custody in March 13, 2012. At that time, and throughout the proceedings, respondent was incarcerated. Respondent's earliest release date is in 2024. The permanency plan in the case was originally reunification with mother, and VW was even placed back in his mother's care briefly in 2013, but removed again only months later. In January 2014, petitioner filed a petition to terminate both mother's and respondent's parental rights. After a hearing, the trial court terminated mother's and respondent's parental rights. Respondent now appeals.

Respondent first argues that the trial court erred when it found by clear and convincing evidence that termination of his parental rights was proper pursuant to MCL 712A.19b(3)(c)(i). We disagree.

"To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground under MCL 712A.19b(3) has been established." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). "We review for clear error a trial court's finding of whether a statutory ground for termination has been proven by clear and convincing evidence." *Id.*; see also MCR 3.977(K). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re Laster*, 303 Mich App 485, 491; 845 NW2d 540 (2013) (citation omitted). MCL 712A.19b(3)(c)(i) provides that a trial court may terminate a respondent's parental rights if at least 182 days have passed since the court issued the initial disposition order and the court finds by clear and convincing evidence 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.”

The trial court did not commit clear error when it determined that petitioner proved by clear and convincing evidence the statutory ground in MCL 712A.19b(3)(c)(i). The condition leading to adjudication in this case was the fact that respondent failed to provide proper care and custody for VW. Respondent was unable to provide proper care and custody for VW himself because he was incarcerated. However, an incarcerated parent may achieve proper care and custody of a child through placement with a relative. See *In re Mason*, 486 Mich 142, 161 n 11; 782 NW2d 747 (2010); *In re Sanders*, 495 Mich 394, 420-421; 852 NW2d 524 (2014). Here, defendant initially left VW in the mother's care, even though defendant knew VW's mother had issues with substance abuse. This situation proved to be inappropriate because mother's rights were ultimately terminated. During the time in the proceedings where reunification with VW's mother was the goal, respondent failed to provide adequate in-state relative placement for VW. Janeek Noble, a foster-care worker for Orchards Children's Services, explained that VW would not have been released to an out-of-state relative when the permanency plan was reunification. See MCL 712A.18f(3)(e); MCR 3.965(C)(7). Later in the proceedings, once termination was established as the permanency plan, petitioner considered respondent's suggestions for out-of-state relative placement. However, placement with the out-of-state relatives could not have occurred within a reasonable time considering the child's young age because assessments for out-of-state placement could not be completed by the time of the hearing. See MCL 712A.19b(3)(c)(i). Moreover, while one candidate, respondent's sister Regina Munn, was still being assessed at the time of the termination hearing, the court determined that given the minor child's age and need for permanency, and the fact that the child would be 13 at the time of respondent's release, termination of his parental rights was appropriate. Based on the record, the trial court did not err in determining that defendant failed to provide proper care and custody for VW.

In addition, during the proceedings, respondent was provided, and failed to comply with, a parent agency agreement. A parent's failure to participate in and benefit from a service plan is evidence that the parent will not be able to provide a child with proper care and custody. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). Specifically, the agreement required that respondent participate in a psychological evaluation, substance abuse services, and parenting classes, as well as obtain housing and a legal source of income upon release from prison. He was also required to maintain monthly contact with Noble. Respondent did not comply with his parent agency agreement. He did not stay in monthly contact with Nobel, only writing to her every couple of months. Respondent was unable to participate in parenting classes. Respondent participated in a weekly outpatient substance abuse program for seven weeks while he was incarcerated in Tennessee, but he did not complete the program because he transferred prisons. Respondent attempted to complete a substance abuse program at the other prison facilities, but he was put on a waiting list. Respondent testified that he began a substance abuse class three weeks before the hearing, but he did not complete the program before the hearing. In addition, respondent could not participate in a psychological evaluation within a reasonable time because he could not receive a psychological evaluation until one year before his release date. We also note that respondent did not participate in many court hearings voluntarily.

Based on respondent's failure to provide proper care and custody for VW during the proceedings as well as his failure to comply with the parent agency agreement, we conclude that the trial court did not clearly err in terminating respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i). The evidence showed that more than 182 days had passed since the court issued the initial dispositional order, and that the conditions that led to adjudication continued to exist and there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering VW's age.

Respondent asserts that petitioner failed to make reasonable efforts to rectify the conditions in the petition. We disagree. "In general, when a child is removed from the parents' custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). "The adequacy of the petitioner's efforts to provide services may bear on whether there is sufficient evidence to terminate a parent's rights." *In re Rood*, 483 Mich 73, 89; 763 NW2d 587 (2009). Here, Noble testified that she discussed services with respondent while he was incarcerated, and respondent told her that there were no services available to him. While Noble did not contact a prison social worker, Noble explained that her agency assisted respondent by maintaining contact with him and encouraging him to obtain services. She wrote respondent a letter on May 20, 2013, in which she acknowledged that services may be limited. In a July 2, 2013 letter, Noble informed respondent of the services in his parent agency agreement and stated, "[P]lease let me know what I can do to get you signed up for those services, as you were ordered to participate." She explained at the hearing that she could not make referrals for respondent since he was incarcerated. Thus, there was evidence that Noble made reasonable efforts to rectify the conditions stated in the petition. Further, as referenced above, respondent took advantage of the limited services offered to him at his prison, but the prison did not provide for the services necessitated by the agreement, which, as Nobel explained, was outside of petitioners' control.

