

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of B. A. GILBERT, Minor.

UNPUBLISHED
October 17, 2013

No. 315592
Dickinson Circuit Court
Family Division
LC No. 12-000530-NA

Before: MURRAY, P.J., and DONOFRIO and BORRELLO, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating his parental rights to his minor child, arguing that the trial court committed clear error in finding that termination was in the minor's best interests. For the reasons set forth below, we affirm.

We review the trial court's decision regarding the minor's best interests for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A decision is "clearly erroneous if, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

Respondent first argues that, under *In re Mason*, 486 Mich 142; 782 NW2d 747 (2010), the trial court clearly erred in terminating his parental rights where he had not been given an opportunity to comply with services to assist his reunification with the minor. Respondent's reliance on *In re Mason*, however, is misplaced.

In re Mason involved a situation in which the Department of Human Services (DHS) was required to make reasonable efforts to reunify a child and parent under MCL 712A.19a(2) but abandoned its statutory duties to involve the parent in the reunification process. *In re Mason*, 485 Mich at 146, 152. As respondent concedes on appeal, DHS was not required to make reasonable efforts to reunify him and the minor because he previously had his parental rights to the minor's sibling involuntarily terminated. See MCL 712A.19a(2)(c). Thus, defendant does not present this Court with an argument on this issue on which we may grant relief.

Relying once more on *In re Mason*, respondent also argues that reversal is mandated because the trial court ignored that the minor had been placed with relatives at the time of the termination hearing. Citing *In re Mason*, this Court has explained that,

[B]ecause “a child’s placement with relatives weighs against termination under MCL 712A.19a(6)(a),” the fact that a child is living with relatives when the case proceeds to termination is a factor to be considered in determining whether termination is in the child’s best interests. Although the trial court may terminate parental rights in lieu of placement with relatives if it finds that termination is in the child’s best interests, the fact that the children are in the care of a relative at the time of the termination hearing is an “explicit factor to consider in determining whether termination was in the children’s best interests[.]” A trial court’s failure to explicitly address whether termination is appropriate in light of the children’s placement with relatives renders the factual record inadequate to make a best-interest determination and requires reversal [*In re Olive/Metts Minors*, 297 Mich App 35, 43; 823 NW2d 144 (2012) (citations omitted; alteration added).]

Contrary to respondent’s assertion, however, the trial court specifically addressed the minor’s placement with relatives in making its best-interest determination, finding that the minor’s need for permanency should not be barred by his placement with relatives, especially where the relatives favored termination and were actively facilitating an adoption.

Furthermore, the circumstances in *In re Mason* are not comparable to those here. In *In re Mason*, the respondent’s minor children were successfully placed with his family while he was incarcerated and seeking reunification, which made it “unnecessary for [him] to make ongoing arrangements with the relatives that would permit him to preserve his rights and remain in contact with his sons.” *In re Mason*, 486 Mich at 163-164. The Court in *In re Mason* concluded that, by failing to consider the placement with relatives, the trial court failed to properly consider whether the respondent could “fulfill his duty to provide proper care and custody in the future by voluntarily granting legal custody to his relatives during his remaining term of incarceration.” *Id.* at 163. Here, the minor’s mother placed him with her relatives, not respondent’s, and the maternal relatives were in favor of terminating, not preserving, respondent’s parental rights and intended to facilitate an adoption with a couple they had already identified and approved. Additionally, nothing in the record reveals that respondent did anything to facilitate or to promote the placement of the minor. In short, respondent was simply not involved with the decision to place the minor child with his mother’s relatives, hence his argument does not provide a basis on which this Court may grant him the relief he seeks.

Moreover, a child’s placement with relatives is only one factor to consider in determining whether termination is in a child’s best interests. Other factors include “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 a parent’s home.” *In re Olive/Metts Minors*, 297 Mich App at 41-42 (citations omitted). Here, the trial court found that the minor had no bond with respondent, that respondent showed no parenting ability with respect to the minor, and that the minor’s need for permanency and stability would be better served in a placement where “stability and continuity would be staples.” The trial court also found that respondent’s criminal history, instances of domestic violence, moral fitness, and mental health also weighed in favor of termination. Respondent does not contend that the trial court erred in making any of these findings.

Accordingly, respondent has failed to show that the trial court committed clear error in determining that it was in the minor's best interests to terminate his parental rights.

Affirmed.

/s/ Christopher M. Murray

/s/ Pat M. Donofrio

/s/ Stephen L. Borrello