STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
October 18, 2012

In the Matter of R. ADAMS, Minor.

Nos. 308986; 308987
Calhoun Circuit Court
Family Division
LC No. 2010-003578-NA

Before: O'CONNELL, P.J., and DONOFRIO and BECKERING, JJ.

PER CURIAM.

In this consolidated appeal, respondents appeal as of right the trial court's order terminating their parental rights to the minor child under MCL 712A.19b(3)(c)(*i*) (conditions that led to the adjudication continue to exist), (c)(*ii*) (other conditions exist that cause the child to come within the court's jurisdiction), (g) (failure to provide proper care or custody) and (j) (reasonable likelihood of harm if the child is returned to respondents' care). Because a respondent may not collaterally challenge the trial court's assumption of jurisdiction over a child and jurisdiction was proper in this case in any event, clear and convincing evidence established the statutory bases for termination of respondents' parental rights, and termination was in the child's best interests, we affirm.

We first address respondent father's argument in Docket No. 308987 that the trial court erred by assuming jurisdiction over the minor child. In order to exercise jurisdiction in a termination of parental rights proceeding, the trial court must find that at least one of the statutory grounds for jurisdiction in MCL 712A.2(b) has been established by a preponderance of the evidence. MCR 3.972(C)(1); *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). At the adjudication, respondents admitted to allegations that they were the subjects of 27 police calls for domestic violence or intoxication in 2010, respondent mother had assaulted respondent father numerous times, respondent father was arrested for domestic violence against respondent mother on November 8, 2010, respondent mother abused prescription medications, and both respondents were on probation or parole. The trial court found that respondents' admissions were voluntarily, knowingly and understandingly made, and assumed jurisdiction over the child.

Citing *In re Youmans*, 156 Mich App 679; 401 NW2d 905 (1986), respondent father argues that admissions are insufficient to establish jurisdiction, and that a trial court must make an independent determination whether the allegations are sufficient to permit the court to assume jurisdiction. Respondent father failed to raise this issue at the time of adjudication, and the trial court's jurisdiction may not be collaterally attacked in a subsequent appeal of an order

terminating parental rights. *In re Hatcher*, 443 Mich 426, 444; 505 NW2d 834 (1993). In any event, even if this argument had been raised at the time of adjudication, it lacks merit. There is a distinction between the sufficiency of allegations in the petition and the sufficiency of the evidence, and in *In re Youmans*, 156 Mich App at 685, the allegations in the petition were not sufficient to confer jurisdiction. That is not the case here. The petition in the present case, alleging domestic violence, criminality, and substance abuse, was sufficient to confer jurisdiction. As noted in *Hatcher*, 443 Mich at 437, "subject matter jurisdiction is established when the action is of a class that the court is authorized to adjudicate, and the claim stated in the complaint is not clearly frivolous." The valid exercise of the "court's statutory jurisdiction is established by the contents of the petition after the . . . judge or referee has found probable cause to believe that the allegations contained within the petition[] are true." *Id*. In this case, the trial court found probable cause to believe that the contents of the petition were true and authorized the petition. Moreover, MCR 3.971[1] allows a respondent's admission and the trial court's acceptance of that admission to form a basis for jurisdiction. Here, both respondents made admissions in response to direct questioning, and the trial court found those admissions sufficient to confer jurisdiction. Thus, the trial court did not clearly err by assuming jurisdiction over the child.

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[1] MCR 3.971 provides, in relevant part:

> (A) General. A respondent may make a plea of admission or of no contest to the original allegations in the petition. The court has discretion to allow a respondent to enter a plea of admission or a plea of no contest to an amended petition. The plea may be taken at any time after the filing of the petition, provided that the petitioner and the attorney for the child have been notified of a plea offer to an amended petition and have been given the opportunity to object before the plea is accepted.
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> (C) Voluntary, Accurate Plea.
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> (1) Voluntary Plea. The court shall not accept a plea of admission or of no contest without satisfying itself that the plea is knowingly, understandingly, and voluntarily made.
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> (2) Accurate Plea. The court shall not accept a plea of admission or of no contest without establishing support for a finding that one or more of the statutory grounds alleged in the petition are true, preferably by questioning the respondent unless the offer is to plead no contest. If the plea is no contest, the court shall not question the respondent, but, by some other means, shall obtain support for a finding that one or more of the statutory grounds alleged in the petition are true. The court shall state why a plea of no contest is appropriate.

