

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ALICIA MAY BOWMAN and
ERIC ALLEN BROWN, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DARLA MAY MELLAS,

Respondent-Appellant,

and

RANDOLPH JOSEPH BOWMAN,

Respondent.

UNPUBLISHED

May 4, 2010

No. 295259

Oakland Circuit Court

Family Division

LC No. 07-736651-NA

Before: MURPHY, C.J., and SAWYER and HOEKSTRA, JJ.

PER CURIAM.

Respondent Darla Mellas appeals as of right from the court orders that terminated her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

After the oldest child was removed from respondent's care and placed into foster care, respondent made good progress on her treatment plan, was married, and gave birth to a second child, who was brought under the court's limited jurisdiction but placed directly with respondent, who had almost completed the aforementioned treatment plan. However, in February of 2009, respondent left her husband and moved back in with a former boyfriend (and father of respondent's oldest child), taking her youngest child with her. This former boyfriend had been convicted in 2007 for domestic violence and assault and battery against respondent, and the youngest child was subsequently removed from respondent's care. Petitions seeking the termination of respondent's parental rights to the children were eventually filed. After a jury adjudicated the youngest child as coming within the court's full jurisdiction, respondent entered a plea of no contest to the petitions' allegations establishing statutory bases for termination and the court found that termination of respondent's parental rights was in the children's best interests.

I. REMOVAL OF CHILDREN IN PROTECTIVE CUSTODY HEARINGS

Respondent first argues that her constitutional right to due process was violated by the court's improper actions in removing the two children from her care. Unpreserved constitutional challenges are reviewed for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). In this case, the oldest child was removed on an emergency basis when respondent admitted herself into a hospital psychiatric unit and the child was left without supervision, while the youngest child was removed after respondent moved back in with a man known to have committed domestic violence against her. Given these circumstances, both removals were proper under MCR 3.963(B), which allows a court to order the immediate taking of a child into protective custody when "the judge or referee has reasonable grounds to believe that conditions or surroundings under which the child is found are such as would endanger the health, safety, or welfare of the child and that remaining in the home would be contrary to the welfare of the child."

Next, there is no requirement that the parent be present at the protective custody hearing held pursuant to MCR 3.963(B). Rather, all that is required is that immediate attempts be made to notify the child's parent about the protective custody. MCR 3.963(C)(1). In this case, respondent voluntarily handed the oldest child over to the police, so she was sufficiently notified about protective custody of that child. And, although the record is vague about the efforts to notify respondent about the youngest child's protective custody, there is no support for respondent's claim that she did not receive notice.

There was also no violation of any court rule in the scheduling of the preliminary hearing in the oldest child's case. MCR 3.965(A)(1) requires that the preliminary hearing "commence no later than 24 hours after the child has been taken into protective custody, excluding Sundays and holidays, . . . unless adjourned for good cause shown[.]" In this case, there was good cause to schedule the preliminary hearing a week after the child's removal since the prosecutor's office needed time to prepare the petition, and additional information about the child's father needed to be ascertained.

Respondent next claims that, in the March 7, 2009, preliminary hearing, the court merely rubberstamped the judge's findings from the previous hearing. The record proves otherwise. The court in the March 7, 2009, preliminary hearing set the matter over for a continuation of the preliminary hearing, and the court in the continued preliminary hearing on May 11, 2009, heard testimony before ruling to continue the youngest child's placement with the Department of Human Services ("DHS").

Finally, respondent argues that MCR 3.913(C) was violated when she was not informed by the referee about her right to file a request for review of the referee's recommended findings and conclusions as provided in MCR 3.991(B). However, because respondent was not present at either protective custody hearing, this court rule was not invoked.

II. EFFORTS TO PREVENT REMOVAL

Respondent argues that DHS failed to make reasonable efforts to prevent the children's removal from her care. In general, when a child is removed from the custody of the parents, the court must determine whether reasonable efforts to prevent the removal of the child were made

or that reasonable efforts to prevent removal were not required. MCL 712A.18f(1); MCR 3.965(D)(1). Respondent's argument fails because, in the case of the oldest child, respondent does not indicate what DHS could have done to prevent the removal. The child was left without supervision due to respondent's admittance into a psychiatric unit, the incarceration of the child's father for domestic violence, and the inability of respondent to identify any relatives for a possible temporary placement.¹ DHS also made reasonable efforts to prevent the removal of the youngest child when it provided respondent with services to reunite her with the oldest child. Furthermore, respondent's claim that DHS should have taken her to a shelter is not supported by the record because she testified at the adjudicative trial that the reason she chose to move in with her former boyfriend was because she had no other family and had not wanted to go to a shelter.

III. BEST INTERESTS DETERMINATION

The trial court did not clearly err in its best interests determination. MCL 712A.19b(5); MCR 3.977(J). The oldest child's protective proceeding had lasted over two years while the youngest child had been removed from respondent's care for the eight months preceding the best interests hearing. Furthermore, there was testimony from a variety of sources that the oldest child did not want to be reunited with respondent, and there was no evidence of a bond between the children and respondent. Most importantly, respondent's emotional instability placed the children at risk and hindered her parenting abilities. As the court psychologist testified, respondent's outbursts were frightening to a child and provided additional proof that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Joel P. Hoekstra

¹ To successfully claim a lack of reasonable efforts, a respondent must establish that he or she would have fared better if the petitioner offered other services. *In re Fried*, 266 Mich App 535, 543; 702 NW2d 192 (2005).