

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of B.C. PANKEY, Minor.

UNPUBLISHED
July 31, 2014

No. 319501
Oakland Circuit Court
Family Division
LC No. 10-773128-NA

In the Matter of B.C. PANKEY, Minor.

No. 319503
Oakland Circuit Court
Family Division
LC No. 10-773128-NA

Before: BOONSTRA, P.J., and METER and SERVITTO, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right the trial court's order terminating their parental rights to their minor child under MCL 712A.19b(3)(g) and (j). For the reasons set forth in this opinion, we affirm the termination of the parental rights of both parents.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been established by clear and convincing evidence and that termination is in the best interests of the child. MCL 712A.19b(5); *In re Sours*, 459 Mich 624, 632; 593 NW2d 520 (1999). We review for clear error the trial court's decision terminating parental rights. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A finding is clearly erroneous if, even if there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). We are to give regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *Miller*, 433 Mich at 337.

I. DOCKET NO. 319501 — RESPONDENT MOTHER

Termination of respondent-mother's parental rights was proper under MCL 712A.19b(3)(g) and (j) because respondent-mother failed to provide proper care and custody for

her son and would not likely be able to within a reasonable time, and he would be at risk of harm if returned to her care. Respondent-mother has not overcome her drug addiction. This child was previously made a temporary court ward in 2010 due to respondent-mother's drug use. Jurisdiction was dismissed in 2012, but by January 9, 2013, the child was forced to return to protective care after respondent-mother was found in the bathroom of a White Castle restaurant with her son and under the heavy influence of drugs. Respondent-mother admitted having a drug problem but there was no evidence she ever successfully addressed her drug-abuse issue. Respondent-mother participated in several drug-treatment programs but failed to complete most of them and never sustained a drug-free lifestyle. Moreover, according to her evaluating psychologist, respondent-mother has a tendency to minimize her behavior, impulsiveness, and poor coping skills, and she was unlikely to change her ways to the point of being able to care for the child. She had not significantly changed her behavior since 2010 and was likely to continue her drug use because, when not in treatment, she turned to drugs.

Respondent-mother's involvement in a domestically violent relationship with the child's father also interfered with her ability to provide proper care and custody for her child. On January 10, 2013, the day after the child's placement in protective care, law enforcement was dispatched to respondent-mother's house in response to a female caller claiming she was being held at knifepoint. When sheriffs arrived at the house, they found respondent-mother with scratches and bruises on her face. Although respondents denied that respondent-father assaulted respondent-mother, the record suggests otherwise. The child's statements regarding his observations about respondents' interactions and his expressions of concern for respondent-mother provided further support for the conclusion that respondent-father physically assaulted respondent-mother on several occasions. Reunification with respondent-mother would subject the child to risk of further emotional harm.

Moreover, although respondent-mother claims she and respondent-father were no longer involved in a relationship, the evidence showed that she continued to speak to him regularly and even lived with the child's paternal grandfather. Respondent-mother clearly maintained a connection to respondent-father despite the fact that the relationship was unhealthy and it caused the child emotional harm. Additionally, respondent-mother was unable to properly care for her child because she was not employed.

Moreover, in 2011 respondent-mother was charged with operating a motor vehicle while intoxicated and also pleaded guilty to uttering and publishing. Thereafter, she had probation violations extending into 2013, near the time of the termination hearing. Her criminality-prone lifestyle would likely interfere with her ability to provide care for her child. Given respondent-mother's history of drug abuse, crime, domestic violence, and lack of employment, the trial court did not err in terminating respondent-mother's parental rights under MCL 712A.19b(3)(g) and (j).

Further, we conclude that the trial court did not err in its determination of the child's best interests. Based on the record as a whole, the trial court correctly found that termination of respondent-mother's parental rights was in the child's best interests. Respondent-mother argues that the trial court disregarded the testimony about the bond that existed between her and the child. However, even if a bond existed, that bond was outweighed by the fact that respondent-mother continually exposed the child to a substantial risk of harm with her substance abuse.

Respondent-mother argues that the child's placement with his maternal grandmother undermines the trial court's best-interests finding. The Michigan Supreme Court has held that "a child's placement with relatives weighs against termination under MCL 712A.19a(6)(a), which expressly establishes that, although grounds allowing the initiation of termination proceedings are present, initiation of termination proceedings is not required when the children are 'being cared for by relatives.'" *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). Accordingly, the *Mason* Court held that the fact that the child is placed with relatives at the time of the termination hearing is an "explicit factor to consider in determining whether termination was in the [child's] best interests . . ." *Id.*

Here, the trial court expressly considered the child's placement with his relative caregiver and found that the child spent most of his life living with his grandmother because of his parents' drug abuse. As a result of respondent-mother's drug use she was unable to provide proper care for the child, and her relapses exposed him to a significant risk of harm. Further, after living with respondent-mother, the child exhibited anger, screaming, and "fits." Respondent-mother was unable to handle the behavior. It appears that the time spent with respondent-mother disrupted the child's life and caused behavioral problems. Moreover, there was no indication that respondent-mother would be prepared to care for him in the foreseeable future.

