STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
May 14, 2013

In the Matter of O. RENDER, Minor.

Nos. 312422 & 313015
Mecosta Circuit Court
Family Division
LC No. 11-005689-NA

Before: FORT HOOD, P.J., and FITZGERALD and O'CONNELL, JJ.

PER CURIAM.

In these consolidated cases, respondent-mother appeals as of right, and respondent-father appeals by leave granted an order terminating their parental rights. We affirm.

I. BACKGROUND

The child was removed from the home in 2011, because of respondent-mother's alcohol abuse. Respondent-father had been absent for most of the minor child's life and, at the time of removal, respondent-father did not know where the child and respondent-mother were living, there was a warrant out for his arrest, and the Department of Human Services (DHS) did not have sufficient contact information for him. Respondent-mother struggled with alcohol most of her adult life. Before the child was born, she had voluntarily released her parental rights to a different child due, in part, to problems relating to her alcohol use. She had been in and out of rehabilitation and detoxification several times, including a hospital-based detoxification when she was pregnant with the child. She testified that she has received numerous services to help her combat her alcohol addiction, but acknowledged that she has suffered from multiple relapses. In June 2011, the court took jurisdiction over the child.

At the dispositional hearing, the minor child and respondent-father were reunified, despite a determination that literacy and domestic violence problems were barriers to reunification. Because respondent-father's housing was inappropriate, he moved in with respondent-mother. At the time, he knew of her alcohol problems and maintained that she had a history of falsely accusing him of domestic violence; however, he said he returned for the child's sake. Respondent-mother and the child were reunified in August 2011, because she was participating in and benefiting from the services she was receiving.

Within the same month, respondent-mother asserted that respondent-father had sexually assaulted and raped her. The child was again removed from the home. DHS gave respondent-father a gas card and asked him to leave the home. Respondent-father left the county and did not

attempt to contact the child. He sporadically responded to efforts by DHS to engage him in services. He did not participate in available parenting time. Respondent-father explained that it was difficult for him to participate because he was incarcerated for part of the time, was sometimes working over 90 hours a week, and did not have transportation. He admitted that he had abruptly ended a telephone permanency planning conference, and that he had refused to return a letter inquiring about possible relative placements.

While respondent-father was absent, respondent-mother continued with services and was reunited with the child again in December 2011. DHS indicated that it was starting to wind down services and that she appeared to be benefiting from the services. In early February 2012, a DHS worker made an unannounced home visit and found that respondent-mother's home was appropriate and that there were no concerns with her sobriety. However, later the same month, DHS received reports that respondent-mother was drinking again. DHS workers went to her home. Respondent-mother did not answer the door, so law enforcement was called. The evidence established that the home was in total disarray, that the five-year-old child appeared to be fending for himself and was hungry, and that respondent-mother was incoherent, highly intoxicated, and barely capable of standing. She was taken to the hospital and then arrested for child abuse. The child was removed from the home, and petitioner sought termination of respondents' parental rights.

II. REUNIFICATION EFFORTS

Respondents first argue that petitioner failed to make reasonable efforts at reunification. We disagree. Generally, reasonable reunification efforts must be made to reunite the parent and child. See MCL 712A.19a(2). DHS was therefore required to make reasonable efforts to rectify the conditions that caused the child's removal. However, the evidence at trial clearly indicated that respondent-mother was provided with the following services before termination was sought: a family advocate referral; transportation services; gas cards; detoxification treatment; a psycho-social assessment, individual and group outpatient counseling; random drug testing; Alcoholics Anonymous (AA) services, both in person and online; Community Mental Health (CMH) counseling; parenting time; OASIS; WISE empowerment groups; and WISE pattern-changing groups. After termination was sought, DHS did not provide any additional services or parenting time. However, it is well-established that "[p]etitioner . . . is not required to provide reunification services when termination of parental rights is the agency's goal." *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009). Thus, the lack of additional services does not warrant reversal.

Respondent-father was not provided the same plethora of services. However, "[w]hile the DHS has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered." *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). Petitioner attempted to involve respondent-father and attempted to provide him with services. However, seemingly because of respondent-father's reluctance to cooperate with petitioner, he did not complete any services. Respondent-father's failure to maintain contact and actively participate in reunification efforts cannot be attributed to petitioner.

III. GROUNDS FOR TERMINATION

Respondents argue that the trial court erred in finding grounds to terminate their parental rights. We disagree. We review for clear error a trial court's finding of whether a statutory ground for termination has been proven by clear and convincing evidence. MCR 3.977(K); *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). "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." *Id.* at 296-297. "Termination of parental rights is appropriate when the DHS proves one or more grounds for termination by clear and convincing evidence." *In re Frey*, 297 Mich App at 244. In this case, the trial court found several grounds for termination; however, only one statutory ground for termination need be established. *In re Olive/Metts*, 297 Mich App 35, 41; 823 NW2d 144 (2012).

