STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
November 20, 2012

In the Matter of M. T. TUCKER, Minor.

No. 308915
Washtenaw Circuit Court
Family Division
LC No. 2009-000060-NA

Before: CAVANAGH, P.J., and HOEKSTRA and SHAPIRO, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(*i*) and (g). We affirm.

Respondent first argues that a statutory ground for termination was not established by clear and convincing evidence. We disagree.

At least one statutory ground under MCL 712A.19b(3) must be established by clear and convincing evidence before parental rights are terminated. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). We review for clear error a trial court's finding that a ground for termination has been proven by clear and convincing evidence. *Id.*

The trial court's finding that the statutory grounds for termination were established by clear and convincing evidence was not clearly erroneous. The record evidence included that, in June 2009, the minor was born premature and with cerebral palsy, as well as other challenges. He was placed in foster care and, eventually, the parental rights of his mother were terminated. Although initially unknown, in January 2010 respondent was identified as the minor's putative father[1] and a parent-agency treatment plan and service agreement were completed. Respondent was to participate in individual therapy, complete a psychological evaluation and parenting classes, and be involved with the child, including his medical care. By August 2010, respondent had visited the minor twice. His case worker indicated that respondent did not return any telephone calls and noted that respondent did not attend the court hearings. The record reveals that, although there were several hearings conducted during the pendency of this matter, most were attended only by respondent's counsel and not respondent.

[1] A DNA test confirmed that respondent is the minor's biological father.

Throughout the course of these proceedings, the parent-agency treatment plan and service agreement were updated. Respondent was asked to provide documentation verifying legal employment and attend supervised parenting time. In January 2011, several services were offered to respondent, including random drug screens, a substance abuse evaluation, a psychological evaluation, parenting classes, and domestic violence classes. By April 2011, after respondent failed to accept any of the several services, he was advised that a petition for termination would be filed if he failed to participate in the services. It was noted that respondent had not visited the minor in over four months. In May 2011, a review and permanency planning hearing was held. Respondent did not attend the hearing, but his counsel appeared and requested an adjournment, which was granted. By June 2011, respondent still had not participated in the offered services. In fact, during that month respondent failed to attend ten scheduled drug tests and tested positive for cocaine on one occasion. Further, in November 2010, respondent had been charged with third-degree criminal sexual conduct against a minor.

In June 2011, a review and permanency planning hearing was held. Respondent did not attend the hearing, but his counsel appeared and requested an adjournment. It was noted that respondent had not completed any of the offered services, including a substance abuse evaluation, parenting classes, domestic violence classes or his psychological evaluation. He also had not visited the minor since December 2010, including on the minor's birthday. By July 2011, respondent was still not compliant with drug testing services; he failed to attend eight scheduled tests and tested positive for cocaine on two occasions. By August 2011, respondent still had not completed any of the services offered and had not visited the minor. He also did not comply with a probate court order requiring him to pay child support.

In September 2011, the trial court gave notice of a pretrial hearing and termination trial. Respondent was ordered to attend both. Nevertheless, respondent did not attend the pretrial, but his counsel was present and requested an adjournment of the scheduled termination trial. The trial was then rescheduled from October to November 2011. An updated service plan and parent-agency treatment plan from November 2011 indicated that respondent had completed a psychological evaluation, but had not attended parenting and domestic violence classes. He also refused to complete a substance abuse evaluation, provide proof of employment, and provide his work schedule.

The termination trial was scheduled to begin on November 10, 2011. On that date, however, respondent did not appear. Respondent's attorney was present and requested an adjournment. The request was granted and the trial was scheduled for December 19, 2011. However, on that date, again respondent did not appear. Respondent's attorney was present and requested another adjournment. Respondent's attorney advised the court that respondent could not take off any time from his truck driving job and requested that the trial commence in February of 2012. After receiving testimony confirming that respondent never provided any verification of his employment, and noting that respondent had not been to several hearings, the court denied the request for adjournment and the trial proceeded. Thereafter, significant evidence was admitted as set forth above, as well as: results of a psychological evaluation of respondent, testimony related to his history of domestic violence, and testimony regarding the lack of contact and bond between the minor and respondent.

After review of the record, we conclude that the trial court did not clearly err in finding that MCL 712A.19b(3)(c)(*i*) and (g) were established by clear and convincing evidence. See *In re Mason*, 486 Mich at 152; *In re Trejo*, 462 Mich 341, 362-363; 612 NW2d 407 (2000). That is, respondent failed to provide proper care or custody for the minor and there was no reasonable expectation that he would be able to do so within a reasonable time considering the minor's age. Further, the conditions that led to the adjudication continued to exist at least 182 days after the initial dispositional order was issued and there was no reasonable likelihood that the conditions would be rectified within a reasonable time considering the minor's age. Contrary to respondent's claims on appeal, the evidence does not "clearly" show that he made any "progress toward becoming a more involved and better parent."

Next, respondent argues that he was denied due process because he was "denied the opportunity to be heard at his termination trial." We disagree.

"Whether a child protective proceeding complied with a respondent's right to due process presents a question of constitutional law that we review de novo." *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009). Due process requires that a respondent be provided notice and an opportunity to be heard. *In re Beck*, 287 Mich App 400, 401; 788 NW2d 697 (2010). As this Court explained in *In re Vasquez*, 199 Mich App 44; 501 NW2d 231 (1993):

> [P]ursuant to MCR 5.973(A)(3)(b),[2] a parent has the right to be present at a termination hearing or may appear through legal counsel. The court rule does not require that the probate court secure the physical presence of a parent, but only implies that the probate court shall not deny a parent's right to be present at the hearing. [*Id*. at 49.]

In this case, respondent chose not to exercise his right to be present at the termination hearing; instead, he was represented by legal counsel who, again, requested an adjournment. Respondent had not attended several previous court hearings, and had been ordered by the court to attend the termination trial. There is no dispute that respondent had notice of the termination trial and he was not denied his right to be present at the hearing. The trial court was not required to secure respondent's presence at trial. In light of the record evidence, respondent cannot establish his claim that he was "denied the opportunity to be heard at his termination trial."

Respondent also appears to claim that he was denied due process because petitioner failed to comply with its statutory duty to prepare and update service plans and report any problems arising during the case so that respondent could correct those issues. Specifically, respondent asserts that petitioner never questioned his employment status or requested verification of his employment. The record does not support this claim. Several of the service plans required respondent to provide employment verification and his work schedule. Further, three caseworkers testified that they had asked respondent to verify his employment, but he refused.

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[2] This provision is now MCR 3.973(D)(2).

Finally, respondent appears to claim that the trial court abused its discretion by denying his motion for a new trial. See *Campbell v Human Servs Dep't*, 286 Mich App 230, 243; 780 NW2d 586 (2009). However, in his brief, respondent simply offers conclusory statements without any discussion or citation to authority. We will not consider a claim of error where the party asserting the claim "presents it as a mere conclusory statement without citation to the record, legal authority, or any meaningful argument." *Ewald v Ewald*, 292 Mich App 706, 726; 810 NW2d 396 (2011).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Joel P. Hoekstra
/s/ Douglas B. Shapiro