

STATE OF MICHIGAN
COURT OF APPEALS

In re TUD, Minor.

UNPUBLISHED
September 17, 2020

No. 352236
Wayne Circuit Court
Family Division
LC No. 14-517879-NA

Before: RIORDAN, P.J., and O’BRIEN and SWARTZLE, JJ.

PER CURIAM.

Respondent-father appeals as of right the trial court’s order terminating his parental rights to the minor child, TUD, under MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist) and (g) (failure to provide care and custody). On appeal, respondent argues that (1) the trial court erred in finding statutory grounds to terminate his parental rights because petitioner failed to present clear and convincing evidence to meet its burden under MCL 712A.19b(3)(c)(i) and (g), and (2) the trial court erred in finding that it was in TUD’s best interests to terminate respondent’s parental rights because respondent rectified the conditions that led to adjudication and shared a strong bond with TUD. We affirm.

I. FACTUAL BACKGROUND

These proceedings began when petitioner filed an emergency petition to remove TUD from respondent’s home. Shortly after TUD’s birth, TUD was placed with a family member as part of a safety plan arranged by Children’s Protective Services (CPS). Despite the safety plan, respondent drove TUD’s mother¹ to the family member’s home, where TUD’s mother physically assaulted the family member and forcibly removed TUD from the home. Thereafter, respondent was arrested and incarcerated, petitioner filed a petition for temporary wardship over TUD, and TUD was placed in a licensed foster home. The trial court authorized the petition, which stated that the police officers who arrested respondent and mother in their home observed that the home lacked gas service, sewage had flooded parts of the basement, and exposed wires posed a fire hazard. The petition also alleged that respondent failed to properly supervise TUD and failed to

¹ Mother also had her parental rights terminated, but she is not a party to this appeal.

provide financial support for TUD. At a preliminary hearing, petitioner informed the trial court that there was no formula or supplies for the infant at the home.

At an adjudicatory hearing on January 27, 2017, respondent entered a plea admitting the allegations in the petition. Respondent admitted that he had not provided financial support for TUD since her birth. He further admitted that he lived at a home without gas or utilities and that the home had standing water in the basement and exposed electrical wires that posed a fire hazard. He admitted that there was minimal food in the refrigerator and no supplies for a baby. He also admitted that he drove mother to the family member's home in order to retrieve TUD even though he was aware of the CPS safety plan. The referee determined that there were statutory grounds to exercise jurisdiction over TUD based on respondent's admissions. The referee then proceeded to a disposition hearing where a foster care worker testified as to respondent's case services plan. Respondent was ordered to participate in parenting classes, individual counseling, and a psychological evaluation. He was also ordered to acquire suitable housing and a legal source of income, attend regular visits with TUD, obey all court orders, and attend all court hearings.

In March 2018, foster care worker Darla Kelly reported concerns regarding TUD's safety during unsupervised visits with respondent. Kelly stated that there were frequent parties at a home across the street from respondent's residence that he attended. Respondent was in attendance at a party at the home in February 2018 involving dice and gambling and an individual was shot and killed. Although TUD was not at respondent's home the weekend of the shooting, Kelly testified that she saw TUD at dice games in Facebook videos. Respondent's sister, who was designated to assist respondent in watching TUD, was also seen on video at the parties. Kelly also testified regarding a Facebook video showing someone telling respondent that TUD "had wet all the way through her diaper and he needed to come change her." Respondent could not tell Kelly the name of the person who was taking care of TUD during that incident. Further, Kelly testified that anonymous pages from Facebook showed respondent still in a relationship with mother and TUD in mother's care with respondent. As a result, the trial court ordered that respondent's visits with TUD were to be supervised and recommended individual therapy and a parent partner for respondent.

On January 22, 2019, during a dispositional review hearing, Kelly testified that she intended to file a permanent custody petition to terminate respondent's parental rights. Kelly testified that respondent had not provided proof of employment during the previous four months, recently moved, and during an unsupervised visit with TUD in December 2018, respondent permitted mother to have contact with TUD even though mother's parental rights were terminated. The trial court, however, continued all prior orders and provided respondent with additional time to work on the conditions that led to adjudication.

At a dispositional review hearing in April 2019, Kelly testified that respondent provided her with false sources of income by forging paychecks. Kelly also testified that respondent did not have stable housing, and that respondent was providing her with false information regarding his housing. Respondent told Kelly that he was living with his cousin in a two-bedroom home. Kelly evaluated respondent's purported residence, but Kelly did not believe respondent lived there because his possessions were not at the home and he did not have a bed in the home. The trial court again continued all prior orders.

On September 11, 2019, petitioner filed a supplemental permanent custody petition that alleged that respondent failed to benefit from parenting classes or individual therapy, failed to maintain suitable housing or a legal source of income, and allowed TUD to have contact with mother although her parental rights were terminated. TUD remained in foster care for almost three years and during that time, respondent made some progress toward reunification but did not complete his case services plan and failed to rectify the issues that led to adjudication. The trial court held a bench trial on petitioner's supplemental petition on October 29, 2019 and on December 4, 2019, entered an order terminating respondent's parental rights to TUD.

Respondent now appeals.

II. STATUTORY GROUNDS

Respondent argues that the trial court clearly erred when it determined that petitioner presented clear and convincing evidence to terminate respondent's parental rights to TUD under MCL 712A.19b(3)(c)(i) and (g). We disagree.

