

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DAVID TURNER, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DAVID PAUL TURNER,

Respondent-Appellee,

and

ROSEMARY TURNER,

Respondent.

UNPUBLISHED
July 10, 2008

No. 280788
Macomb Circuit Court
Family Division
LC No. 2005-060719-NA

In the Matter of MICHAEL TURNER, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DAVID PAUL TURNER,

Respondent-Appellant,

and

ROSEMARY TURNER,

Respondent.

No. 280789
Macomb Circuit Court
Family Division
LC No. 2005-060720-NA

In the Matter of KATHERINE TURNER, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DAVID PAUL TURNER,

Respondent-Appellant,

and

ROSEMARY TURNER,

Respondent.

No. 280790
Macomb Circuit Court
Family Division
LC No. 2005-060721-NA

Before: Owens, P.J., and O'Connell and Davis, JJ.

PER CURIAM.

In these consolidated appeals, respondent David Paul Turner appeals as of right the trial court's order terminating his parental rights to his minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

First, respondent claims that the Department of Human Services (DHS) failed to establish by clear and convincing evidence the statutory grounds for termination of his parental rights. In order 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 met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). "Once a statutory 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 Minors*, 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.

The children at issue were removed from their parents' care as a result of the parents' inability to provide a safe and stable home because of respondent's imprisonment, both parents' serious substance abuse, and the past domestic violence between the parents. The trial court assumed jurisdiction over the children after the mother admitted to the allegations in the petition. The DHS provided respondent with a copy of his parent/agency agreement, and the respondent was aware of the issues that he needed to address to regain custody of his children. However, respondent remained in prison during most of the proceedings and was therefore unable to participate in or comply with the specific services enumerated in his agreement. When respondent was released on parole over 17 months into the proceedings, termination proceedings had already begun. Thus, the caseworker did not offer him reunification services following his

release from prison. Regardless, respondent was able to make substantial efforts toward improving his ability to provide proper care for the children by participating in numerous services while in prison, continuing to address his substance abuse and domestic aggression issues, and obtaining employment and housing after his release.

Unfortunately, despite his efforts, the evidence clearly showed that by the time of the termination hearing, respondent had not yet maintained enough stability or sufficiently addressed his issues to provide a safe and stable home for the children. We find significant the testimony detailing the longstanding and serious nature of respondent's domestic violence and substance abuse issues, which led to multiple incarcerations and imprisonment, lost employment, instability in the children's lives, the foreclosure of their home, emotional harm to the children, and an inability to provide proper care or custody for the children. In fact, respondent had not seen his children in over two years due to his imprisonment. Further, the children had resided with their grandparents and outside respondent's care for the past five years, and during this time respondent did not provide physical or financial support for their care. Although respondent obtained limited stability following his release from prison, as evidenced by his continued sobriety and his ability to obtain housing and employment, he had only been released from prison for three months at the time of the termination hearing, which was not an adequate amount of time to demonstrate an ability to maintain his stability or provide a safe and stable home for the children. Also pertinent to his ability to maintain stability was his recent reunification with the children's mother, despite their shared past of serious domestic violence and substance abuse, which increased the likelihood that he would not be able to maintain a safe and stable environment for the children.

On this record, we find no clear error in the trial court's finding that the evidence sufficiently established grounds for termination of respondent's parental rights under subsections (c)(i), (g), and (j). *Trejo, supra* at 356–357. The evidence clearly and convincingly established that there was no reasonable likelihood that respondent would be able to fully address his issues in order to give the children a safe and stable home and provide them with proper care and custody within a reasonable time. Further, considering the children's past emotional harm due to the lack of stability and the domestic violence in their parents' home and the parents' ongoing need to address their domestic violence and substance abuse issues, a reasonable likelihood existed that the children would be subjected to emotional harm if they returned to their parents' home. In light of the evidence, and considering that for several years, the children had been outside their parents' care and in a safe and stable environment where they were doing well, it would be unfair to delay their permanency any longer, notwithstanding respondent's efforts to address his issues.

