STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
November 27, 2018

In re J. M. EDWARDS, Minor.

No. 342104
Ingham Circuit Court
Family Division
LC No. 17-001341-NA

Before: RIORDAN, P.J., and RONAYNE KRAUSE and SWARTZLE, JJ.

PER CURIAM.

Respondent-father appeals as of right the January 3, 2018 order terminating his parental rights to the minor child, JME, under MCL 712A.19b(3)(a)(*ii*) (desertion for 91 or more days and parent has not sought custody during that period) and (c)(*i*) (conditions leading to adjudication continue to exist).[1] We affirm.

I. PERTINENT FACTS

In September 2017, petitioner, Vernita Payne, the minor's maternal great-grandmother and guardian, filed a petition requesting termination of respondent's parental rights. Petitioner indicated that she obtained guardianship of the minor on December 20, 2015, and the child has resided with her ever since. Petitioner expressed that since June 2017, she had received support from respondent only twice and respondent had visited the minor on only three sporadic occasions. Additionally, petitioner informed the trial court that she was seeking termination of both parents' parental rights because she intended to adopt the minor.

Although respondent was personally served by a court officer throughout these proceedings, he failed to attend all of the hearings, including the termination hearing. After some court involvement in June that attempted to help increase respondent's presence in JME's life, respondent "stepped up" and was allowed regular visits with JME, of which he only appeared three times until finally ceasing all visits. Ultimately, the trial court terminated

[1] The same order also terminated respondent-mother's parental rights to JME and to another child, TE; however, she is not a party to this appeal. Additionally, the parental rights of TE's father were terminated by the same order; however, he is also not a party to this appeal.

respondent's parental rights, concluding that respondent was both unwilling and unfit to parent the child, and that petitioner could provide JME with the stability and permanence that he needs.

On appeal, respondent argues that the trial court erred by finding grounds for termination of his parental rights and by failing to explicitly find that termination of his parental rights was in JME's best interests. For the reasons explained below, we affirm.

II. STATUTORY GROUNDS

"In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met." *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). The trial court's finding that a ground for termination has been established is reviewed under the clearly erroneous standard. MCR 3.977(K); *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009) (opinion by CORRIGAN, J.). "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 BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004). "Appellate courts are obliged to defer to a trial court's factual findings at termination proceedings if those findings do not constitute clear error." *Rood*, 483 Mich at 90.

The trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(a)(*ii*) and (c)(*i*), which provide:

> 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:
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> * * *
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> (a) The child has been deserted under either of the following circumstances:
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> * * *
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> (*ii*) The child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period.
>
> * * *
>
> (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.

A. 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 argues that the trial court erred by determining that he deserted JME because he had since visited the child three times since June 2017 and it was unclear from the record when he last saw JME. However, limited contact with a child is insufficient to rebut a finding of desertion. See *In re Laster*, 303 Mich App 485, 492; 845 NW2d 540 (2013); *In re Hall*, 188 Mich App 217, 223-224; 469 NW2d 56 (1991). Petitioner's testimony indicated that respondent exercised only three visits before once again ceasing contact. Furthermore, according to petitioner's testimony at the preliminary hearing, respondent had no contact with JME after his birthday party on September 12, 2017—a period of more than 91 days from the date of the termination hearing. Respondent does not argue that he has seen the child since that day; rather, he argues only that "it is unclear when he last saw the child." Nonetheless, it is apparent from the record that respondent failed to seek custody of JME during that period. Furthermore, respondent's absence from the termination hearings was consistent with his continued and long-standing disinterest in parenting his child. Based on this evidence, it was reasonable for the trial court to conclude that respondent deserted JME for 91 days or more and failed to seek custody of him during that period. Accordingly, the trial court did not err by ordering termination of respondent's parental rights under MCL 712A.19b(3)(a)(*ii*).

B. MCL 712A.19b(3)(c)(*i*)

Termination under MCL 712A.19b(3)(c)(*i*) is proper "where 182 or more days have elapsed since the issuance of an initial dispositional order" and clear and convincing evidence establishes that "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."

Respondent correctly argues that the trial court erred by finding that MCL 712A.19b(3)(c)(*i*) applied, because 182 had not elapsed since the initial dispositional order. In this case, the trial court issued its initial dispositional order and the order terminating respondent's parental rights on the same day. Accordingly, the trial court clearly erred by finding that MCL 712A.19b(3)(c)(*i*) applied in this case. Nonetheless, the trial court's error was harmless because only one statutory ground is required for termination. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009).

III. BEST INTERESTS

Respondent argues that the trial court erred by failing to explicitly address whether termination was in JME's best interests. We disagree.

We review the trial court's determination of best interests for clear error. *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "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." *BZ*, 264 Mich App at 296-297. "Appellate courts are obliged to defer to a trial court's factual

findings at termination proceedings if those findings do not constitute clear error." *Rood*, 483 Mich at 90.

"Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *Olive/Metts*, 297 Mich App at 40. When considering best interests, the focus is on the child, not the parent. *In re Moss*, 301 Mich App 76, 87; 836 NW2d 182 (2013). "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *Id*. at 90.

"The trial court should weigh all the evidence available to determine the child's best interests." *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). The trial court may consider such factors as "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 . . . " *Olive/Metts*, 297 Mich App at 41-42 (citations omitted). Other factors that the trial court may consider include the parent's visitation history with the child, the child's well-being while in care, and the possibility of adoption. *White*, 303 Mich App at 714. The trial court can also consider how long the child lived with relatives, as well as the likelihood that "the child could be returned to [the] parent's home within the foreseeable future, if at all." *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012).

First, it is important to note that respondent did not even appear at any hearings on this matter, including the termination hearing. Respondent's failure to avail himself of these court proceedings evidenced disinterest and disregard for the child's well-being. Furthermore, petitioner confirmed that JME had no bond with respondent. JME had resided with her for more than two years and had minimal contact with respondent, only seeing him on three occasions since December 2015. In addition, the prospects for adoption were strong, because petitioner has voiced intent to adopt JME on numerous occasions. This evidence supported termination of respondent's parental rights.

In its oral opinion regarding termination of respondent's parental rights, the trial court included a brief discussion of the child's best interests, noting that (1) respondent was not stepping forward to be a parent, (2) respondent's absence was by choice, (3) JME had a need for stability and a safe home, (4) petitioner provided that safe, stable home, and (5) petitioner provided JME with the love and affection that he needed. Each of these factors was properly considered by the trial court and weighed in favor of termination. Thus, the trial court did not clearly err when finding that termination was in the child's best interests.

Affirmed.

/s/ Michael J. Riordan
/s/ Amy Ronayne Krause
/s/ Brock A. Swartzle