STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
April 16, 2013

In the Matter of SMITH/JOHNS, Minors.

No. 312540
Wayne Circuit Court
Family Division
LC No. 10-496461-NA

Before: WILDER, P.J., and STEPHENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

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

Respondent argues that the trial court clearly erred in finding clear and convincing evidence to terminate his parental rights. We disagree. Termination of parental rights is appropriate where petitioner proves by clear and convincing evidence at least one ground for termination and that termination is in the child's best interests. MCR 3.977(H)(3); MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 355, 612 NW2d 407 (2000); *In re B & J*, 279 Mich App 12, 17; 756 NW2d 234 (2008). This Court reviews the lower court's findings under the clearly erroneous standard. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999); *B & J*, 279 Mich App at 17. 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. *Mason*, 486 Mich at 152; *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *B & J*, 279 Mich App at 17-18.

This case is exceptionally unfortunate, because it is clear that respondent eventually made genuine attempts to become a suitable parent. Furthermore, the trial court clearly erred in finding a "reasonable likelihood . . . that the child will be harmed if he or she is returned" to the parent's home under MCL 712A.19b(E)(j). Respondent lived in his girlfriend's home, which was unstable and otherwise not the most ideal living situation, but there was no suggestion of drug or alcohol abuse, mistreatment or neglect of children, or insufficient food or unclean conditions. Aside from initially neglecting the minor children and leaving them with their mother who neglected them, there was no evidence that respondent had ever harmed a child. Indeed, to the contrary, his interactions with the children were, by the time his rights were terminated, appropriate and caring. We find the evidence insufficient to prove subsection (j) by clear and convincing evidence. See *Mason*, 486 Mich at 165.

However, only one statutory ground need by proven by clear and convincing evidence, *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000), and sufficient evidence supported termination of respondent's parental rights under subsections (c)(*i*)[1] and (g).[2] Despite a tepid and ambivalent start, respondent eventually completed parenting classes, demonstrated proper parenting skills, and provided negative drug screens. Unfortunately, the children had special needs, and respondent had substantial physical and mental health problems of his own. Respondent, in a showing of commendable honesty, himself voiced concerns that he simply would not be capable of caring for the children's needs, and the evidence shows that concern to be well-founded, through no fault of respondent's own. Furthermore, respondent's home with his girlfriend was unstable, and after 18 months, respondent was unable to progress to unsupervised visits. The trial court simply did not clearly err in finding subsections (c)(*i*) and (g) proven by clear and convincing evidence.

Respondent suggests that the trial court erred in terminating his parental rights because his niece expressed a willingness to act as guardian for the children and their half-brother. Respondent cites MCL 712A.19a(6), which provides that placement with relatives weighs against termination. See *Mason*, 482 Mich at 164. Here, however, the children were not placed with relatives, mainly because no suitable relatives came forward to care for them until right before the termination hearing. Furthermore, the extent to which the niece's husband was committed to the guardianship was never established, and there were apparently some concerns about how the niece's minor daughter would react to the guardianship situation. The niece hardly knew the children and was insufficiently familiar with their special needs. We agree with the trial court that the niece's offer was commendable, but we also agree with the trial court's decision to discount it.

Respondent also maintains that the trial court clearly erred in finding termination to be in the children's best interests. We disagree. Once a statutory ground for termination is established by clear and convincing evidence, the trial court must terminate parental rights if termination is in the child's best interests. MCR 3.977(H)(3); MCL 712A.19b(5). The trial court's decision on best interests is reviewed for clear error. MCR 3.977(K); *Trejo*, 462 Mich at 356-357; *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009).

Respondent again relies on his niece's offer to act as the children's guardian. We note that the trial court took the possibility seriously. However, as discussed above, the trial court did not err in finding that guardianship possibility a poor one. In contrast, the children had been in the same foster home for nearly two years, and the home provided stability and permanency because the foster parents were willing to adopt. See *In re VanDalen*, 293 Mich App 120, 141;

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[1] "182 or more days have elapsed since the issuance of an initial dispositional order and . . . The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age."

[2] "The 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."

809 NW2d 412 (2011). The foster mother was able and willing to take care of RS's special needs, while respondent admitted never being able to handle RS's issues. Respondent could not offer a permanent, stable home. He was uncertain of his ability to care for the children and questioned his paternity of RS. While he had a bond with the children, they had not lived with him for any appreciable length of time. His failure to complete some aspects of his PAA could properly be considered as evincing neglect. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003); *Trejo*, 462 Mich at 360-363. We find that the court considered the relevant factors and did not clearly err in its best-interest determination.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Cynthia Diane Stephens
/s/ Amy Ronayne Krause