STATE OF MICHIGAN

COURT OF APPEALS

In re A. B. RYANS, Minor.

UNPUBLISHED
September 10, 2020

No. 352585
Newaygo Circuit Court
Family Division
LC No. 18-009148-NA

Before: REDFORD, P.J., and BECKERING and M. J. KELLY, JJ.

PER CURIAM.

Respondent appeals as of right the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(c)(*i*), (c)(*ii*), and (j). For the reasons stated in this opinion, we affirm.

I. BASIC FACTS

In November 2018, the Department of Health and Human Services (DHHS) filed a petition seeking temporary custody of the child. The petition alleged that Child Protective Services (CPS) had received a complaint that respondent had bipolar disorder, was "out of control," was physically abusing the child, and was unable to produce the child's prescription medications when requested. In December 2018, the petition was amended to add allegations that respondent was verbally abusing the child, and to explain that the child had behavioral issues that were affecting his education.

In March 2019, the trial court conducted a bench trial to determine if there was a statutory basis to take jurisdiction over the child. Witnesses testified that the child was "quite violent" and was being treated for Attention Deficit Hyper Disorder (ADHD) and Oppositional Defiant Disorder, but that there were concerns that his medications were being taken by someone else or sold. Additionally, the child's great-grandmother testified that she called Community Mental Health (CMH)'s hotline because respondent was having "some problems that I've never seen him have before" and she was concerned that he was "having a breakdown of some sort." The CMH case manager stated that during the call she could hear someone who she believed was respondent yelling something to the effect of "you better stop it, or I'll beat your fucking ass." The CMH case manager stated that the great-grandmother indicated to her that respondent would strike the child. At trial, the great-grandmother testified that when she had been on the phone with the CMH case

manager, respondent and the child were doing math and "it was a little bit frustrating and that is when [respondent] kind of lost it." The great-grandmother stressed, however, that respondent would spank the child, but not in an overly forceful manner. In contrast, the child's great-uncle stated that the child was scared when around respondent. The great-uncle testified that the last time he saw the child and respondent together, respondent was trying to get the child to pick up his toys. Because the child would not, respondent slapped him in the "back of the head so hard he knocked him down." Respondent then "screamed at him to pick [the toys] up again and when [the child] wouldn't he grabbed him by the arm and jerked him up off the floor." A babysitter also testified to seeing respondent walk up to the child, slap him on the head hard enough to knock him to the ground, and then jerk him up by one arm. When the child started crying, respondent said, "Ain't nobody going to help you anyways." Finally, the child's mother testified that respondent slapped the child and was "very aggressive" toward him. She also recalled seeing respondent slap the child hard enough to knock him to the ground. Respondent testified that he never smacked the child or knocked him down and adding that the child always received his medication before he went to school. Respondent also stated that he had been diagnosed with bipolar, anti-social personality traits, and ADHD; he received his own medications and had no reason to take his child's medications. When asked why the child's great-grandmother was worried about him "flying off the handle," respondent testified it was because he had "an attitude problem." He added, "I have anger problems when—when I get angry but it's only towards the people I am angry at." He said he was sometimes frustrated with the child, but was never angry.

Based on the evidence presented, the court found a statutory basis to take jurisdiction over the child. Initially, the barriers to reunification were identified as respondent's emotional well-being, his parenting skills, and resource availability and management. However, as the case progressed, substance abuse was identified as an additional barrier to reunification based on respondent's diagnosis with cannabis dependence and a drug-screen showing that respondent was positive for amphetamines, methamphetamines, and marijuana. Respondent was also hostile in his communications with his family or support team, the DHHS caseworkers, the child's school, and the child's medical providers. To address the barriers, respondent was provided with a number of services, including substance abuse counseling, substance abuse assessment, random drug screens, mental health counseling services, Alternatives to Violence class, parent education, parenting time visitation, transportation assistance, and family team meetings. For the most part, he was non-compliant with the services offered and was only willing to participate in the services that he wanted to participate in. Consequently, the DHHS filed a petition seeking termination of respondent's parental rights.

Following the termination hearing, the trial court found by clear and convincing evidence that termination of respondent's parental rights was warranted under MCL 712A.19b(3)(c)(*i*), (c)(*ii*), and (j). The court also found by a preponderance of the evidence that termination of respondent's parental rights was in the child's best interests.

