

STATE OF MICHIGAN
COURT OF APPEALS

In re A. M. BERKLEY, Minor.

UNPUBLISHED
November 29, 2018

No. 343174
Oakland Circuit Court
Family Division
LC No. 2016-841170-NA

Before: O'BRIEN, P.J., and TUKEL and LETICA, JJ.

PER CURIAM.

Respondent-father 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) (conditions at adjudication continued to exist) and (g) (failure to provide proper care and custody). We affirm.

Respondent-father argues that the trial court erred by finding that clear and convincing evidence supported the statutory grounds for termination of his parental rights. We disagree. We review a trial court's determination regarding a statutory ground for termination for clear error. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). "A finding of fact is clearly erroneous where the reviewing court is left with a definite and firm conviction that a mistake has been made." *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000). "When reviewing the trial court's findings of fact, this Court affords deference to the special opportunity of the trial court to judge the credibility of the witnesses." *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005).

The trial court found that termination of respondent-father's parental rights was justified under MCL 712A.19b(3)(c)(i) and (g), which permit termination under the following circumstances:

(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.

* * *

(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.^[1]

The trial court did not clearly err by finding that clear and convincing evidence supported termination of respondent-father's parental rights pursuant to MCL 712A.19b(3)(c)(i). The child had been in care for over 19 months. Although respondent-father had complied with portions of his treatment plan, the primary reason for the child's adjudication was respondent-father's substance abuse, which remained a problem. Before the court took temporary custody, the child was immersed in the drug culture. The family consistently lived in homes with ongoing substance abuse. Indeed, before the age of three years, the child had been present on two occasions when people overdosed and died from drugs, including his mother. When the child's mother overdosed and died, the child remained alone in a hotel room with his mother's dead body for a day or two before they were discovered. Meanwhile, respondent-father was incarcerated for possession of cocaine and could not take custody of the child.

Around the time of the adjudication, respondent-father entered a 90-day inpatient drug rehabilitation program. But when he was released at the end of July 2016, he only remained drug-free for two months before he tested positive for marijuana three times in September 2016. Moreover, he missed 5 out of 17 drug screens before the hearing in November 2016. For the next 11 months, the child remained in the temporary custody of the court and respondent-father continued to miss drug screens and test positive for marijuana. In addition, because of respondent-father's persistent drug abuse, his probation officer cited him for violating his criminal probation, exposing him to the possibility of jail or prison time, which would make him unavailable to care for the child, just as he had been when the child came into care. In light of respondent-father's persistent use of illegal drugs, his failure to attend required drug screens, and his violation of probation related to the cocaine conviction, we are not left with a definite and firm conviction that the trial court made a mistake when it found clear and convincing evidence that substance abuse was a condition that led to respondent-father's adjudication and continued to exist.

Moreover, there was no reasonable likelihood that this condition would be rectified within a reasonable time. By the time of the statutory-basis determination, the child had been removed from respondent-father's care for more than 19 months. During that time, respondent-father made repeated promises to complete drug screens and stop using illegal drugs, but his promises were empty. The trial court did not clearly err in finding that there was no reasonable

¹ MCL 712A.19b(3)(g) was amended by 2018 PA 58, effective June 12, 2018. As amended, § 19b(3)(g) now provides grounds for termination of parental rights if "[t]he parent, although, in the court's discretion, financially able to do so, 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."

likelihood that respondent-father would resolve his substance abuse issues within a reasonable time.

On appeal, respondent-father attempts to minimize his illegal substance abuse and his failure to screen by arguing that he was using marijuana for medicinal purposes—to alleviate back pain from scoliosis and to combat stress. Respondent-father notes that he previously had a medical marijuana card and argues that, if he had still been permitted to have the card, his marijuana use would not have been illegal. Under Michigan’s Medical Marihuana Act (MMMA), MCL 333.26421 *et seq.*, a person shall not be denied custody for the medical use of marijuana in accordance with the act. See MCL 333.26424(d). However, as a result of respondent-father’s own actions—specifically, his decision to possess cocaine, resulting in a criminal conviction and probation—his medical marijuana card was rescinded. Being substance-free was a requirement of probation, the parent-agency treatment plan, and respondent-father’s inpatient substance abuse rehabilitation program. Moreover, by failing to screen regularly, respondent-father failed to demonstrate that he was not using illegal substances other than marijuana. Accordingly, respondent-father’s failure to screen and his continued unlawful use of marijuana were properly considered as bases supporting termination.