Respondent further relies on *In re Mason*, 486 Mich 142, to support his position. In *Mason*, the Michigan Supreme Court held that the trial court erred when it terminated the respondent's parental rights solely because the respondent was incarcerated. *Id.* at 146. Here, we do not agree that the trial court terminated respondent's parental rights based solely on respondent's incarceration. Instead, respondent's parental rights were terminated because he failed to provide proper care and custody of VW and there was no indication that he would be able to within a reasonable time. See MCL 712A.19b(3)(c)(i). In addition, the current case can be further distinguished from *Mason*. In *Mason*, the respondent's release was imminent at the time of the termination proceedings, whereas in this case respondent will not be released from prison until 2024. See *Mason*, 486 Mich at 159. Unlike the trial court in *Mason*, the court here facilitated respondent's participation in the hearings by telephone and allowed respondent to speak at the hearings. See *id.* at 154-155. While the trial court in this case prohibited respondent from talking to VW by telephone, it soundly reasoned that VW was too young for the telephone contact and that the calls may confuse the child. See *id.* at 148. Furthermore, unlike the respondent in *Mason*, respondent was provided with a parent agency agreement, which he signed and returned. See *id.* at 156-157. Finally, VW was not placed with relatives, whereas the respondent's child in *Mason* was placed with relatives. See *id.* at 163-164. Given the numerous distinctions between *Mason* and the current case, we do not agree with defendant that *Mason* is applicable here.

Respondent next argues that termination of his parental rights was not in VW's best interests. We disagree.

Once a statutory ground for termination is established, the trial court shall order termination of parental rights if it finds by a preponderance of the evidence that termination is in the child's best interests. MCL 712A.19b(5); *In re Moss*, 301 Mich App at 90. The trial court's best-interest decision is also reviewed for clear error. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The court should weigh factors including " 'the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home.' " *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014) (citation omitted). "The trial court may also consider a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption." *Id.* at 714.

The trial court did not err in determining that termination of respondent's parental rights was in VW's best interests. The facts presented at the hearing indicated that respondent was unable to provide VW with permanency and stability. Respondent was in prison at the time of the hearing, and VW will be a teenager when respondent is released from prison. Further, respondent would need to obtain housing and a source of income, as well as participate in parenting classes and substance abuse classes, before he could take responsibility for VW. Additionally, respondent failed to comply with his parent agency agreement. See *id.* at 713. Based on this evidence, respondent was unable to provide permanency and stability for VW.

Compellingly, Noble testified that she did not believe that there was not an established bond between VW and respondent. While respondent sent over 100 letters to VW along with gifts during the proceedings, VW had not seen respondent since VW was one year old. VW did not ask for respondent. The court prohibited respondent from contacting VW by telephone during the proceedings, but explained that VW was too young for the telephone contact, would likely be confused by the phone calls, and had already gone through too much in the case. Thus, there was evidence presented at the hearing that respondent and VW did not have a bond. See *id.* at 713-714.

In contrast, there was evidence that VW was bonded with his foster family and that there was the potential that the foster family would adopt VW. Noble testified that VW has been in the same foster home for approximately nine months. The foster family included two other young children who are the biological children of the foster parents. One of the children in the foster family is male and younger than VW; VW and the child act like brothers. Respondent acknowledged at the hearing that it was good for VW to be with another boy his age. Noble testified that VW is more social and friendly than he had been before the placement. According to Noble, the foster home could provide permanency and finality. Noble believed that VW had bonded with his foster family and that living with another boy has benefitted VW. In addition, Noble testified that the foster family had indicated that they had a desire to adopt VW, which further indicates that termination was in VW's best interests. See *id.* at 713-714.

Respondent asserts that he proposed relative placements for VW. However, there was testimony presented at the hearing that termination was in VW's best interests regardless of

whether there was an adequate relative placement for VW. The investigation into whether Munn would be an adequate relative placement for VW was ongoing at the time of the hearing. However, Noble explained that the referral was for Munn to adopt VW as opposed to a guardianship. Noble testified that it might be appropriate for Munn to adopt VW, but that respondent's parental rights would have to be terminated for that to occur. Noble did not believe that waiting until there was a recommendation with regard to Munn was in VW's best interests because he needs permanency. Furthermore, Munn testified that she had not seen VW since December 2011. Therefore, we conclude that the trial court did not err in determining that termination was in VW's best interests because there was evidence that termination of respondent's parental rights would provide VW with permanency, stability, and finality. See *id.* at 713.

Affirmed.

/s/ Karen M. Fort Hood  
/s/ Henry William Saad  
/s/ Michael J. Riordan