

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
July 24, 2012

In the Matter of JACKSON, Minors.

No. 307754
Monroe Circuit Court
Family Division
LC No. 10-021574-NA

Before: DONOFRIO, P.J., and RONAYNE KRAUSE and BOONSTRA, JJ.

PER CURIAM.

Respondent appeals as of right an order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(g) and (j). We affirm.

To terminate parental rights, the trial court must find that the petitioner has proven at least one of the statutory grounds for termination by clear and convincing evidence. MCL 712A.19b(3); MCR 3.977(H)(3)(a); *In re Sours*, 459 Mich 624, 632; 593 NW2d 520 (1999). We review for clear error a trial court's decision terminating parental rights. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re 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). To be clearly erroneous, a decision must be more than maybe or probably wrong. *In re Sours*, 459 Mich at 633. We 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); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

MCL 712A.19b(3)(g) contemplates termination of parental rights when “[t]he 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.” We conclude that the trial court did not clearly err in finding that this statutory ground was established by clear and convincing evidence.

Respondent’s service agreement was specifically tailored to address his parenting deficits and improve his capacity to care for his children. As respondent argues on appeal, he was initially participating in services and nearly completed parenting classes, participated in counseling, and earned weekly day-long unsupervised visitation with his children. However, the record evidence shows that respondent was not able to maintain his progress, eventually abandoned his services plan, completely stopped contacting DHS, did not appear in court, and eventually lost the opportunity to visit his children.

Respondent argues that he became frustrated and tired because visiting his children and also doing the required alcohol and drug screens presented a financial burden. Respondent did not bring these concerns to his caseworker and instead abandoned the program. In any event, the record shows that DHS provided respondent with a monthly check reimbursing him for all the mileage involved in traveling to see his children. The foster parents worked with respondent on finding convenient places to meet to drop off the children. Despite the reimbursement, the foster parents' assistance, and several months to make arrangements, respondent was not able to overcome his transportation or financial issues.

Respondent admitted he had a problem with alcohol, but he lacked insight into the seriousness of the problem and how it affected his ability to parent his children. While respondent testified that he was aware of the steps involved in AA and the importance of meetings, respondent's attendance at AA meetings was spotty at best and he showed no benefit from the meetings. Respondent also had difficulty following the law and staying out of jail. Respondent got out of prison in February 2008. Thereafter, respondent had violations of the Sex Offenders Registration Act (SORA), MCL 28.721 *et seq.*, in 2009, 2010, and 2011. Respondent was also convicted of domestic violence in 2009 and again in 2010. While on probation for a SORA violation, respondent violated the terms of his probation more than once by consuming intoxicants and not performing community service as ordered. Bench warrants were issued. Respondent went to jail for 28 days in August 2010 for domestic violence. Just before the termination hearing, respondent served another 24-day jail sentence in late October/November 2011 for violating his probation. Respondent testified that at the time of the termination hearing he had a pending misdemeanor charge for another SORA violation and was yet again facing possible jail time. Despite services and support, respondent was not able to break his cycle of criminality and incarceration. Simply stated, respondent cannot be an effective parent and provide a stable environment for his children if he cannot follow the law and stay out of jail.

In sum, the record evidence reveals that respondent abandoned his case services plan, stopped contacting his caseworkers, did not rectify his drinking problem, violated the law, and returned to jail while his children were in foster care. Again, respondent's case services plan was instituted to improve his parenting skills and prevent these destructive patterns from continuing, but he either could not or would not comply with his plan and truly benefit from it. "[A] parent's failure to comply with the parent-agency agreement is evidence of a parent's failure to provide proper care and custody for the child." *In re JK*, 468 Mich at 214. While respondent loved his children, respondent's choices throughout the case did not demonstrate that he could put the needs of his children before his own and provide a safe, stable, and suitable home for them. Therefore, by virtue of clear and convincing evidence, respondent failed to give the children proper care and custody, and no reasonable expectation existed that respondent would be able to do so within a reasonable time.

Similarly, we conclude that the trial court did not clearly err when it found clear and convincing evidence to terminate respondent's parental rights under MCL 712A.19b(3)(j), which provides, "[t]here 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." The evidence established that respondent lacked sound judgment, lacked the skills necessary to properly care for his children, and also lacked the ability to protect the children. Respondent admittedly had a drinking problem that he was not able to overcome in the 15 months his

children were in foster care, despite services. Respondent continued to violate the law while his children were in care and even had charges pending against him at the time of the termination hearing. Questions remained about respondent's ability to stay away from the children's mother, a known heroin user whose parental rights to the children were terminated. Significantly, when participation in his case services program became difficult for him, respondent gave up and stopped participating in services even though he knew that would mean he could no longer have visitation with his children. Respondent did not have insight into his parenting shortfalls and was unwilling or unable to benefit from services designed to improve his parenting skills and in turn safeguard and protect his children from harm.

Finally, the trial court did not clearly err when it determined that termination of respondent's parental rights was in the best interests of his minor children. "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.19(b)(5). A trial court may consider evidence on the whole record in making its best-interest determination. *In re Trejo*, 462 Mich at 353. This Court reviews the court's best-interest determination for clear error. MCR 3.977(K).

The minor children were young—nine years old, four years old, and just 20 months old at the time of the termination order. This was the second time in foster care for the older two children, and the youngest child was taken into custody when she was just four months old. The children had spent very significant portion of their lives in foster care. They deserved to be brought up in an environment that was healthy, stable, and permanent. While it was undisputed that respondent loved the children, respondent was unable or unwilling to stay committed to his case services plan and, when it became difficult for him, completely abandoned it while knowing he would no longer be able to visit with his children. Despite receiving opportunities to participate in multiple services, support from DHS and the foster parents, financial assistance for travel, and 15 months of time, respondent still labored with serious problems, especially repeated violations of the law and a resultant cycle of incarceration. Respondent did not demonstrate that he could put the needs of his children before his own and provide a safe and stable home for them. Because of respondent's abandonment of his service plan and the children's need for permanency and stability, there was no clear error in the trial court's finding that termination of respondent's parental rights served the children's best interests.

Affirmed.

/s/ Pat M. Donofrio
/s/ Amy Ronayne Krause
/s/ Mark T. Boonstra