

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
April 17, 2012

In the Matter of M. R. KENNETT, Minor.

No. 306441
Genesee Circuit Court
Family Division
LC No. 02-115355-NA

Before: BORRELLO, P.J., and JANSEN and GLEICHER, JJ.

PER CURIAM.

Respondent-father appeals as of right the termination of his parental rights to his daughter MK (DOB 5/14/2002) pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). Although the circuit court clearly erred in finding a reasonable likelihood of harm to MK if returned to her father's care, the petitioner did present clear and convincing evidence that the conditions leading to adjudication continued to exist, that respondent had not provided proper care and custody in the past, and that neither condition could be remedied within a reasonable time given the child's age. Accordingly, we affirm the circuit court's termination decision.

I. BACKGROUND

MK lived with her mother, JG, and respondent for the first two years of her life. Accepting respondent's testimony as true, JG then took MK and kept her hidden from respondent. JG secured a child support order against respondent during this period. Respondent admitted that he refused to pay support during that time but claimed he did not want JG to use the funds to purchase drugs. On August 14, 2009, JG left MK with a neighbor while she traveled out of state, but made no arrangements for the child's medical and financial needs. MK's maternal great-grandmother reported JG's neglect to Child Protective Services (CPS). CPS placed MK in the care of relatives and filed a neglect petition against respondent and JG on September 14, 2009. The petition alleged that respondent's whereabouts were unknown and that he had not supported MK in any way since she was two years old.

Respondent learned of the child protective proceedings through a published legal notice. He appeared in December 2009 and was immediately included in the case service plan. The court ordered respondent to participate in parenting time, attend a parenting class, submit to a psychological evaluation and drug screens, maintain legal income and appropriate housing, and pay \$165 each month in child support. Respondent never obtained employment and did not meet his child support obligation. Respondent moved among friends' homes without paying rent before moving in with his girlfriend of only three months. Respondent did not participate in any

drug screens until the termination petition was filed. Respondent was so hostile toward the Department of Human Services (DHS)'s recommended psychologist, Allen Bellamy, that the office staff was forced to summon security. Respondent did not thereafter follow through and pursue a psychological evaluation through Community Mental Health (CMH) as recommended by the DHS case worker. In his favor, respondent did complete a parenting class. He also faithfully participated in parenting time, except for a brief respite in spring 2010 when he moved to Tennessee. Respondent worked diligently to form a bond with his child. MK, however, never became comfortable with respondent and expressed her desire to remain with her foster parents.

The DHS filed a petition to terminate both parents' rights on February 10, 2011, noting that respondent had not provided proof of legal income or suitable housing and failed to participate in drug screens prior to the petition. The DHS noted that respondent failed to participate in parenting time in spring 2010 and that MK continued to be "standoffish" and uncomfortable around her father. The DHS indicated that Bellamy "ha[d] serious concerns with the mental stability of [respondent] and his ability to care for his daughter" and opined that respondent had anger management and antisocial issues. The DHS was concerned with respondent's failure to follow through with recommended counseling.

Following a two-day termination trial, the court noted that respondent had a lack of insight regarding his mental health issues. The court also noted respondent's lack of independent means to support himself and MK and lack of independent housing. Respondent was unprepared to provide MK any stability. The court found incredible respondent's tale about JG keeping MK hidden for four years. Rather, the court believed that respondent took little action to find his daughter because of his ever increasing child support debt. The court therefore terminated respondent's parental rights.¹

II. STANDARD OF REVIEW

The petitioner bears the burden of proving a statutory ground for termination by clear and convincing evidence. MCL 712A.19b(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). Once the petitioner has proven a statutory ground for termination by clear and convincing evidence, the circuit court must order termination if "termination of parental rights is in the child's best interests." MCL 712A.19b(5). This Court reviews for clear error a circuit court's decision to terminate parental rights. MCR 3.977(K). The clear error standard controls our review of "both the court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest." *Trejo*, 462 Mich at 356-357. A decision qualifies as clearly erroneous when, "although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). Clear error signifies a decision that strikes the Court as more than just maybe or probably wrong. *Trejo*, 462 Mich at 356.

