

STATE OF MICHIGAN
COURT OF APPEALS

In re W. N. JOHNSON, Minor.

UNPUBLISHED
March 15, 2016

No. 328123
Wayne Circuit Court
Family Division
LC No. 10-496636-NA

Before: RONAYNE KRAUSE, P.J., and JANSEN and STEPHENS, JJ.

PER CURIAM.

Respondent-father, K. Johnson (“respondent”), appeals as of right the trial court’s order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

I. BACKGROUND

Petitioner Department of Health and Human Services (“petitioner”) commenced investigation of the child’s welfare in February 2013 after it received reports of domestic violence between respondent and the child’s mother.¹ The child was four months old at the time. When the caseworker arrived at respondent’s home, she found that the home was lacking a refrigerator, stove, and bed. The court agreed with petitioner that the home’s state was unsuitable for the child and ordered the child’s removal from the home and placement into foster care on February 6, 2013. In foster care, the child was diagnosed with Kawasaki disease, dermatographism, and chromosomal deficiencies. These illnesses caused the child’s immune system to attack itself, and she was hospitalized for a lengthy period. Consequently, the child treated with multiple doctors, had monthly medical appointments, and was required to be tested annually to monitor her condition. The child also had cognitive and developmental delays that impacted her ability to communicate. At only 2½ years old, the child attended school for occupational and physical therapy.

¹ In an earlier decision, the trial court also terminated the parental rights of the child’s mother, and this Court affirmed that decision on appeal. *In re W N Johnson Minor (After Remand)*, unpublished opinion per curiam of the Court of Appeals, issued March 5, 2015 (Docket No. 320222).

Respondent had medical problems of his own. He was in need of a kidney transplant and attended dialysis three times a week. Respondent also had a history of abusing and selling illegal substances. Respondent's parent agency treatment plan included substance abuse therapy, drug screens and obtaining and maintaining suitable housing. The court repeatedly and purposely adjourned hearings to give respondent more time to comply with his treatment plan. The court terminated respondent's parental rights over two years after assuming jurisdiction. At the time of the termination hearing, the court found that while respondent participated in most services offered by petitioner, he failed to acknowledge the degree of care required to take care of his child, was not prepared to have the child in his home, was still abusing substances, and was without a viable plan to take care of the child in light of his health issues.

II. DISCUSSION

Respondent argues that the trial court clearly erred in concluding that the statutory grounds for termination were established. 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).

The trial court found that termination of respondent's parental rights was appropriate under the following provisions of MCL 712A.19b(3):

(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 . . . 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.

* * *

(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.

Only one statutory ground need be established for termination. *In re Laster*, 303 Mich App at 495.

Respondent contends that his eventual compliance with aspects of his treatment plan militates against termination. We disagree. Satisfaction of the terms of an agency agreement or case service plan does not necessarily warrant return of the child. *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005). Rather, “benefitting from the services [is] an inherent and necessary part of the compliance with the case service plan.” *Id.* at 677. “[T]he court shall view the failure of the parent to substantially comply with the terms and conditions of the case service plan . . . as evidence that return of the child to his or her parent would cause a substantial risk of harm to the child’s life, physical health, or mental well-being.” MCL 712A.19a(5). Respondent’s cooperation with the service plan is insufficient when it does not result in insight into the needs of the children and the services do not manifest into beneficial parenting skills. See *In re T K*, 306 Mich App 698, 711; 859 NW2d 208 (2014).

We acknowledge respondent’s participation in some of the services offered. Respondent did not have transportation and had to attend dialysis three days a week for four hours a session. This is not a case where respondent did not make considerable efforts or one where he lacked sincere affection for his child. To his credit, he would leave dialysis and use bus service to attend visitation with his child. He also completed parenting classes. Additionally, he did obtain housing immediately prior to the termination hearing. Unfortunately, he had significant cognitive deficits and health problems and no significant support system that could help him compensate for the gap between his ability to care for his child and her needs. The child’s medical conditions caused her to suffer from cognitive and developmental delays. Her medical regimen was complicated. According to the foster parent, the child was very active, put everything in her mouth, climbed and fell, and had to be monitored “24/7.” It was necessary for a caregiver not only to constantly supervise the toddler but also to carry an epi-pen in the event of a sudden onset of the child’s conditions. In addition to attending doctor appointments, the child attended occupational and physical therapy at school to address her cognitive delays. Despite the fact that respondent was advised of the child’s conditions, he minimized them to the workers and frequently insisted that the child was normal. Respondent was not able to secure family or other care for the child while he attended his needed dialysis or to assume care during his frequent hospitalizations.

The child’s caseworker and infant mental health therapist found that respondent did not readily accept instruction, and would instead become defensive and angry. Respondent suffered from his own cognitive limitations, and it took time for him to incorporate advice into the visitation.

In light of the evidence, the trial court did not clearly err in finding that the conditions that led to adjudication continued to exist and, considering that the child had been in care for more than two years, were not reasonably likely to be rectified within a reasonable time considering the child’s age. *In re Moss*, 301 Mich App at 80. The trial court also did not clearly err in finding that there was no reasonable expectation that respondent would be able to provide proper care and custody within a reasonable time, and that the child was reasonably likely to be harmed if returned to respondent’s home.

Respondent next argues that termination of his parental rights was not in the child's best interests because of the bond between father and child. "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." MCL 712A.19b(5). "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App at 90. "We review a trial court's decision regarding a child's best interests for clear error." *In re Laster*, 303 Mich App at 496.

The trial court acknowledged the bond between respondent and the child, but found that the bond was outweighed by the significant risk of further neglect of the child. Despite two years of services, there was no indication that respondent was able to care for a child with cognitive and developmental delays, as well as special medical needs, when the evidence showed that respondent was unwilling or unable to recognize and properly address them.

Affirmed.

/s/ Amy Ronayne Krause
/s/ Kathleen Jansen
/s/ Cynthia Diane Stephens