STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of MCW, JR., Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MESSIAH CALVIN WAITE,

Respondent-Appellant.

UNPUBLISHED
May 18, 2010

No. 294639
Oakland Circuit Court
Family Division
LC No. 08-742430-NA

Before: METER, P.J., and MURRAY and BECKERING, JJ.

PER CURIAM.

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

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination 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 the petitioner has established a statutory ground for termination by clear and convincing evidence, and the court finds that termination is in the best interest of the child, the trial court must order termination of parental rights. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 353; 612 NW2d 407 (2000). There is an exception to this rule; the court is not required to terminate parental rights if the petitioner has not made reasonable efforts to reunify the child with the parents. *In re Rood*, 483 Mich 73, 105 (CORRIGAN, J.); 763 NW2d 587 (2009), citing MCL 712A.19a(6)(c) (additional internal cites omitted). The trial court's decision, including the best interest determination, is reviewed under the clearly erroneous standard. MCR 3.977(J); *In re Rood*, 483 Mich at 90-91. The holding regarding whether the petitioner made reasonable efforts to reunify the family is reviewed under the same standard, *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989), while questions of constitutional law are reviewed de novo. *In re Rood*, 483 Mich at 90-91. An unpreserved constitutional issue is reviewed for plain error affecting substantial rights. *Wolford v Duncan*, 279 Mich App 631, 637; 760 NW2d 253 (2008).

We hold that the trial court did not clearly err in finding that the statutory grounds for termination of respondent's parental rights were established by clear and convincing evidence under MCL 712A.19b(3)(c)(i), (g), and (j), or in determining that termination of respondent's parental rights was in the child's best interests.

On September 11, 2009, one year and three months after signing a parent-agency agreement[1], the trial court terminated respondent's parental rights. As of that date, respondent had not completed any of the requirements of the parent-agency agreement. He never provided proof of appropriate housing, legal employment, or completion of a parenting class. He had not had any physical contact with his son for over a year and three months, no verbal contact with the child for over nine months, and had sent the minor child no cards, letters, or packages. Further, he was incarcerated because he had stopped appearing for drug testing, a condition of his parole. Respondent explicitly told the trial court that he wanted his son to live with respondent's own mother rather than respondent, because she was more reliable. Petitioner arranged a study of the home of respondent's mother, but it was found to be inappropriate for a child. These facts supported the trial court's finding that termination was required under MCL 712A.19b(3)(g) and (i).

Respondent contends, however, that DHS failed to make reasonable efforts to assist with reunification, and that this failure renders the evidence insufficient to support termination and undermines the trial court's findings that statutory grounds for termination were established. Respondent's argument fails. As already noted, the statute generally requires the state to make "[r]easonable efforts to reunify the child and family." *In re Rood*, 483 Mich at 99-100, quoting MCL 712A.19a(2). *See also In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005), citing MCL 712A.18f(1), (2) and (4), and holding that the state is required "to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." The state's obligation to make reasonable efforts at reunification extends to the non-custodial parent, particularly when it becomes clear that reunification with the custodial parent is unlikely. *See In re Rood*, 483 Mich at 119-122.

The adequacy of the state's attempts to provide services "may bear on whether there is sufficient evidence to terminate a parent's rights." *Id.* at 89, citing *In re Fried*, 226 Mich App at 542. This is true because, if the state does not provide adequate services to a parent, the trial court will lack the evidence by which to decide whether the parent, if provided with appropriate services, would be able to rectify the conditions that led to adjudication, or to provide proper care and custody, within a reasonable time considering the child's age. *Id.* at 115-118. Therefore, if the state fails to make reasonable efforts, the trial court "is not required to terminate parental rights." *Id.* at 105, citing MCL 712A.19a(6)(c) (additional internal cites omitted).

Contrary to respondent's argument that the state failed to make reasonable efforts to reunify him and his son, the evidence showed that DHS (1) provided respondent with a service plan, a psychological evaluation, referrals for parenting classes, and supervised visitation; (2) facilitated arrangements with Messiah's foster family so that respondent could speak with his son by telephone; (3) agreed to deliver any letters or packages he wished to send to his son; and (4) facilitated a home study of his mother's house in Maryland. Additionally, the DHS was aware

[1] Respondent entered into a parent-agency agreement in June 2008, which required him to obtain and maintain appropriate housing and legal employment; take a parenting class; maintain the family bond and visit with the minor child regularly; and maintain compliance with the terms and conditions of his probation in Maryland, including remaining substance-free.

that respondent had access to the services provided by the State of Maryland in connection with his probation, such as drug screens. Respondent does not identify any service that he lacked, but even if he had been forced to find some services on his own, this fact would "in no way compel[] the conclusion that petitioner's efforts toward reunification were not reasonable, and, more to the point, [would] not suggest that respondent would have fared better if the worker had offered those additional services to him." *In re Fried*, 266 Mich App at 543.

Respondent had ample opportunity to demonstrate his ability and willingness to parent. See *In re Rood*, 483 Mich at 89. The trial court had no need to resort to conjecture about whether respondent would be able to rectify his former neglect of his son and provide Messiah with proper care and custody within a reasonable time. To the contrary, clear and convincing evidence established that respondent chose not to avail himself of the opportunity to be a father to Messiah for months on end. Instead, he chose to continue his former lifestyle and did not visit his son, send letters or packages, and he did not even call for many months at a time. Ultimately, respondent stopped reporting for his drug screens and landed back in jail for six months. Perhaps respondent did not take advantage of available services because, *as he explicitly stated*, he wanted his mother to raise his son. The statutory requirement that the state make reasonable efforts toward reunification does not include actions that would clearly be futile. *See In re Fried*, 266 Mich App at 542.

Finally, citing *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003), respondent argues that the trial court violated his due process rights by terminating his parental rights without the requisite proof of his unfitness. "A due-process violation occurs when a state-required breakup of a natural family is founded solely on a 'best interests' analysis that is not supported by the requisite proof of parental unfitness." *Id*., quoting *Quilloin v Walcott*, 434 US 246, 255; 98 S Ct 549; 54 L Ed 2d 511 (1978). This rule applies only when the decision to terminate the respondent's parental rights was clearly erroneous. *Id.* at 211. As discussed above, the trial court did not err in terminating respondent's parental rights in this case.

Respondent also contends that the record as a whole did not support the trial court's conclusion that termination of his parental rights would be in the minor child's best interest. Respondent's support for this argument, in its entirety, is, "Messiah Waite Jr. knew and was bonded to his father. Mr. Waite wanted to be given the opportunity to plan. He wanted his son with him in Maryland. His mother and he could take care of him." The record simply does not support these conclusory statements, and as detailed above, supports the opposite conclusions. The trial court's best interests finding was supported by clear and convincing evidence.

In sum, the trial court did not clearly err in finding that the statutory grounds for termination of respondent's parental rights were established by clear and convincing evidence under MCL 712A.19b(3)(c)(i), (g) and (j) and that termination of respondent's parental rights was in the minor child's best interests. There was no violation of respondent's due process rights.

Affirmed.

/s/ Patrick M. Meter
/s/ Christopher M. Murray
/s/ Jane M. Beckering