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STATE OF MICHIGAN

COURT OF APPEALS

In re RODRIGUEZ, Minors.

UNPUBLISHED
March 26, 2019

No. 345212
St. Clair Circuit Court
Family Division
LC No. 17-000208-NA

Before: SHAPIRO, P.J., and BECKERING and M. J. KELLY, JJ.

PER CURIAM.

Respondent appeals by right the trial court's order terminating his parental rights to his two children under MCL 712A.19b(3)(c)(*i*), (g), and (j). Because there are no errors requiring reversal, we affirm.

I. BASIC FACTS

The children were originally placed with respondent after they were removed from their mother's care. Shortly thereafter, respondent left the home and attempted suicide, leaving the two-year-old and four-year-old children unattended. Respondent attended inpatient psychiatric care. The children were removed and placed in foster care. After respondent's release from the inpatient facility, the trial court ordered him to comply with a case service plan that required him to complete a psychological evaluation, a substance abuse assessment, a parenting skills class, and a life skills program. Respondent was also required to obtain stable employment and appropriate housing. Respondent was instead incarcerated for four months, and he did not notify the trial court, his lawyer in this case, or the foster-care caseworker of his incarceration. Shortly after his release, respondent overdosed on heroin. Respondent did not comply with any of the trial court's orders to engage in services; however, he claimed to have been voluntarily attending alcoholics anonymous and narcotics anonymous meetings three days a week. He was unemployed until two months before the termination hearing, at which point he found employment as a roofer. Additionally, respondent was presumed homeless for the majority of the proceedings; however, he testified at the termination hearing that he had been living with his girlfriend, her children, and his girlfriend's father during the four-month period leading up to the termination hearing.

The trial court found that respondent had not done any of the things required of him in order to reunify with his children. It acknowledged that respondent had found housing, but the court remained concerned that his housing was completely dependent upon his relationship, and it was not obtained through respondent's efforts or resources. The trial court found that the same issues that brought the children into care continued to exist over a year after adjudication. It also found that respondent was unable to provide the children with proper care and custody and that the children were at a risk of harm if they were returned to his care. Therefore, the court found that MCL 712A.19b(3)(c)(*i*), (g), and (j) were proven by clear and convincing evidence. The trial court also considered the children's need for stability and consistency and their well-being while in foster care. It found that termination of respondent's parental rights was in the best interests of the children.

II. TERMINATION OF PARENTAL RIGHTS

A. STANDARD OF REVIEW

Respondent argues that the trial court clearly erred by terminating his parental rights. In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been met by clear and convincing evidence. MCL 712A.19b(3); *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). "We review the trial court's determination for clear error." *Id*. "A finding is 'clearly erroneous' if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). Additionally, we review for clear error a trial court's finding that termination of a respondent's parental rights is in the best interests of the children. *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009).

B. ANALYSIS

The trial court terminated respondent's parental rights under MCL 712A.19b(3)(c)(*i*), (g), and (j), which state:

> (3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
>
> * * *
>
> (c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:
>
> (*i*) 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.
>
> * * *

> (g) The parent, although, in the court's discretion, financially able to do so, 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.
>
> * * *
>
> (j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

"Harm" includes physical as well as emotional harm. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011). "[A] parent's failure to comply with the terms and conditions of his or her service plan is evidence that the child will be harmed if returned to the parent's home." *In re White*, 303 Mich App 701, 711; 846 NW2d 61 (2014).

The record reflects that respondent failed to engage in any of the services required of him. Moreover, nothing at trial suggested that respondent had acquired the mental health, parenting skills, and ability to provide proper care and custody that he lacked when the children were removed from his care. Although respondent argues that he only attempted to commit suicide once, there is nothing in the record ensuring that he would not attempt to do so in the future. Moreover, while the case was proceeding, respondent overdosed on heroin. He explained that he did so because he was overwhelmed. Nothing on the record supports a finding that the circumstances leading to him being overwhelmed have been rectified or can be rectified in a reasonable time considering the young ages of his children. Next, despite his recent employment, respondent had been unemployed for at least 10 months while the case was proceeding.

Although respondent argues on appeal that his four months' incarceration prevented him from making efforts at reunification and that he should be given more time, the period of incarceration was only a fraction of the 13 months that his children were in foster care. Additionally, his lack of effort while not incarcerated is not adequately explained. Despite his argument that two different agencies handled the case and that there were multiple caseworkers, respondent made no showing that he attempted to contact any entity to advise of his incarceration or pursue services to address the mental health concerns. In contrast, there was testimony that respondent's caseworkers made efforts to contact him, including seeking his address and phone number at court hearings so that they could work with him on the reunification efforts. Moreover, as the court noted, incarceration would not have necessarily prevented reunification services as some services could have been provided while in jail. In sum, although there was some evidence that respondent addressed his homelessness and unemployment, his home situation was precarious and his mental health issues remained

unaddressed. The trial court did not clearly err by finding grounds for termination was established under MCL 712A.19b(3)(c)(*i*) and (j).[1]

Respondent next argues that the trial court erred by finding that termination of his parental rights was in his children's best interests. "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). "[W]hether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence." *In re Moss Minors*, 301 Mich App 76, 90; 836 NW2d 182 (2013). "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 35, 41-42; 823 NW2d 144 (2012) (citations omitted).

In this case, the record reflected that the children's bond with respondent had deteriorated because of his absence. There was also evidence that they needed stability and permanence, especially as they had behavioral difficulties in their placements. Given respondent's inability to make meaningful progress toward reunification—primarily because of his inability to maintain contact with his caseworkers and participate in offered services—we conclude that the trial court's best-interest determination was not clearly erroneous.

Affirmed.

/s/ Douglas B. Shapiro
/s/ Jane M. Beckering
/s/ Michael J. Kelly

[1] It appears that the trial court's analysis under MCL 712A.19b(3)(g) may have been erroneously based on a prior version of the statute. Respondent does not raise this on appeal. However, even if the court applied the wrong version of subdivision (g), reversal is not warranted because the court properly found grounds for termination under MCL 712A.19b(3)(c)(*i*) and (j). See *In re Laster*, 303 Mich App 485, 495; 845 NW2d 540 (2013) (stating that only one ground for termination of parental rights need be established).