

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
June 19, 2012

In the Matter of SAGI/GRISWOLD, Minors.

No. 305932
Wayne Circuit Court
Family Division
LC No. 09-491510

Before: SERVITTO, P.J., and METER and FORT HOOD, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating his parental rights to two minor children pursuant to MCL 712A.19b(3)(c)(i), (g), (h), and (j). We affirm.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence and that termination is in the best interests of the children. MCL 712A.19b(5); *In re Sours*, 459 Mich 624, 632; 593 NW2d 520 (1999). We review for clear error the trial court's decision to terminate parental rights. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *Sours*, 459 Mich at 633. A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003); *In re Miller*, 433 Mich 331, 337; 455 NW2d 161 (1989). We must give regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); MCR 3.902(A); *Miller*, 433 Mich at 337.

Termination of respondent's parental rights was proper under MCL 712A.19b(3)(c)(i) and (g) because the conditions leading to the adjudication continued to exist, respondent was unable to provide proper care for his children, and there was no likelihood of rectification within a reasonable time. At the time of the adjudication, respondent admitted having a substance-abuse history involving marijuana and heroin. He had a criminal history that included an operating-while-impaired conviction and an arrest for malicious destruction of property. He had left the children with their mother even though she had a protective-services history and was not a fit caregiver. By the time of the termination hearing, respondent had not addressed his substance-abuse issues. He was terminated from substance-abuse counseling in April 2010 and October 2010 due to noncompliance. There was no evidence that he had addressed his substance-abuse issues and could maintain a drug-free lifestyle for any sustained period of time. Respondent also continued demonstrating criminal behavior. At the time of the termination

hearing, respondent was incarcerated and without suitable housing or income. He had not participated in parenting classes in an effort to demonstrate that he had learned appropriate parental judgment.

Moreover, respondent's inability to provide proper care and custody of his children was evidenced by his failure to consistently visit them, which demonstrated a lack of commitment to them. Although respondent was unable to visit his children in 2011 due to his incarceration, in 2010, before his arrest, he regularly missed visits, and he never sent letters to the children from jail. Given all the circumstances, there was no evidence that respondent could provide proper care for the children.

Respondent argues that he could comply with the treatment plan upon his release from prison and that termination of his parental rights was premature. This contention is without merit. The children were adjudicated temporary court wards in January 2010. Once respondent is released from prison in November 2012, it will take him time to demonstrate that he can maintain sobriety and obtain employment and housing. Given respondent's history, his demonstrated lack of commitment to the children, and his inability or unwillingness to make progress on addressing his issues, there is no evidence that termination of respondent's parental rights was premature or that the process of family reunification would be brief.

Respondent argues that he was not given enough services during his incarceration. See, e.g., *In re Mason*, 486 Mich 142, 160; 782 NW2d 747 (2010) (the state is not relieved of its duty to engage an absent parent on the basis of incarceration). In the present case, respondent was not incarcerated throughout the entire proceedings, and petitioner was only limited in its ability to provide services while he was incarcerated. The caseworker had provided him with a treatment plan, referred him for services, and later made efforts to contact him while he was in jail. Respondent had not adequately complied with services even before his incarceration and did not send letters to the children from jail.¹ Under the circumstances, we conclude that the trial court did not clearly err in finding that termination of respondent's parental rights was proper under MCL 712A.19b(3)(c)(i) and (g).

The trial court also did not clearly err in finding that the children would be subject to a risk of harm in respondent's care. See MCL 712A.19b(3)(j). Because respondent did not complete drug treatment or demonstrate that he could maintain a drug-free lifestyle, the children would be at a risk of harm in his care. Likewise, given respondent's propensity toward criminality, his willingness to leave the children with their mother, an unfit caregiver, and his failure to participate in parenting classes to improve his parental judgment, there was no evidence that he could keep them safe in his custody.

Although termination of respondent's parental rights under MCL 712A.19b(3)(h) may have been improper, because it was not clear that his incarceration would deprive the children of

¹ Moreover, we note that respondent was incarcerated as a result of his own actions, and the temporary lack of availability of services was a consequence of the choices he made.

a normal home for at least two years after the termination hearing, *In re Perry*, 193 Mich App 648, 650; 484 NW2d 768 (1992), any error was harmless because other statutory grounds were established by clear and convincing evidence, *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

Finally, the trial court did not err in its best-interests determination. Respondent has been unable to demonstrate that he could maintain a stable home life without drugs and criminality, and there was no evidence that respondent had the capacity or disposition to provide for the children's basic needs. It was in the children's best interests to be raised by someone, unlike respondent, who can provide them with a stable and safe home. If a parent cannot or will not meet his minimum parental responsibilities, the needs of the child must prevail over the needs of the parent. *In re Terry*, 240 Mich App 14, 28; 610 NW2d 563 (2000). Given the children's young ages, termination of parental rights was appropriate.

Respondent argues that the trial court did not properly consider that it was in the children's best interests to be placed with family and that relative placement was a critical factor to consider in determining whether termination was in the children's best interests. The trial court did note that care by relatives was relevant, but it indicated that a relative's ability to care for respondent's children did not forestall respondent's obligation to care for them.

A child's placement with relatives weighs against termination under MCL 712A.19a(6)(a), which expressly establishes that when grounds allowing the initiation of termination proceedings are present, initiation of termination proceedings is not required if the children are "being cared for by relatives." Also, in some instances, an incarcerated parent may achieve proper custody by placing a child with relatives. *In re Curry*, 113 Mich App 821, 823-827; 318 NW2d 567 (1982). In this case, however, termination of parental rights was appropriate because there was no evidence that respondent was a fit caregiver or that he ever attempted to provide proper care for his children by making arrangements to have any relative caregivers step in during his incarceration. While it is true that the potential relative caregivers here were not chosen by petitioner to provide care for the children, respondent never intervened to request placement with the relatives or to make sure his children would be cared for by them while he was in prison. Respondent has not demonstrated that he was thinking about the children's care during the time he was unavailable to care for them. Moreover, respondent fails to make clear how placement with relatives in this case would have undermined the trial court's best-interests findings. His children were placed in a foster home with their younger half-brother (who was not respondent's child), they were improving while in foster care, and the foster parent wished to pursue adoption. The trial court did not clearly err in its best-interests determination.

Affirmed.

/s/ Deborah A. Servitto

/s/ Patrick M. Meter

/s/ Karen M. Fort Hood