This appeal follows.

II. STATUTORY GROUNDS

A. STANDARD OF REVIEW

Respondent argues that the trial court erred when it found that the DHHS proved by clear and convincing evidence that a statutory basis existed for terminating father's parental rights. We review for clear error a trial court's finding that termination is warranted under one or more of the statutory grounds set forth in MCL 712A.19b(3). *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991).

B. ANALYSIS

The trial court terminated respondent's parental rights under MCL 712A.19b(3)(c)(*i*), (c)(*ii*), and (j). Termination is proper under MCL 712A.19b(3)(c)(*i*) if:

> (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.

Respondent does not dispute that more than 182 days elapsed between the initial dispositional order and the termination hearing. One of the primary barriers to reunification was respondent's inability to regulate his emotions, which had caused him to physically strike his child and to yell threats and profanities at him. The trial court found that respondent had failed to rectify that condition, despite being offered services to address it. On appeal, however, respondent argues that he was a good father, who was "generally compliant with services, albeit in a reluctant and slow way." He contends that multiple professionals stated that he could make progress toward reunification within a reasonable time, so he argues that termination was premature.

In support, respondent notes that he independently recognized he had an anger-management problem, so on his own he obtained counseling at CMH. He argues that rather than allow respondent to continue to treat with the CMH counselor he had received anger-management counseling from since 2015, the DHHS tried to force respondent to dismiss that counselor and treat with a counselor chosen by DHHS.[1] Respondent contends that led to his mistrust of the

[1] At the termination hearing, the caseworker testified that initially the DHHS was supportive of respondent continuing to work with CMH. However, review of the CMH records did not show that work was being done in the treatment to address the reasons that the child came into care. In particular, respondent was telling the counselor that he was going to get the child back and that he had done nothing wrong to require the child to be removed. Respondent's comments to his counselor, as reflected in the CMH notes, appeared to be deceptive. Further, at the termination hearing, the CMH counselor affirmed that respondent never took any sort of accountability for the

DHHS. He further points to testimony from his therapist that within 10 or 12 sessions, respondent "should have some relief of some anger." Yet, that same therapist testified that a full resolution of respondent's anger issues "would probably take a couple of years." And the therapist was unsure why respondent—who started anger-management counseling in 2015—had not yet improved his ability to regulate his emotions.

Moreover, the results of respondent's psychological evaluation further confirmed that respondent had unresolved anger-management issues. Dr. Byron Barnes testified that respondent's psychological evaluation showed that respondent was "a very guarded, difficult individual who really blames other people, externalizes responsibility, [perceives] that he's being mistreated by others, really doesn't take responsibility for the difficulties in his life, [and] feels like he is being persecuted by CPS." Additionally, Dr. Barnes stated that respondent was "an individual who [had] a great deal of difficulty regulating and controlling his emotional and or behavioral responses." He described respondent as "aggressive, hostile, explosive and [as someone who has] difficulty controlling himself once he's upset."

On appeal, respondent directs this Court to testimony from Dr. Barnes indicating that respondent would benefit from an Alternatives to Violence class, which would last for 36 weeks. But he ignores the caseworker's testimony that respondent previously completed the class, but failed to benefit from it. Then respondent refused to take it a second time despite Dr. Barnes recommendation that he take the class again. Moreover, Dr. Barnes testified that "36 to 104 weeks would be appropriate" for respondent to be in counseling to learn to manage his anger. But again, the record reflects that counseling from 2015 to 2019 had been insufficient to resolve respondent's problems. Therefore, to the extent that respondent suggests all his problems could have been resolved in a short 36 weeks, the record reflects he had been unable to show benefit despite treatment for a much longer period, and it showed that respondent was, in fact, unwilling to undergo the treatment necessary to make progress within that timeframe. Instead, as noted by Dr. Barnes, respondent was "agitated and pressured and irritable a lot" and he had "a short trigger." Dr. Barnes also explained that it took "very little to agitate him, to provoke [respondent], and for him to become, you know, pretty upset, reactive and explosive." Finally, Dr. Barnes testified that if respondent did not follow his recommendation, respondent's "prognosis for effectively dealing with the situation [was] poor." Dr. Barnes also stated that if respondent did not comply with or benefit from services, the child would be at risk in respondent's care.

