

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
June 14, 2011

In the Matter of K. M. DOUGLAS, Minor.

No. 301232
Oakland Circuit Court
Family Division
LC No. 09-761216-NA

Before: FORT HOOD, P.J., and DONOFRIO and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent appeals as of right the order of the trial court terminating his parental rights to his minor child pursuant to MCL 712A.19b(3)(j), (k)(ii), and (n)(i). We affirm.

Petitioner sought termination of respondent's parental rights after the child, then four years old, reported that respondent had made her perform oral sex on him. The trial court found that respondent had in fact sexually assaulted the child on two occasions, but did not initially terminate respondent's parental rights. The trial court relied on the evidence of a bond between the child and respondent and further noted that the child's therapist and psychologist did not recommend termination. Thereafter, respondent was convicted in a separate criminal action of first-degree and second-degree criminal sexual conduct involving the child and was sentenced to a minimum term of seven years of imprisonment.

Petitioner filed a supplemental petition again seeking termination of respondent's parental rights. At the hearing on the supplemental petition, the foster care worker testified that respondent posed a threat to the child. Further reports from the therapist indicated that the child was coping well with the separation and was making progress in dealing with the guilt she experienced when respondent was incarcerated. The trial court thereafter terminated respondent's parental rights pursuant to MCL 712A.19b(3)(j), (k)(ii), and (n)(i).

On appeal, respondent contends that the trial court erred in finding that clear and convincing evidence supported termination under the statutory subsections. We disagree. To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination, MCL 712A.19b(3), has been established by clear and convincing evidence. *In re Fried*, 266 Mich App 535, 540-541; 702 NW2d 192 (2005). On appeal, the trial court's factual findings are reviewed for clear error. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

A review of the record demonstrates ample evidence to support the trial court's finding that termination of respondent's parental rights to the child was warranted pursuant to MCL

712A.19b(3)(j), (k)(ii), and (n)(i). It is undisputed that respondent was convicted of first-degree and second-degree criminal sexual conduct perpetrated against the child in violation of MCL 750.520b and MCL 750.520c. Subsection (3)(n)(i) provides for termination when the parent has been convicted of either of those statutes if the trial court finds that it is in the best interests of the child to do so because continuing the parent-child relationship would be harmful to the child. Here, the trial court determined that continuing the parent-child relationship would be harmful to the child who was adjusting to the separation and had started to overcome her feelings of guilt over respondent's conduct. We cannot conclude that the trial court's factual findings are clearly erroneous. *Miller*, 433 Mich at 337. The trial court also did not err in finding that termination was warranted under subsection (k)(ii), which provides for termination where the parent has abused the child by means of criminal sexual conduct involving penetration.

A review of the record also demonstrates ample evidence to support termination of respondent's parental rights pursuant to subsection (j). Respondent sexually assaulted the child and therefore poses a threat to the child. Respondent argues, however, that clear error is established because the trial court did not terminate his parental rights after the first petition, but terminated them upon the same evidence submitted following the supplement petition. The trial court did, in fact, decline to terminate respondent's parental rights in its first order. At that time, the trial court found that respondent had sexually abused the child, but noted the testimony of the psychologist and the therapist that the child had a strong attachment to respondent. The trial court also remarked that the psychologist believed that respondent would be amenable to treatment.

When ruling upon the supplemental petition, however, the trial court had additional evidence before it that included the criminal convictions and lengthy prison sentence. During the dispositional hearing on the supplemental petition, the foster care specialist testified that respondent was a threat to the child. Further, progress reports from the therapist indicated that the child was missing respondent less and making progress in dealing with blaming herself. Regardless of the earlier ruling, it cannot be said the trial court clearly erred by subsequently finding that the child would not be safe in the care of respondent. *Miller*, 433 Mich at 337. We also conclude that the trial court did not err in finding that termination was in the best interests of the child. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000).

Respondent also contends that the trial court terminated his parental rights because he could not pay for rehabilitative services and that petitioner failed to provide him with services geared toward reunification. This issue is without merit. When a child is removed from a parent's custody, the agency charged with the care of a child is generally required to report to the trial court the efforts made to rectify the conditions that led to the removal of the child. See *Fried*, 266 Mich App at 542. Services are not mandated in all situations, however. *In re Terry*, 240 Mich App 14, 26 n 4; 610 NW2d 563 (2000). Reasonable efforts by the agency are not required where the parent has subjected the child to aggravated circumstances as set forth in MCL 722.638, which include criminal sexual conduct involving penetration. Further, where a parent has sexually abused a child, petitioner is required to seek termination of that parent's parental rights, and that parent is therefore not entitled to services. MCL 722.638; see also *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009). Petitioner was therefore not obligated to provide respondent with services.

Moreover, the trial court did not terminate respondent's parental rights because of his inability to pay for services. In addressing the supplemental petition, the trial court held that respondent posed a threat to the child and further concluded that there was no evidence that respondent had sought treatment. The trial court then based its decision upon the evidence of respondent's sexual assault upon his child and the child's progress toward recovery that would be disturbed by reunification with respondent. As the record amply supports this determination, the trial court did not err.¹

Affirmed.

/s/ Karen M. Fort Hood
/s/ Pat M. Donofrio
/s/ Amy Ronayne Krause

¹ Respondent's citation to *In re Mason*, 486 Mich 142; 782 NW2d 747 (2010) is misplaced. The *Mason* Court held that the state was not relieved of its duty to engage an absent parent on the basis of incarceration. 486 Mich at 152. In *Mason*, the father was incarcerated for a limited duration for a drunk driving offense, but the state did not even afford the father the opportunity to participate in hearings over the telephone pursuant to MCR 2.004. *Mason*, 486 Mich at 152-154. In the present case, respondent was not incarcerated at the commencement of the petition, and the state was statutorily limited in its ability to provide services in light of the sexual assault allegations and findings by the lower court.