¹ The court also terminated JG's parental rights, but she has not appealed that ruling.

III. ANALYSIS

Respondent first contends that the petitioner could not establish the grounds for termination because it failed to make reasonable efforts to assist him in reunification. Specifically, respondent accuses the DHS of failing to refer him to a new psychologist after his visit with Bellamy went awry. “[W]hen a child is removed from the parents’ custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused removal by adopting a case service plan.” *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005), citing MCL 712A.18f(1), (2). The reasonableness of the services offered to a respondent “ultimately relates to the issue of sufficiency” of the evidence. *Id.* at 541. Contrary to respondent’s position, however, the petitioner did refer respondent for another psychological evaluation. The case worker directed respondent to CMH for an evaluation and individual counseling. Respondent initially complied and participated in a CMH intake interview, but told the evaluator that he did not need any treatment. As a result of respondent’s actions, CMH denied him services.

Further, the circuit court did not clearly err in finding at least one statutory ground for termination was established by clear and convincing evidence. The record evidence supports termination under two provisions of MCL 712A.19b(3):

(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 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.

Both grounds are supported by the same evidence: respondent’s inability to provide a home and support for his child and failure to establish a parent-child bond.

Respondent has not financially supported MK since she was two years old. Despite more than one court order, respondent failed to make any support payments and has amassed an arrearage over \$18,000. The circuit court rejected respondent’s claims that he had searched for MK during her absence. Even after MK was placed in care and respondent was certain of her whereabouts, respondent did not provide for MK’s financial support. Respondent remained unemployed throughout the child protective proceedings and survived on the proceeds of student loans. To his credit, respondent was attending classes at Mott Community College to earn an

associate's degree in heating and cooling. However, respondent did not indicate how soon he could earn his degree or whether he had researched his job prospects.

Respondent was also unable to provide a stable home for MK. During the child protective proceedings, respondent moved repeatedly. Respondent was never able to live independently and moved among friends' homes. Even after he moved in with his girlfriend, respondent did not contribute to the household finances. As respondent was not the named lessee of his residence, he could not ensure that it would be a stable future home for his daughter. Moreover, respondent had no plan for MK's care in the event he lost his current residence. Respondent testified that other friends had offered to take him in, but he failed to indicate whether those homes would be suitable for a child or whether MK would even be welcome. Given respondent's transient lifestyle and chronic unemployment, it is unlikely that he could provide proper care and custody for MK in a reasonable time.

Standing alone, respondent's economic situation would not necessarily support termination of his parental rights. However, respondent also failed to take the necessary steps to rectify the harm caused by his extended absence in MK's life. The record establishes that MK did not feel comfortable around respondent and, despite respondent's appropriate efforts during parenting time, the parent-child bond was never restored. During Bellamy's brief encounter with respondent, he identified several potential mental health issues that could have an effect on the parent-child bond, including respondent's antisocial tendencies and anger management issues. Despite the case worker's referral to CMH, respondent continually refused to submit to a full psychological evaluation and rejected counseling services. Respondent's own obstinacy created a barrier to reunification with his child.

We disagree, however, with the circuit court's assessment that termination was supported under MCL 712A.19b(3)(j), which provides, "There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent." There is no record evidence that respondent has ever physically or mentally harmed anyone, let alone MK. We will not infer respondent's capacity to cause harm absent any record support.

The circuit court's determination that termination was in MK's best interests is also supported by the record. We do not doubt that respondent loves MK and interacted appropriately with her during parenting time sessions. Yet, there simply was no other evidence that weighed in favor of reunification. Respondent had no immediate or future plan to provide a stable life for MK. Most importantly, even by the time of the termination hearing, MK had not bonded with her father and remained uncomfortable around him.

Affirmed.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Elizabeth L. Gleicher