STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
December 22, 2011

In the Matter of T. HEADEN III, Minor.

No. 303842
Jackson Circuit Court
Family Division
LC No. 10-002657-NA

Before: CAVANAGH, P.J., and SAWYER and METER, JJ.

PER CURIAM.

Respondent-father appeals as of right from the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(b)(*i*), (g), and (j). We affirm.

Before terminating a respondent's parental rights, the trial court must make a finding that at least one of the statutory grounds under MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). Only one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights, even if the court erred in finding sufficient evidence under other statutory grounds. *In re Huisman*, 230 Mich App 372, 384–385; 584 NW2d 349 (1998). The trial court must order termination of parental rights if it finds that termination is in the child's best interests. MCL 712A.19b(5). This Court reviews the trial court's best-interest determination and its overall decision to terminate parental rights for clear error. *In re Rood*, 483 Mich 73, 90-91, 126 n 1; 763 NW2d 587 (2009); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCR 3.977(K). To warrant reversal, the trial court's decision must be more than maybe or probably wrong. *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009). Clear error exists "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).

The statutory grounds were supported by sufficient evidence. The conditions that led to the adjudication involved serious physical abuse of an 11-week-old child. It is undisputed that the minor child was physically abused. He sustained multiple injuries, including a right radial buckle fracture, a right ulnar corner fracture, a right hematoma on his head, multiple rib fractures, and a right femur fracture. The child also had failed to thrive. Medical evidence showed that some of the fractures had already begun to heal, proving that the child was abused on more than one occasion. The minor child's mother acknowledged that she may have caused some of the more recent fractures; however, the identity of the perpetrator of the earlier physical

abuse while the child was in his mother and father's custody and care was not conclusively established.

The trial court reasonably concluded that respondent, although he may not have directly inflicted the injuries, was nonetheless culpable because he failed to adequately safeguard the child. Therefore, the trial court did not err in terminating respondent's parental rights under MCL 712A.19b(3)(b)(*i*). Termination of a parent's parental rights under MCL 712A.19b(3)(b) is permissible, even in the absence of definitive evidence regarding the identity of the perpetrator, where the evidence does show that the respondent or respondents must have either caused or failed to prevent the child's injuries. *In re Ellis*, ___ Mich App ___; ___ NW2d ___ (Docket Nos. 301884/301887, issued August 25, 2011). Respondent-mother admitted that she may have broken the minor child's right femur and some of his ribs when taking him out of a walker. Neither parent could explain the cause of the child's earlier injuries, including two broken arm bones and additional broken ribs. The trial court heard credible evidence that respondent-mother had roughly handled the minor child by forcibly grabbing him from respondent's arms on at least two occasions while the parents were verbally arguing. The court found that the minor child had been abused on more than one occasion and, had respondent taken appropriate action to remove the child from the dangerous situation, one or more of the injuries could have been prevented. The court reasonably concluded that respondent's failure to act resulted in physical injury to the minor child.

Additionally, the lower court record contained credible evidence that respondent may have directly physically abused the child. Respondent-mother told a family friend, while waiting at the hospital for the test results that confirmed the child's multiple fractures, that respondent had struck her and had hurt the minor child. Respondent-mother stated further that respondent had thrown the child across the room onto a bed. Respondent-mother also said that, on another occasion, respondent put a pillow over the minor child's face until the child turned blue and then said, "He's too stupid to breath[e]." Respondent-mother told a police officer that respondent had hit her but later denied the statement. Further, the caseworker heard respondent remark in court that respondent-mother liked to play rough. Petitioner identified respondent as having issues with anger management and a history of fighting that had led to his permanent expulsion from school in the eighth grade. In child protection appeals, this Court gives deference to the trial court's ability to assess witness credibility. MCR 2.613(C); MCR 3.902(A). Viewing the lower court record as a whole, the trial court did not err in concluding that respondent had caused, directly or indirectly by failing to safeguard, the child's serious physical injuries. Thus, termination of respondent's parental rights under MCL 712A.19b(3)(b) was not clearly erroneous.

Clear and convincing evidence similarly supported the trial court's decision to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(g)and (j). Parental rights may be terminated under MCL 712A.19b(3)(g) and (j) where the evidence shows that respondent failed to safeguard the children from injury. *In re Vandalen, Minors*, ___ Mich App ___; ___ NW2d ___ (Docket Nos., 301126/301127, issued June 26, 2011). Respondent failed to provide proper care, including medical treatment, for his child. It was uncontroverted that respondent saw the minor child the day after the incident that caused the child's significant head injury and yet he failed to seek immediate and necessary medical attention. Initially, respondent said that he did not seek medical assistance because he did not have transportation. Later, respondent asserted,

as he does on appeal, that he was not negligent because not every bruise mandates an immediate trip to the emergency room. This argument ignores the weight of the evidence. This was not just a minor bump or bruise. Rather, the injury was a hematoma on an 11-week-old baby's head, allegedly caused by being dropped on the ground and was significant enough to cause bruising around the baby's eyes. Respondent was emphatic that his child did not need to be seen by a doctor. The trial court concluded that a reasonable person would have recognized the common sense signs that the child needed immediate medical attention. The court also correctly concluded that respondent's young age of 16 and his parental inexperience did not excuse him from seeking medical attention for his 11-week-old child. Moreover, respondent lacked appropriate housing, employment, and adequate education. A review of the record unequivocally demonstrates that respondent had not provided proper care and support for the minor child and that there was no reasonable expectation that the he would be able to do so within a reasonable time considering the child's age. MCL 712A.19b(3)(g). The record also supports the trial court's conclusion that there was a reasonable likelihood, based on respondent's conduct, that the minor child would be harmed if he was returned to respondent's care. MCL 712A.19b(3)(j).

Respondent contends that the trial court erred by not providing respondent with multiple opportunities to improve his parenting skills before terminating his parental rights. Essentially, respondent argues that petitioner had to provide reasonable efforts to reunite the family before termination. Generally, petitioner must make reasonable efforts to rectify conditions, to reunify families, and to avoid termination of parental rights. See *In re Terry*, 240 Mich App 14, 25-26; 610 NW2d 563 (2000); MCL 712A.18f; MCL 712A.19(7); see also MCL 712A.19b(5). Petitioner did offer respondent reunification services, including parenting classes and individual counseling. He refused to participate. Thus, respondent's contention that he could have been an appropriate parent if he had been offered services is groundless.

The court also properly concluded that termination of respondent's parental rights was in the child's best interests. MCL 712A.19b(5). There was credible testimony from the caseworker that respondent had not established a parental bond with the minor child. The trial court noted respondent's missed and abbreviated visits and his lack of communication with petitioner. Most telling, respondent knew of the termination hearing yet failed to attend and his whereabouts were unknown.

Affirmed.

/s/ Mark J. Cavanagh
/s/ David H. Sawyer
/s/ Patrick M. Meter