

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
May 16, 2013

In the Matter of A. MCGEE, Minor.

No. 313103
Kent Circuit Court
Family Division
LC No. 11-052094-NA

Before: SERVITTO, P.J., and WHITBECK and SHAPIRO, JJ.

PER CURIAM.

Respondent-father, A. Robinson, appeals as of right the circuit court order terminating his parental rights to his minor child under MCL 712A.19b(3)(c)(i), (g), and (h). Robinson asserts that termination of his parental rights was not in the child's best interests. We affirm.

I. FACTS

A. BACKGROUND FACTS

In 2011, one of the child's siblings tested positive for cocaine and marijuana when he was born. At the preliminary hearing, Yolanda Augustus, an employee of the Department of Human Services (the Department), testified that Robinson was imprisoned and that his earliest release date was in 2016. Augustus testified that the child was living with G. Smith and believed that Smith was his father.

At the adjudication, the child's mother admitted that she physically abused the child and that she used cocaine and marijuana during her pregnancy with the child's sibling. Robinson admitted that he was imprisoned, that his earliest release date was February 3, 2016, and that he had not contacted the child in over 90 days. The trial court placed the child in foster care.

In August 2011, Bryan Oosting, the children's foster care caseworker, testified that he would work with Robinson and the prison to determine what services were available to help Robinson address his substance abuse and other issues. The trial court ordered Robinson to provide the Department with possible relatives or guardians with whom it could place the child.

In November 2011, Oosting testified that Robinson wanted the trial court to place the child with Robinson's sister, the child's aunt. Oosting testified that the aunt wanted to establish a relationship with the child, and the Department scheduled a home study. He testified that

Robinson reported that he was on the waiting list for parenting and substance abuse classes and that he believed that Robinson was actively trying to be involved in the child's case.

In February 2012, Oosting testified that the aunt's home visit showed that she could provide an appropriate home for the child; however, the aunt stated that she needed financial support in order to provide for him, and thus was not interested in an unlicensed placement. Oosting testified that the aunt had stopped the licensing process because of financial issues.

In April 2012, Liana Kaplan, the child's new foster care case worker, testified that Robinson indicated that it was difficult to become involved in services where he was incarcerated. She testified that Robinson sent her completed parenting worksheets, and she was not aware of further services in which he could be involved.

Kaplan testified that Robinson also sent her a letter that stated that he wished to be part of the child's life. In his letter, Robinson included a photograph and a letter for the child. Kaplan testified that she had not given the letter to the child because his therapist had not indicated whether it would be appropriate, given that the child did not know that Robinson was his father.

Kaplan testified that the child's aunt frequently called to check on the child and to speak with him, but continued to indicate that she was unable to proceed with the foster care licensing process. Kaplan testified that, because Robinson's earliest release date was 2016, he would be unable to form a relationship with the child before then. Kaplan recommended that the trial court terminate Robinson's parental rights.

In June 2012, the Department petitioned the trial court to terminate Robinson's parental rights on the grounds of MCL 712A.19b(3)(a)(ii) (desertion), (c)(i) (the conditions of adjudication continue to exist), (g) (the parent has failed to provide proper care and custody), (j) (the child will be harmed if returned to parent), and (h) (the parent is imprisoned and the child will be deprived of a normal home for more than two years). At Robinson's request, the trial court discharged his counsel and appointed new counsel.

B. THE TERMINATION HEARING

At the August 2012 termination hearing, Robinson expressed his frustration with his new counsel. When Kaplan began testifying at the termination hearing, Robinson asked to be excused and left the courtroom. Kaplan testified that Robinson indicated that few classes were available at the prison where he was incarcerated. According to Kaplan, when she contacted the prison, prison personnel told her that it provided only minimal services at the level of security at which Robinson was housed. She testified that Robinson had not reached a lower security level during the pendency of the proceedings.

Kaplan testified that the child was doing well in his most recent foster home, and he was excited to start school there. She testified that the child did not know that Robinson existed and believed that a different man was his father. Kaplan testified that, because of Robinson's incarceration, he would not have the opportunity to establish a relationship with the child until 2016. Because of the child's young age and how long Robinson would remain incarcerated, she believed that the child could not wait that long to establish a relationship with him.

C. THE TRIAL COURT'S FINDINGS AND DETERMINATION

The trial court found that Robinson had been incarcerated for the majority of the child's life and would remain incarcerated until 2016. It found that the child had no bond with Robinson and was unaware that Robinson was his father. It also found that Robinson, "for the first two years when he was not incarcerated[,] did little to exercise any bond with his child." The trial court found that Robinson offered two potential placements—one did not respond, and the other indicated that she was not able to provide a home for the child at that time. It found that Robinson did not make enough progress in the case for the trial court to consider an alternative placement.

The trial court found that the child was at a "formative year [for] development," and required a permanent home and stability because of his very young age. The trial court determined that the department established MCL 712A.19b(3)(c)(i), (g), and (h) by clear and convincing evidence, and that terminating Robinson's parental rights was in the child's best interests.

II. BEST INTERESTS OF THE CHILD

A. STANDARD OF REVIEW

We review for clear error the trial court's determination regarding the child's best interests.¹ The trial court's factual findings are clearly erroneous if the evidence supports them, but we are definitely and firmly convinced that it made a mistake.²

B. LEGAL STANDARDS

The trial court must order the parent's rights terminated if the Department has established a statutory ground for termination by clear and convincing evidence, and the trial court finds from evidence on the whole record that termination of the parent's parental rights is in the child's best interests.³ To determine whether termination is in the child's best interests, the trial court may consider a wide variety of factors, including "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."⁴

¹ MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

² *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

³ MCL 712A.19b(5); *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012).

⁴ *In re Olive/Metts*, 297 Mich App at 41-42 (internal quotations omitted).

C. APPLYING THE STANDARDS

Robinson argues that the trial court prematurely terminated his parental rights because, despite his frustration with the Department, he participated in his treatment plan. We agree that Robinson appears to have participated in the treatment plan to the extent that he was able to do so, but are not definitely and firmly convinced that the trial court made a mistake when it determined that terminating his parental rights was in the child's best interests.

Here, the trial court found that the child and Robinson did not have a bond. The trial court's finding was not clearly erroneous because the child had never met Robinson, because the child believed that a different man was his father, and because Robinson did not establish or attempt to establish a bond with the child before his incarceration. The trial court also found that, because of the child's young age, he required permanency and should not have to wait until 2016 to establish a parental bond. Kaplan testified that the child had difficulties in his former foster homes, but was doing well in his placement at the time of the termination hearing, and that she believed that the child could not wait until 2016 to establish a parental bond.

Thus, the trial court considered proper factors when determining the child's best interests, and the record evidence supported its findings. We conclude that the trial court's decision to weigh the child's needs for permanency, stability, and a parental bond more strongly than the prospect that Robinson might be a fit parent for the child after his release from prison was not erroneous.

We affirm.

/s/ Deborah A. Servitto
/s/ William C. Whitbeck
/s/ Douglas B. Shapiro