The trial court correctly found that it was in the child's best interests to be cared for by someone who can provide him with a stable home life. Given respondent-mother's propensity toward drug use and the fact that she has not sustained a drug-free lifestyle for any significant length of time, it is unlikely she will be able to provide the child with the stability and safety he needs. It is in the child's best interests to be cared for by someone who can meet his needs continually and without disruption. The trial court did not err in its best-interests determination.

II. DOCKET NO. 319503 — RESPONDENT-FATHER

Termination of respondent-father's parental rights was proper under MCL 712A.19b(3)(g) and (j) because respondent-father did not provide proper care for the child and would not likely be able to within a reasonable time, and the child would likely be at risk of harm if returned to his care. Respondent-father has a history of drug abuse and criminal activity. There was evidence that respondent-father made a living as a drug dealer. Respondent-mother's stepsister observed respondent-father under the influence of drugs almost all of the time she visited with him. Respondent-mother told her stepsister that she and respondent-father were addicted to OxyContin. Although respondent-father may have participated in a methadone clinic, there was no evidence that he sustained a drug-free lifestyle for a significant length of time because he refused to submit to court-ordered drug screens in the spring and summer of 2013. Respondent-father's claim that his completion of a treatment plan in 2010 weighs against termination of parental rights is unpersuasive because his apparent drug relapse and failure to protect his child more persuasively show that he cannot maintain an appropriate lifestyle for the wellbeing of the child.

Although respondent-father denied knowing that respondent-mother was using drugs again, respondent-mother's stepsister testified that he did know. At any rate, respondent-father was aware of respondent-mother's history of substance addiction and the risk that she might begin using again. Nonetheless, he left his son in her care. At the very least, he should have

taken measures to protect his child. His failure to do so demonstrates his failure to provide proper care for the child.

Respondent-father argues that the trial court put undue emphasis on his criminal history. This contention is unpersuasive because respondent-father's extensive criminal history demonstrated a propensity toward criminality that interfered with his ability to care for the child and showed that the child would likely be exposed to risk of harm as a result of the criminal activity. Respondent-father's criminal record dates back to 1992. More recently, he had outstanding arrest warrants for felonious assault and retail fraud. On January 10, 2013, when police were called to respondents' house, respondent-father was found hiding between a box spring and bed mattress to avoid arrest. We note that respondent-father did not get the child from the police station hours earlier after respondent-mother was found high on drugs and unable to care for him. Respondent-mother's stepsister testified that respondent-father told her that he did not go to retrieve the child because of his outstanding warrants. Respondent-father's criminal activity and attempts to avoid arrest prohibited him from creating a safe home environment and properly caring for the child.

Respondent-father also argues that no witnesses observed him assault respondent-mother. Although respondent-mother denied any physical abuse by respondent-father, there was evidence of domestic violence. Statements of the child and witness testimony support the claim that respondent-father assaulted respondent-mother on several occasions. On Thanksgiving of 2012 respondent-mother had a black eye and a knot on her nose caused by respondent-father. On another occasion, respondent-mother called her stepsister at 2:00 a.m. after respondent-father threatened her. On January 10, 2013, respondent-mother told a 911 operator that respondent-father had been holding her against her will by knife. The police found respondent-mother with bruises on her face that, according to respondent-mother's mother, were caused when respondent-father "stomped on her."

Respondent-father's assaultive criminal history shows his propensity toward violence and undermines his claim that he did not engage in domestic violence with respondent-mother. Likewise, the child described witnessing domestic violence and indicated that he was concerned that respondent-father would hurt his mother. The child's aggressive behavior and tantrums increased after living with respondents and being exposed to their violent relationship. Respondent-father's domestic violence suggests he was unable to create a proper environment to care for the child and would put him at risk of emotional harm.

Respondent-father argues that neither domestic violence nor respondent-mother's substance abuse would have been an issue because he was no longer involved in a relationship with respondent-mother. There was evidence that tended to show otherwise. Respondent-mother's stepsister testified that she believed they were still involved with one another. They communicated regularly and, because respondent-mother was living with respondent-father's father, they maintained a close connection that might have encouraged them to reignite their relationship.

Moreover, there was no evidence that respondent-father's behavior would change within a reasonable period of time. To the contrary, his tendency to minimize domestic violence presented the possibility that he would continue to engage in it. Given respondent-father's

failure to protect the child and his history of criminality, substance abuse, and domestic violence, the trial court did not err in terminating his parental rights under MCL 712A.19b(3)(g) and (j).

Further, we conclude that the trial court did not err in its determination of the child's best interests. Based on the record as a whole, the trial court correctly found that termination of respondent-father's parental rights was in the child's best interests. The evidence showed that there was a minimal bond between respondent-father and the child. Given respondent-father's "limited frustration tolerance," the child's behavioral issues, and respondent-father's various issues as discussed above, it was not in the child's best interests for respondent-father to be his primary caregiver.

Respondent-father argues that placement with relatives weighs against termination of parental rights. In this case, the trial court explicitly considered the child's placement with his maternal grandmother. The trial court properly found that the child spent the majority of his life living with his maternal grandmother as a result of respondents' behavior. He needed structure and a secure, stable home, which respondent-father was unable to provide. The trial court did not err in its best-interests determination.

Affirmed.

/s/ Mark T. Boonstra
/s/ Patrick M. Meter
/s/ Deborah A. Servitto