Respondent-mother's rights were terminated pursuant to MCL 712A.19b(3)(c)(*i*), (g), and (j). Pursuant to (c)(*i*), the court may terminate a parent's parental rights if it finds by clear and convincing evidence that "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." In this case, the primary condition leading to adjudication was respondent-mother's alcohol abuse. According to respondent-mother's testimony, she purchased and consumed alcohol at least twice in February 2012. Further, in late February 2012, when law enforcement and the DHS arrived at her home, respondent-mother was highly intoxicated, nearly incoherent, and unable to fend for herself, much less for the child. She had to be hospitalized before she was taken to jail for fourth-degree child abuse. Respondent-mother also admitted that she had consumed alcohol in late March of 2012, that she was arrested in April of 2012 for being drunk and disorderly, and that she was arrested again in June of 2012 with a blood alcohol content of .15. Although she claimed that she had not had anything to drink since June 20, 2012, that was only about one month before the termination hearing. Thus, it is evident that the condition leading to adjudication continued to exist despite the numerous services respondent-mother received to help her overcome her alcohol addiction. The child was only five years old and had already been repeatedly removed because of respondent-mother's alcohol abuse. Given her unsuccessful treatment, it was unlikely that the condition could be remedied within a reasonable time given the child's age. The trial court did not clearly err in finding grounds for termination under MCL 712A.19b(3)(c)(*i*) with regards to respondent-mother. Because of our decision on this issue, we need not address whether the trial court erred in finding grounds for termination pursuant to MCL 712A.19b(3)(g) and (j).

With regard to respondent-father, the trial court found grounds for termination pursuant to MCL 712A.19b(3)(c)(*i*), (g), and (a)(*ii*). Pursuant to subsection (g), the court may terminate a parent's parental rights if "[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." Here, the evidence clearly showed that respondent-father recognized that respondent-mother was not an appropriate guardian. He has been aware of her addiction since the second time he met her and testified that she is violent, verbally abusive, and assaultive when drinking. He also testified that she had relapsed multiple times while he lived with her and that he had to take her to the hospital for detoxification on more than one occasion. In spite of this knowledge, he never sought custody of the child, even though DHS offered to help him with a custody change. He virtually disappeared after August 25, 2011, and did not contact or attempt to contact the child.

Furthermore, he only had sporadic contact with DHS, and he did not take advantage of parenting time, even though DHS wanted to schedule it. Again, the child is only five years old. Respondent-father has not provided care and custody for him since August 2011. Further, respondent-father has demonstrated an inability to participate in services. On these facts, the trial court did not clearly err in finding that respondent-father cannot provide proper care and custody within a reasonable time. Because of our finding on this issue, we need not address whether the trial court erred in finding clear and convincing evidence to terminate based on subsections (c)(*i*) and (a)(*ii*).

IV. BEST INTERESTS

Respondents also argue that termination was not in the minor child's best interests. We disagree. We review a trial court's best interests decision for clear error. *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009). "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.19b(5). "In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts Minors*, 297 Mich App at 41-42 (internal citations omitted). In this case, the trial court made detailed findings based on pertinent factors.

Regarding respondent-mother, the evidence showed that she was closely bonded with the child. Even after being removed from her home four times, he still mentioned his mother frequently in a positive fashion. However, the evidence also showed that respondent-mother had a severe addiction to alcohol and that, when drinking, she could not take care of the child. She failed to derive any lasting benefit from the services she received to help her overcome her addiction, and the DHS indicated that there were no additional services it could provide. Further, the child was removed from respondent-mother's care three times within a one-year period and four times total, and he needs stability and permanence that respondent-mother appears incapable of providing within a reasonable time. We therefore conclude that the evidence supported the trial court's determination that termination was in the child's best interests.

Regarding respondent-father, the evidence showed that the child had no bond to him. In fact, although the child frequently mentioned his mother while in his foster home, he never mentioned respondent-father. Further, the evidence showed that respondent-father had an extensive criminal background, including a conviction for domestic violence against respondent-mother. Respondent-father refused to participate in services for domestic violence, often asserting that the allegations were just respondent-mother's lies. In addition, he only sporadically responded to phone calls initiated by the DHS and was, overall, simultaneously frustrated with the process and uncooperative with efforts to involve him in the child's life. There were no signs that respondent-father could provide proper care and custody within a reasonable time considering the child's age. Accordingly, the trial court did not clearly err in finding that termination of parental rights would be in the child's best interests.

V. AMENDMENT TO PETITION

Finally, respondent-father argues that the trial court erred in allowing petitioner to amend the petition to include additional grounds for termination after the close of the proofs. Petitioner added subsection (a)(*ii*) with regards to respondent-father. Respondent-father argues that the amended petition violated his due process rights because he was not given notice that he had to defend on those grounds. Because of our decision that subsection (g) was established by clear and convincing evidence, we decline to address this issue.

Affirmed.

/s/ Karen M. Fort Hood
/s/ E. Thomas Fitzgerald
/s/ Peter D. O'Connell