

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of NADALINA MARCIA
HOUSTON, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DALISA HOUSTON,

Respondent-Appellant.

UNPUBLISHED

June 10, 2008

No. 281283

Oakland Circuit Court

Family Division

LC No. 07-731262-NA

Before: Owens, P.J., and Meter and Schuette, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating her parental rights to the minor child under MCL 712A.19b(3)(g) and (j). We affirm.

Respondent first contends that the court's failure to conduct a preliminary hearing in a timely manner or to provide her with a copy of the original petition deprived her of her constitutional right to due process. Respondent failed to raise her constitutional claim before the trial court in a timely manner, and therefore this issue is not preserved for our review.¹ *In re Hildebrant*, 216 Mich App 384, 388-389; 548 NW2d 715 (1996). To obtain relief, respondent must demonstrate plain error that affected her substantial rights; in other words, she must show the existence of a clear or obvious error that affected the outcome of the proceedings. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

The child at issue was removed from respondent's care at birth pursuant to a petition filed in Lenawee County requesting that the court take temporary jurisdiction over the child. At this time, respondent, a 17-year-old delinquency and neglect ward, was clearly unable to care for the child because she was displaying assaultive and violent behavior and had not made any progress towards addressing her longstanding issues at her residential placement, which did not

¹ Although respondent requested dismissal of the original and amended petitions during a pretrial hearing, citing the delay in the proceedings, her objection was untimely and did not raise constitutional grounds.

accommodate infants. At the time of the removal, Lenawee County held a hearing and made a finding that it was contrary to the welfare of the child to remain in respondent's home because she could not take care of the child. Thereafter, Lenawee County transferred the case to Oakland County, which had jurisdiction over respondent. Unfortunately, it appears from our review of the record that there was an approximately 30-day delay in transferring the paperwork from Lenawee to Oakland County, during which time apparently no action was taken on the case, including conducting a preliminary hearing, providing respondent with formal notice of the petition, or allowing visits with the child. Afterwards, the Oakland court immediately took corrective action by conducting a preliminary hearing, wherein the court afforded respondent a probable cause and reasonable efforts determination as required under MCR 3.965. During the hearing, respondent was represented by counsel, who waived her presence at the hearing and waived the probable cause determination.

On appeal, respondent correctly asserts that the trial court, having conducted a preliminary hearing approximately 30 days after the child's removal from her care, plainly violated MCR 3.965(A)(1), which provides that a "preliminary hearing must commence no later than 24 hours after the child has been taken into protective custody, . . . unless adjourned for good cause shown, or the child must be released." Respondent also correctly asserts that, as the parent of a child who was the subject of a child protective proceeding, she was entitled to notice of the petition and of the time and place for any hearings regarding that petition. MCL 712A.12; see also MCR 3.920(B)(2)(b), MCR 3.920(C), MCR 3.963(C), and *In re SZ*, 262 Mich App 560, 564; 686 NW2d 520 (2004). Although we find that the court's delay with regard to the preliminary proceedings constituted plain error, under the circumstances of this case it did not violate respondent's constitutional right to due process or affect the outcome of the proceedings. *Carines, supra* at 763-764.

"There is no question that [respondent had] a due process liberty interest in caring for [her child] and that child protective proceedings affect[ed] that liberty interest." *In re CR*, 250 Mich App 185, 204; 646 NW2d 506 (2001) (internal citation and quotation marks omitted). The evidence, however, overwhelmingly showed that the child could not be safely released to respondent's care during the approximately 30-day delay in the preliminary proceedings, and thus the delay did not increase the risk of an erroneous deprivation of her interest in caring for her child, see, generally, *In re MU*, 264 Mich App 270, 281; 690 NW2d 495 (2004), or affect the outcome of those proceedings, *Carines, supra* at 763-764. During the preliminary hearing the caseworker testified that it was unsafe for respondent to be released into the community, she was currently incarcerated and in need of services, she had no plan for the child's care, and it would not be in the child's best interests to allow parenting time. This testimony sufficiently justified removal of the child from respondent's care on the basis that the child's health, safety, or welfare would be in danger if she were placed with respondent, and the situation was no different during the 30-day delay in the preliminary proceedings. On this record, we cannot say that the delay in the preliminary proceedings deprived respondent of having the child in her care or custody, and therefore it did not infringe on her liberty interest in caring for her child or affect her substantial rights. Respondent's apparent knowledge during her pregnancy that, because of her circumstances, she could not keep her child in her custody and the child would need to be placed in foster care further suggests that she was not prejudiced by the court's failure to take timely action on the original petition.

Moreover, respondent was ultimately provided with notice of the original petition and the preliminary proceedings and afforded an opportunity to defend the petition's allegations. *In re Nunn*, 168 Mich App 203, 208-209; 423 NW2d 619 (1988). Further, respondent was served with timely notice of the amended petition requesting that the court terminate her parental rights at the initial dispositional hearing and was also informed of the time and place of the adjudicative/termination proceedings. Significantly, during those proceedings, respondent was present, testified in her own defense, and was represented by counsel. Thus, she was afforded a meaningful opportunity to defend the grounds alleged to support jurisdiction and termination of her parental rights.

Respondent also briefly argues that she should have been allowed parenting time during the two-month period from the time of the child's removal until petitioner filed the permanent custody petition. Respondent has waived this issue because of inadequate briefing. *Mitcham v City of Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). At any rate, considering respondent's severe behavioral issues, which clearly posed a risk of harm to the child, and her placements in secured facilities that were not conducive to visits, we find no error in the court's finding after the preliminary hearing that parenting time, even if supervised, would have been harmful to the child and in denying parenting time. MCR 3.965(C)(6)(a). Moreover, respondent's situation was the same during the 30-day delay in the preliminary proceedings, so there is no indication that parenting time would have been appropriate then.

Respondent next argues that the trial court erred in terminating her parental rights because the testimony showed that termination was contrary to the child's best interests. "Once a ground for termination is established, the court must issue an order terminating parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests." *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000); MCL 712A.19b(5). We review the trial court's determination for clear error. *Trejo, supra* at 356-357.

Considering the record in its entirety, we find no clear error in the trial court's finding that termination was in the child's best interests.² We recognize that respondent expressed a desire to care for the child and had made some limited progress towards improving her personal situation in that she had not displayed assaultive behavior during her recent incarceration and expressed a willingness to participate in services upon her release. However, considering her longstanding history of serious mental instability and assaultive and violent behavior (some of which resulted in injuries to others), her lack of capacity to parent the child, her lack of means to physically provide for the child, and her need for continued services, respondent clearly could not provide the child with stability or permanency and would likely not be able to do so in the foreseeable future. Furthermore, the record lacked any evidence of a bond between respondent and the child, who was removed from her care as a newborn infant, had been outside of her care her entire life, and was doing "very well" and thriving in her placement. On this record, we

² The trial court went beyond the required best interests inquiry under MCL 712A.19b(5) in finding that termination of respondent's parental rights was in the child's best interests. *Trejo, supra* at 364 n 19.

cannot say that the trial court clearly erred in refusing to delay the child's permanency any longer and in terminating respondent's parental rights.

Affirmed.

/s/ Donald S. Owens

/s/ Patrick M. Meter

/s/ Bill Schuette