The trial court also did not clearly err by finding that clear and convincing evidence established the statutory grounds for termination of respondents' parental rights. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). The trial court made detailed findings of fact and acknowledged respondents' compliance with services, the progress that they had made in eliminating domestic violence incidents, and the love that they had for the minor child. The court found, however, that respondents had not rectified their substance abuse issues or significantly changed their lifestyle, which posed a danger to the child. The evidence showed that respondents had made partial progress and, at the October 28, 2011, permanency planning hearing, reunification remained the goal. At that hearing, respondents asserted that they had benefitted from intervention and that the child could safely return home, but five days later the police executed a drug raid on their residence and found drugs, drug dealing paraphernalia, and firearms. Thereafter, the goal changed from reunification to termination.

Respondents assert that the trial court relied too heavily on the drug raid in terminating their parental rights, and did not adequately consider their progress and the fact that respondent father's brother claimed ownership of the contraband found during the raid. A review of the record, however, shows that the trial court considered respondents' progress in some areas, their lack of progress with respect to substance abuse and stabilizing their relationship, and simply did not find credible their claim that they were unaware that drugs were present in their home and that they were not involved in selling drugs. The court concluded that respondents failed to comprehend that their lifestyle, particularly with respect to drug use, had to change dramatically in order to reach the point that the child could be returned to them. The court determined that respondents had been dishonest, had concealed their true lifestyle, and that it could not trust them to be honest in the future.

The evidence supported termination of respondents' parental rights. Respondent mother's drug screens in the months leading up to the termination hearing continued to be above therapeutic levels for her prescription medications, and she was under the influence of substances at a visit with the child one month before the termination hearing. At the termination hearing, respondent mother admitted that she had no explanation for her elevated drug levels. Respondent father continued to consume alcohol during the entire proceeding, including as recently as two months before the termination hearing. Respondents' relationship also remained unstable, and, at the termination hearing, respondent mother testified that respondent father was not to blame for an incident in which her coat was stuck in a car door and she was dragged down the street while respondent father was inside the car. Thus, the trial court did not clearly err by finding that respondents had failed to rectify the conditions that led to the adjudication and that they had failed to rectify other conditions that caused the child to come within the court's jurisdiction. Likewise, the trial court did not clearly err by finding that respondents failed to provide the child with proper care or custody and that there existed a reasonable likelihood of harm if the child was returned to respondents' care. Further, based on respondents' more recent activity, including the drug raid, and their lack of credibility, the trial court did not clearly err by finding that it could not trust respondents to be honest in the future and that there was no reasonable expectation that they would rectify these conditions within a reasonable time. Thus, the trial court did not clearly err by finding that the statutory bases for termination had been proven by clear and convincing evidence.

Finally, for the reasons discussed above, the trial court did not clearly err by finding that termination of respondents' parental rights was in the child's best interests. MCL 712A.19b(5); *In re Rood*, 483 Mich 73, 102 n 43; 763 NW2d 587 (2009). The evidence showed that respondents' home was not safe for the child, that there was no reasonable likelihood that respondents would be able to rectify their substance abuse issues within a reasonable time, and that there was a reasonable likelihood of harm if the child was returned to respondents' care. The child experienced behavioral difficulties upon removal but improved after being placed with a relative and was doing well in the relative's care. Thus, the record supports the trial court's determination that termination of respondents' parental rights was in the child's best interests.

Affirmed.

/s/ Peter D. O'Connell
/s/ Pat M. Donofrio
/s/ Jane M. Beckering