Respondent-father further complains that the agency overseeing the proceedings did not provide him with a Livingston County substance abuse screening location, which made transportation for his screening troublesome, and if an accommodation had been made, a different result “would have been probable.” Respondent-father’s argument is not supported by the record. According to respondent-father’s own statements, he was living in Brighton, and testing in Howell. Both locations are in Livingston County, and according to respondent-father’s probation officer, the Howell screening center was the closest one to his home. Moreover, the record demonstrates that many accommodations were made to ensure that respondent-father completed all of his screening requirements, despite his transportation issues. When respondent-father claimed that screening once a week would be more manageable, biweekly screenings were reduced. The caseworker also tested respondent-father at his home during their appointments, and respondent-father’s girlfriend, who obtained a vehicle during the proceedings, agreed to drive respondent-father for screening. Despite these efforts, respondent-father still missed screens. On this record, there was no reasonable likelihood that respondent-father would have attended all the required drug screens within a reasonable time if additional accommodations had been made.

In sum, clear and convincing evidence supported a statutory basis for termination under MCL 712A.19b(3)(c)(i). Because at least one ground for termination exists, this Court need not consider the additional grounds on which the trial court based its decision. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009).

Respondent-father also argues that termination of his parental rights was not in the child’s best interests. We disagree. We review for clear error a trial court’s determination regarding a child’s best interests. MCR 3.977(K); *In re Fried*, 266 Mich App at 541.

Once a statutory ground for termination is established, the trial court shall order termination of parental rights if it finds that termination is in the child’s best interests. 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 76, 90; 836 NW2d 182 (2013). The trial court should weigh all the evidence available to it in determining a child’s best interests. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). Factors relevant to a determination of a child’s best interests include the child’s bond to the parent, the parent’s compliance with his or her case service plan, the parent’s history of visitation with the child, the child’s need for permanency, stability, and finality, the advantages of a foster home over the parent’s home, and the possibility of adoption. *Id.* at 713-714.

More than a preponderance of evidence supports the trial court’s determination that termination of respondent-father’s parental rights was in the child’s best interests. Respondent-father emphasizes that he and the child shared a bond, and the child wanted to be with him. After respondent-father was released from jail and completed his 90-day substance abuse rehabilitation program, respondent-father regularly visited the child at his grandmother’s house, where he was placed. But when respondent-father’s inappropriate conduct in front of the child prompted petitioner to move visitation to the agency, respondent-father failed to visit the child there, despite being offered gas cards to help with transportation issues. During the three months between the statutory-basis hearing and the last best-interest hearing, respondent-father only saw the child two or three times, in specially-arranged visits at the grandmother’s home. According to respondent-father, because the child had rarely seen him, the child lashed out at school by hitting other children. A psychologist opined that the child risked additional inconsistency in the future if respondent-father was incarcerated for substance use, and it could be traumatic for the child if respondent-father was unavailable to him again. By the end of the best-interest proceedings, respondent-father had been sentenced to 13 months to 8 years in prison for violating his probation for the possession of cocaine conviction. The psychologist also opined that the child’s need for permanency and stability superseded any bond that existed between the child and respondent-father.

Again, respondent-father complied with many requirements of his parent-agency treatment plan, but he failed to achieve success related to the substance-abuse goals. Even though respondent-father understood and accepted that he could not use marijuana, he continued to test positive. Respondent-father claimed that he was self-medicating with marijuana, but as discussed earlier, his use was illegal. And respondent-father was not interested in alternative pain-management strategies. The psychologist opined that respondent-father was not able to control his substance abuse problem and that further treatment would not benefit him. Although respondent-father had rented a home² and obtained employment to support the child, his prison sentence would impede any permanence that he could provide to the child within a reasonable time.

² Respondent-father claims, without citation to the record, that the foster-care worker indicated that he would be referred for housing assistance, but that was never offered. According to the record, however, respondent-father was working with an agency that was providing lists of possible rentals to him. Moreover, respondent-father actually rented an apartment in late 2017. Therefore, respondent-father’s ability to obtain housing was not a barrier to reunification.

The child was placed with his paternal grandmother, who had expressed interest in adopting him. Because of that relative placement, the court had given respondent-father more time to resolve his substance abuse problems, which he failed to do. The psychologist opined that despite the relative placement, termination could shield the child from inconsistency involving respondent-father's continuing substance abuse and future incarcerations. Therefore, the trial court did not clearly err in finding that termination of respondent-father's parental rights was in the child's best interests.

Affirmed.

/s/ Colleen A. O'Brien
/s/ Jonathan Tukel
/s/ Anica Letica