Respondent argues that if the DHHS treated him with "due respect" instead of just treating him like an uncooperative parent, he would have done what was requested of him. In support, he directs this Court to the circumstances surrounding the DHHS's attempts to obtain respondent's consent to administer a sedative to the child while the child was receiving an MRI. He notes that after the need for a sedative was explained to him, he consented to it. He neglects to mention, however, that it took a court hearing for him to understand the reasons why the DHHS felt a sedative might be necessary. Moreover, we find no merit to respondent's argument that "if only approached in a non-accusatory manner," he would have complied with the DHHS's requests. As

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reasons the child came into care. As a result, the DHHS sought to obtain respondent counseling that would address the reasons the child came into care.

respondent points out, he had received counseling with CMH since 2015 to help him regulate his emotions. The fact that by 2019 he was still unable to show any progress and needed people to approach him in a certain way for him to do what was necessary to reunify with the child is evidence that the conditions leading to adjudication continued to exist and were unlikely to be rectified within a reasonable time considering the child's age.

In addition to not rectifying his inability to regulate his emotions, respondent did not show that he rectified the problems with his parenting skills. Instead, respondent insists that he was a good parent and that the testimony showing that he physically abused his child was made up by people—such as the child's mother—who had reason to lie. In doing so, respondent does not acknowledge that the child psychological evaluation included the child's disclosure that respondent had hit him and that the child was fearful of respondent. Moreover, the fact that witnesses to the abuse had reason to be biased against respondent does not strip their testimony of all credibility and make it impossible for the court to credit their testimony.

In addition to denying any responsibility for the child coming into care, respondent was only partially compliant with the recommended parenting classes. Specifically, although hostile to the parenting-class provider, respondent partially complied with the supervision component of the parenting class. Respondent did not participate in the education component of the parenting class. Overall, testimony that respondent had previously physically abused the child and was now refusing to participate fully in parenting classes to improve his parenting skills supports the trial court's finding that the conditions leading to adjudication continued to exist and would not be rectified in a reasonable time considering the child's age.

Based on the foregoing, we conclude that the trial court did not clearly err in finding grounds to terminate respondent's parental rights under MCL 712A.19b(3)(c)(*i*).[2]

III. BEST INTERESTS

Respondent argues that the trial court erred by finding termination of his parental rights was in the child's best interests. "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." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012) (citations omitted). "[T]he focus at the best-interest stage" is on the child, not the parent. *In re Moss minor*, 301 Mich App 76, 87; 836 NW2d 182 (2013). In balancing all the evidence available to determine the child's best interests, the court may look to "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*, 297 Mich App at 41-42 (citations omitted). The trial court may also consider the length of time the child was in foster care, the likelihood that "the child could be returned to her parent's home within the foreseeable future, if at all," and

[2] Because only one ground for termination need be established, we decline to address whether the court clearly erred by finding additional grounds to terminate respondent's parental rights under MCL 712A.19b(3)(c)(*ii*) and (j). See *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009).

compliance with the case service plan. *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012).

In this case, the testimony showed that the child—who was described as a difficult child—was thriving in foster care. Specifically, the child's therapist testified that the child really enjoyed his placement, noting that "he likes being there" and calls his foster parents "mom and dad." In contrast, the child reported that he was scared of respondent and that he said respondent would hit him in the face. She opined that if respondent continued to struggle with his anger issues, being around respondent would continue to traumatize the child. As noted above, respondent had not made progress in regulating his emotions despite being in voluntary counseling since 2015 and despite being offered counseling through the DHHS to address his anger-management issues. The child deserved stability and permanence, which, because of respondent's ongoing anger issues could not be achieved. In addition, given that respondent still accepted no responsibility for the reasons his child came into care—including that respondent was physically abusing the child and yelling profanities at him—it was unlikely that the child could be returned to respondent's home in the foreseeable future. Although there was some testimony about a bond between respondent and the child, that testimony was overshadowed by the testimony that the child was abused by and fearful of respondent, the testimony that respondent continued to deny any deficiency in his parenting, and respondent's recognized but unrectified anger-management issues. Based on the record before this Court, the trial court did not clearly err by finding termination of respondent's parental rights was in the child's best interests.

Affirmed.

/s/ James Robert Redford
/s/ Jane M. Beckering
/s/ Michael J. Kelly