STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
June 26, 2012

In the Matter of M. BAILEY, Minor.

No. 305820
Presque Isle Circuit Court
Family Division
LC No. 10-000016-NA

Before: M. J. KELLY, P.J., and WILDER and SHAPIRO, JJ.

PER CURIAM.

Respondent appeals as of right the trial court order terminating his parental rights under MCL 712A.19b(3)(g) (failure to provide proper care or custody) and (j) (likelihood of harm). We affirm.

The minor child and his four half-siblings were removed from their mother and her long-term partner for drug abuse and criminality. Respondent, who occasionally abused drugs and alcohol with the mother and her partner, never had a relationship with or communicated with the minor child but had seen him four or five times and was identified as the child's putative father in the original May 6, 2010, petition. No allegations were made against respondent in the original petition and its later amended version. The first caseworker in this proceeding prepared a case-service plan with the goal of reunifying the child with his mother. Respondent was contacted by petitioner on several occasions, but declined to participate in formulating a treatment plan identifying and providing services to rectify his barriers to reunification, and refused to engage in any services because he claimed that he was not convinced he was the child's father. Respondent's paternity was confirmed by genetic testing in mid-August 2010, but by October 2010, he still refused to participate in a treatment plan, stating he was scheduled to become incarcerated soon and had nothing to offer the child. He requested a visit with the child, but when the caseworker arranged one, respondent did not respond or attend. Respondent became incarcerated on or about November 30, 2010, with an earliest release date in October 2012 and maximum release date in 2032.

A new caseworker assumed the case in January 2011 and contacted respondent in prison in February 2011, indicating that the child's mother and her partner were not making satisfactory progress toward reunification with the child and his half-siblings. The caseworker and respondent spoke at length about respondent's barriers to reunification with his child. The caseworker prepared and mailed a parent-agency treatment plan in March 2011, which respondent did not sign and return for six weeks. On May 16, 2011, petitioner filed a

termination petition requesting termination of the mother's, her partner's, and respondent's parental rights. The mother voluntarily relinquished her parental rights and released all five of her children for adoption on May 25, 2011, and at that hearing, respondent stated that he wished to relinquish his parental rights to the minor child as well. However, at the June 13, 2011, hearing at which the mother's partner relinquished his parental rights to his two children, respondent changed his mind and stated that he wanted to preserve his parental rights. A termination hearing was then held July 15, 2011, solely with regard to respondent, from which the trial court terminated his parental rights under MCL 712A.19b(3)(g) and (j)[1].

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. MCL 712A.19b(5); *In re Sours*, 459 Mich 624, 632; 593 NW2d 520 (1999). We review a trial court's factual findings for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). "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." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

On appeal, respondent does not contest the trial court's determination that the statutory conditions were proven by a clear and convincing standard. Instead, respondent argues that the trial court erred in finding that petitioner made reasonable efforts to reunify him with the minor child, as required by statute, court rule, and case law. We disagree.

Respondent claims that the trial court's order terminating his parental rights should be reversed based on the Supreme Court cases of *In re Mason*, 486 Mich 142; 782 NW2d 787 (2010), and *In re Rood*, 483 Mich 73. However, this reliance is misplaced. In *In re Rood*, despite having contact information for respondent Rood, DHS and the trial court failed to provide him notice of several hearings in his child protective proceeding, and the caseworker had no contact with him. The Michigan Supreme Court concluded,In sum, the state deprived respondent [Rood] of even minimal procedural due process by failing to adequately notify him of

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[1] Those statutory subsections provide,

> (g) The parent, without regard to intent, fails to provide proper care or custod 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.
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> * * *
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> (j) 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.

proceedings affecting his parental rights and then terminating his rights on the basis of his lack of participation without attempting to remedy the failure of notice. [*In re Rood*, 483 Mich at 118.]

This case bears no resemblance to *Rood*; the respondent was consistently notified of the child protection proceedings and of his rights to participate.

Likewise, in *In re Mason*, despite knowing where respondent Mason was incarcerated, DHS and the trial court failed to facilitate his participation in all hearings during the crucial dispositional phase, and the caseworker candidly testified that he had no contact with Mason during the proceeding. The Michigan Supreme Court found that the trial court and DHS's failure to secure Mason's presence at the hearings, along with DHS's complete abandonment of its statutory duty to involve Mason in the reunification process, had prevented Mason's meaningful participation in the proceeding, and therefore created "holes in the evidence" and missing information. *In re Mason*, 486 Mich at 152-160, 166, 169. The Court held that the "holes in the evidence," or lack of information regarding Mason, had effectively relieved DHS from its burden to prove the statutory grounds alleged against Mason by clear and convincing evidence. *Id.* at 159-160, 167. A key element in both *In re Mason* and *In re Rood* was that a trial court may not make a decision terminating parental rights based on a lack of information about a respondent or a lack of a respondent's participation in the proceeding when that lack of information or participation is caused by petitioner's failure to properly service a respondent's case. *Id.* at 159-160; *In re Rood*, 483 Mich at 119. In sum, the state cannot fail to adequately engage a respondent in the proceeding and then terminate his parental rights for his failure to engage.

In the present case, the trial court found that petitioner's efforts were reasonable under the circumstances of this case, and that neither *In re Rood* nor *In re Mason* supported respondent's position that DHS did not make reasonable reunification efforts. We agree.

As noted above, there are few, if any, similarities between respondent's case and *In re Rood* and *In re Mason*. In those other cases, there was no attempt to engage the fathers in services or even to keep them apprised of the cases as they progressed. In respondent's case, there was testimony regarding the various workers' repeated attempts to actively engage respondent. Up until the termination hearing, respondent had rebuffed each attempt. He declined services initially; declined them a second time even though he had learned months earlier that he was the child's biological father; failed to show up when given an opportunity to visit with the child; declined services a third time, albeit temporarily, when he did not promptly sign and return the parent-agency agreement that had been sent to him; and at the initial termination hearing stated on the record that he wished to voluntarily terminate his parental rights. On this record, the trial court properly found that petitioner had made reasonable efforts to reunify.

Affirmed.

/s/ Michael J. Kelly
/s/ Kurtis T. Wilder
/s/ Douglas B. Shapiro