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.* (quotation marks and citation omitted).

A trial court may terminate parental rights under MCL 712A.19b(3)(c)(i) if 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds that "[t]he 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." MCL 712A.19b(3)(c)(i). "This statutory ground exists when the conditions that brought the children into foster care continue to exist despite time to make changes and the opportunity to take advantage of a variety of services." *In re White*, 303 Mich App 701, 710; 846 NW2d 61 (2014) (quotation marks and citation omitted).

The trial court did not clearly err when it determined that petitioner presented clear and convincing evidence to terminate respondent's parental rights to TUD under MCL 712A.19b(3)(c)(i). The trial court entered the initial disposition order on February 13, 2017 and terminated respondent's parental rights on December 4, 2019. Therefore, "182 or more days" had "elapsed since the issuance of an initial disposition order."

Turning to whether the trial court properly found that respondent failed to rectify the conditions that led to adjudication, petitioner presented evidence at the October 29, 2019 termination trial showing that the conditions that led to adjudication continued to exist. When TUD was removed from respondent's care, respondent lacked suitable housing and a legal source of income, and he failed to properly supervise TUD. Respondent was offered services including visitation with TUD, parenting classes, and individual counseling. Although respondent visited TUD, completed parenting classes, and participated in individual counseling, Kelly opined that respondent failed to benefit from the services.

In regards to housing, the trial court found that obtaining a suitable home for respondent to properly care for TUD remained an issue for respondent. Respondent testified at trial that he was living in a two-bedroom home with his cousin and that he would share a room with TUD. However, Kelly testified that she did not believe respondent lived there because when she went to evaluate the home, respondent's possessions were not at the home, he did not have a bed, and respondent told Kelly that he was sleeping on the couch. The day before the termination trial, Kelly went to assess the home again, but respondent was not at the home even though he knew when Kelly was to arrive. Respondent's cousin did not answer the door for Kelly. Kelly further testified that respondent was not paying rent, and she was concerned that his cousin could tell him to leave the home and take TUD with him. Based on this evidence, the trial court did not clearly err when it found by clear and convincing evidence that respondent failed to rectify his housing issues that led to adjudication because respondent failed to obtain independent housing that permitted him to adequately care for TUD.

In addition to lack of housing, the trial court found that respondent also failed to provide proof of legal income. Kelly testified that respondent provided fraudulent proof of income on several occasions. Kelly also testified that she saw a Facebook posting where respondent was seeking out someone to make check stubs for him. Respondent testified that he recently began a job that would allow him to provide financial support for TUD, but he did not provide Kelly with proof of that employment. Thus, the trial court did not clearly err when it found by clear and convincing evidence that respondent failed to obtain a legal source of income in order to provide for TUD.

Finally, the trial court found that proper supervision of TUD remained an issue for respondent. Kelly explained that respondent permitted TUD's mother to have contact with TUD on multiple occasions although her parental rights were terminated. Furthermore, as previously discussed, when respondent was granted overnight visitation with TUD, social media showed TUD not being properly supervised by respondent during gambling parties. In addition, in the month prior to trial, respondent missed several visits with TUD. Therefore, the trial did not clearly err when it found by clear and convincing evidence that respondent continued to fail to properly supervise TUD.

In sum, the trial court did not clearly err when it found by clear and convincing evidence that termination of respondent's parental rights was proper under MCL 712A.19b(3)(c)(i) because 182 days or more had elapsed since the initial disposition order was entered and respondent still had not rectified the conditions that led to adjudication.²

III. BEST INTERESTS

Respondent asserts that the trial court clearly erred when it determined that termination of respondent's parental rights was in TUD's best interests. We disagree.

² 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 based upon MCL 712A.19b(3)(c)(i) and we need not address MCL 712A.19b(3)(g).

“Whether termination of parental rights is in the best interest 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 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 (quotation marks and citation 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 at 714.

During the trial regarding the termination of respondent’s parental rights, evidence was presented that respondent shared a bond with TUD and visited TUD on a consistent basis. However, there was also considerable evidence regarding several best interests factors that weighed in favor of termination. Petitioner presented evidence that respondent failed to complete his case services plan and failed to benefit from the aspects of the case services plan that he did complete. Petitioner also presented evidence that respondent did not have suitable independent housing. In addition, petitioner presented evidence that respondent took TUD to dangerous parties during unsupervised visits, and respondent allowed TUD’s mother to have contact with TUD although her parental rights were terminated. In the last month prior to the termination trial, respondent missed several visits with TUD. Also, the report from the Clinic for Child Study indicated that respondent might still be seeing mother, despite his denials, and ultimately concluded that termination of respondent’s parental rights was in TUD’s best interests.

In comparison, Kelly and the GAL consistently reported that TUD was doing well in her foster care placement, and TUD’s foster parents were willing to adopt her. The foster home was the only home that TUD knew, except for a few overnight visits with respondent in January and February of 2018. The evidence indicated that, unlike TUD’s foster home, respondent was unable to provide TUD with permanency, stability, and finality. In light of the foregoing, the trial court did not clearly err when it determined that termination of respondent’s parental rights was in TUD’s best interests under MCL 712A.19b(5).

Affirmed.

/s/ Michael J. Riordan
/s/ Colleen A. O’Brien
/s/ Brock A. Swartzle