

STATE OF MICHIGAN
COURT OF APPEALS

In re TUCKER/BAKER, Minors.

UNPUBLISHED
March 24, 2020

No. 350138
Wayne Circuit Court
Family Division
LC No. 17-000034-NA

Before: BECKERING, P.J., and SAWYER and GADOLA, JJ.

PER CURIAM.

Respondent father appeals as of right the trial court’s order terminating his parental rights under MCL 712A.19b(3)(a)(ii) (desertion for 91 or more days without seeking custody).¹ We affirm.

I. FACTUAL BACKGROUND

Respondent is the legal father of MT and the putative father of AT, ST, and PT.² The trial court first acquired jurisdiction over the four children in January 2017 following a Department of Health and Human Services (DHHS) petition for temporary custody alleging AT, MT, ST, and PT were hospitalized as a result of physical neglect and malnourishment. Respondent did not appear

¹ Contrary to petitioner’s assertions, the trial court did not terminate respondent’s parental rights under MCL 712A.19b(3)(c)(i), (g), and (j). In the trial court’s July 17, 2019 order terminating parental rights, the trial court found clear and convincing evidence to terminate respondent’s parental rights under MCL 712A.19b(3)(a)(ii). After doing so, the trial court addressed the termination of the parental rights of the children’s mother. The trial court found that petitioner presented clear and convincing evidence to terminate the parental rights of the children’s mother under MCL 712A.19b(3)(c)(ii), (g), and (j). The trial court also found that petitioner did not present clear and convincing evidence to terminate the parental rights of the children’s mother under MCL 712A.19b(3)(c)(i) and (h). Considering that respondent’s parental rights were not terminated under MCL 712A.19b(3)(c)(i), (g), and (j), our analysis will be limited to the termination of respondent’s parental rights under MCL 712A.19b(3)(a)(ii).

² Respondent is the putative father of another child, JB. Respondent does not appeal the termination of parental rights to JB.

at the adjudicatory hearing, and the trial court found that there were statutory grounds to exercise jurisdiction over the children as it related to respondent under MCL 712A.2(b)(1) and (2) after finding that respondent and the children's unknown father or fathers were served with a copy of the petition by publication. AT, MT, ST, and PT were placed in foster care in their maternal grandmother's home.

The trial court entered a dispositional order. The trial court ordered respondent to complete parenting classes and a psychological evaluation, obtain suitable housing and income, attend all court hearings, and attend supervised visits with MT. The trial court also ordered the unidentified legal father or fathers of AT, ST, and PT to establish legal paternity over AT, ST, and PT, obtain suitable housing and income, complete parenting classes, and attend all court hearings. The children remained in foster care for over two years. Between January 2017 and May 2019, respondent could not be located, he did not attend any hearings, and he did not comply with the treatment plan. Consequently, DHHS filed a permanent custody petition to terminate respondent's parental rights in June 2019. After DHHS filed the permanent custody petition, respondent appeared at the pretrial and evidentiary hearings regarding the termination of his parental rights. In July 2019, the trial court entered an order terminating respondent's parental rights to the children under MCL 712A.19b(3)(a)(ii).

On appeal, respondent argues that the trial court clearly erred by terminating his parental rights under MCL 712A.19b(3)(a)(ii), and termination of his parental rights was contrary to the children's best interests. We disagree.

II. MCL 712A.19b(3)(a)(ii)³

In order to terminate parental rights, a trial court must find that a statutory ground has been established by clear and convincing evidence. *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). The trial court's findings regarding statutory grounds are reviewed for clear error. *Id.* "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." *Id.* (citation and quotation marks omitted).

Termination of an individual's parental rights is proper under MCL 712A.19b(3)(a)(ii) if "[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." MCL 712A.19b(3)(a)(ii). Respondent argues that he did not desert the children because he visited the children throughout the proceedings, and he was preparing to care for the children when his parental rights were terminated. We disagree.

³ Respondent never established legal paternity over AT, ST, and PT, and the trial court terminated the parental rights of the unknown father or fathers of AT, ST, and PT. The parties do not distinguish between the trial court's termination of respondent's parental rights to MT and the trial court's termination of the parental rights of the unknown father or fathers of AT, ST, and PT. For this reason, this Court will address the trial court's termination of the parental rights of the unknown father or fathers of AT, ST, and PT as if the trial court terminated respondent's parental rights to AT, ST, and PT.