Next, respondent claims that termination of his parental rights was premature because the DHS failed to provide him with services during and after his release from prison to assist him in reunifying with his children. At the outset of this case, the DHS planned to reunify the family, and thus the DHS was required to make reasonable efforts to rectify the conditions that caused the children's removal. MCL 712A.18f; *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). Because respondent was imprisoned, the sole effort by the DHS towards rectifying

respondent's issues was formulating and providing him with a parent/agency agreement.¹ However, it was evident from our review of the record that the DHS's alleged failure or inability to provide services to respondent did not impede his ability to receive services to address his issues. To the contrary, during his imprisonment, respondent availed himself of numerous services available to him through the Department of Corrections to address his parenting, substance abuse, and domestic violence issues. Further, upon his release from prison, respondent secured services on his own to continue to work on those issues. In fact, respondent testified that he successfully addressed the issues identified in his parent/agency agreement through his participation in those services. Because respondent admittedly was able to find services in prison or on his own to address his issues, without the assistance of the DHS, he failed to show that he was adversely affected by the DHS's alleged lack of contact with him or referrals for services. See *Fried, supra* at 543. Therefore, we cannot say that respondent's failure to make sufficient progress towards addressing his issues to provide a safe and stable home for the children was attributed to the DHS's alleged failure to assist him with services.² Under these circumstances, the trial court did not clearly err when it found that petitioner made reasonable efforts toward reunification.

Respondent next claims that termination of his parental rights was clearly not in the children's best interests. "Once a statutory 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." *Trejo, supra* at 354; MCL 712A.19b(5). We review the trial court's determination regarding the child's best interests for clear error. *Trejo, supra* at 356–357.

Although respondent made commendable efforts and progress towards improving his situation, and he loved, shared a bond with, and desired to parent the children, the focus of a best interests inquiry should be on the children. *Trejo, supra* at 356. The children here had resided with their grandparents for approximately five years in, by all accounts, a stable and safe environment, and respondent had not seen his children in over two years. The record indicated that the children suffered emotional harm and anxiety and exhibited behavioral issues arising from their parents' past instability and domestic violence. These issues had been addressed in therapy, and the children had demonstrated improvement and seemed happier in their placement with their grandparents. Additionally, the caseworker indicated that the children did not talk about respondent or ask for him during the proceedings. In light of these facts, we find no clear error in the court's best interests determination. MCL 712A.19b(5); *Trejo, supra* at 356–357. Respondent's recent efforts and progress towards addressing his issues did not "clearly overwhelm" the children's need for permanency in a safe environment. See *Trejo, supra* at 364.

¹ However, the DHS made significant efforts to reunify the family during the lengthy proceedings by providing numerous services to the children's mother, including substance abuse treatment, parenting classes, counseling, and visit facilitation, and by providing counseling to the children.

² The lower court record reveals that respondent never requested services from the caseworker during the proceedings and only contacted her on three occasions.

Finally, respondent claims that he was denied due process because the court started the termination proceedings in his absence. On March 7, 2007, the first day of the scheduled termination hearing, neither respondent, who was still incarcerated, nor his appointed counsel was present. The court was unwilling to continue the hearing for both parents; instead it proceeded with regard to the mother only and continued the hearing with regard to respondent. A continued termination hearing concerning respondent was held August 9 and 10, 2007, and respondent was present and represented by counsel.

“A procedural due process analysis requires a court to consider (1) whether a liberty or property interest exists which the state has interfered with, and (2) whether the procedures attendant upon the deprivation were constitutionally sufficient.” *In re CR*, 250 Mich App 185, 204, 646 NW2d 506 (2002), quoting *In re AMB*, 248 Mich App 144, 209; 640 NW2d 262 (2001) (citations omitted). Respondent failed to raise his due process claim before the trial court, and thus we review this unpreserved claim of constitutional error for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763–764; 597 NW2d 130 (1999); *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000).

We find no plain error or prejudice to respondent in the trial court’s action and therefore no violation of his right to due process. The court continued the termination hearing with regard to respondent and did not take any testimony or evidence regarding respondent when he was not present, limiting the testimony to the mother’s case. Respondent was given a meaningful opportunity to be heard during the continued termination proceedings, where both he and his appointed counsel were present and available to both defend the allegations against him and discredit the caseworker’s testimony by presenting respondent’s testimony, admitting additional evidence, and cross-examining the caseworker. Under these circumstances, respondent failed to show that he was prejudiced by his absence from the mother’s termination proceeding. *Carines*, *supra* at 763–764; *Kern*, *supra* at 336.

Affirmed.

/s/ Donald S. Owens
/s/ Peter D. O’Connell
/s/ Alton T. Davis