Respondent deserted the children. The initial petition was filed in this matter in January 2017. Respondent was aware of the proceedings, but he declined to attend any hearings until June 12, 2019. Several caseworkers attempted to contact respondent throughout the proceedings, but they were unsuccessful. From January 2017 to June 2019, respondent did not participate in any court-ordered services in his case service plan. At the July 12, 2019 evidentiary hearing, respondent testified that he visited the children in March 2018 and April 2018, but he had not seen the children since April 2018. In other words, respondent had not seen the children for approximately 15 months—a period well over 91 days. Respondent later contradicted his own testimony and stated that he visited the children on a monthly basis at their maternal grandmother’s home. Nonetheless, limited contact with a child is insufficient to rebut a finding that a parent has deserted a child. 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). When the proceedings began, a caseworker sent respondent a request for DNA in order to establish paternity over AT, ST, and PT, but respondent did not respond. In addition, there is no evidence in the lower court record that respondent attempted to establish paternity over AT, ST, and PT during the period in which he deserted the children from April 2018 to June 2019. Upon a thorough review of the lower court record, we hold that the trial court did not clearly err by finding that termination of respondent’s parental rights was proper under MCL 712A.19b(3)(a)(ii).

Only one statutory ground needs to be established to support termination of parental rights under MCL 712A.19b(3). *In re Martin*, 316 Mich App 73, 90; 896 NW2d 452 (2016). Therefore, termination of respondent’s parental rights was appropriate under MCL 712A.19b(3)(a)(ii).

III. BEST INTERESTS

Respondent argues that the trial court clearly erred when it determined that termination of respondent’s parental rights was in the children’s best interests under MCL 712A.19b(5). We disagree.

“[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. This Court reviews the trial court’s ruling that termination is in the child’s best interests for clear error. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011). “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 Moss*, 301 Mich App at 80 (citation and quotation marks omitted).

“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). “In deciding whether termination is in the child’s best interests, the court may consider 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 Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). The trial court may also consider “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.” *In re White*, 303 Mich App 701, 711; 846 NW2d 61 (2014). A child’s

placement with relatives weighs against termination, and it is generally in each child's best interests to keep siblings together. *In re Olive/Metts Minors*, 297 Mich App at 43.

At the outset, we acknowledge that the children are currently placed in foster care with their maternal grandmother, and the children's foster care placement with a relative weighs against termination. *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). Nonetheless, the trial court properly addressed the children's placement with their maternal grandmother in its order terminating respondent's parental rights, and the children's placement with their maternal grandmother does not outweigh the other best interest factors. Specifically, the trial court addressed the children's placement with their maternal grandmother by explaining that the children's placement with a relative was a factor that weighed against termination, but the children's maternal grandmother could not adopt all of the children for health reasons, and efforts would be made to find a different foster care placement where the children could stay together.

Respondent avers that it was in the children's best interests to allow him additional time to complete his case service plan. We disagree. On the date of the termination hearing, the children had already been in foster care for over two years. During that period, respondent did not attend any hearings, and he failed to participate in his case service plan. Considering the length of time that the children were in foster care, respondent's repeated noncompliance with the trial court's orders, and the children's need for permanency, stability, and finality, it was not in the children's best interests to allow respondent additional time to complete his case service plan.

Furthermore, it does not appear from the lower court record that respondent had a strong bond with the children. Respondent testified that he did not see the children for approximately 15 months during the proceedings. Respondent contradicted his own testimony regarding the frequency of his visits, and he stated that he visited the children on a monthly basis. Even assuming that respondent visited the children on a monthly basis, the infrequency of his visits indicates that the children did not share a strong bond with respondent.

In sum, the trial court did not clearly err when it found that a statutory ground existed to terminate respondent's parental rights under MCL 712A.19b(3)(a)(ii), and the trial court did not clearly err when it determined that termination of respondent's parental rights was in the children's best interests under MCL 712A.19b(5).

Affirmed.

/s/ Jane M. Beckering
/s/ David H. Sawyer
/s/ Michael F. Gadola