

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

August 12, 2010

In the Matter of SHANNON, Minors.

No. 296284

Kalamazoo Circuit Court

Family Division

LC No. 2008-000022-NA

Before: GLEICHER, P.J., and ZAHRA and K. F. KELLY, JJ.

PER CURIAM.

Respondent-appellant W. Shannon appeals as of right the trial court order terminating his parental rights to his two minor children under MCL 712A.19b(3)(c)(ii). We affirm.

The trial court did not clearly err in finding that the statutory ground for termination of respondent father's parental rights was established by clear and convincing evidence, and that termination of respondent's parental rights was in the children's best interests. MCL 712A.19b(5); MCR 3.977(J); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000), *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The trial court found at the September 2009 termination hearing that respondent father's unstable relationship with the girlfriend who housed and supported him, and failure in eighteen months to rectify the inability to "stand on his own two feet," established § 19b(3)(c)(ii) as a ground for termination of his parental rights. The trial court was not troubled by the fact that respondent father was "living off of his girlfriend," but was concerned because the relationship was not stable. The trial court's statutory findings were supported by evidence that respondent father had abused his girlfriend's son and caused her to be placed on the Central Registry for failure to protect, thus making her home ineligible as a site for his reunification with the minor children. Respondent father made no concerted effort to find alternate housing during the two-year proceeding. The evidence also showed the relationship was unstable because the girlfriend lacked the ability to stand up to respondent father, and respondent father considered leaving the relationship after the girlfriend became pregnant with his child. The trial court did not immediately find it in the children's best interests to terminate respondent father's parental rights, but allowed him an additional three months to demonstrate an ability to appropriately parent the children during unsupervised visits. Evidence presented at the January 2010 best interests hearing clearly showed respondent father's relationship with his girlfriend continued to be unstable because he fathered three children by three women in just over one year. The trial court's best interest finding that respondent father remained too immature and self-centered to put the children's needs ahead of his own in order to effectively parent was supported by evidence that he failed to understand how fathering three other children affected his ability to support the two minor children, subject to this proceeding, failed to encourage or follow through on the younger child's essential therapies, failed to provide

the children with stimulation or proper care and supervision during unsupervised visits, and failed during the two-year proceeding to become able to independently support and house the children. The trial court did not clearly err in terminating his parental rights.

Respondent father also asserts the caseworker's bias against him and favoritism toward the foster parents interfered with provision of services, and the trial court erred in finding petitioner provided reasonable reunification efforts. The evidence does not support respondent father's contention. Whether petitioner made reasonable efforts to facilitate reunification is a question of fact reviewed under the clearly erroneous standard. MCR 3.977(J); *Miller*, 433 Mich at 337. The record showed petitioner provided and respondent father partially complied with every service ordinarily provided in a child protective proceeding. Additionally, the caseworker commended respondent father on several occasions, the trial judge commented on the caseworker's esteem for respondent father, and counsel for respondent father remarked that the caseworker was excellent. The record reveals that the caseworker exhibited no personal bias against respondent father or his girlfriend, but discord arose when respondent father was granted unsupervised visits during the last three months of the two-year proceeding. The caseworker tended to believe the foster parents' reports regarding negative aspects of respondent father's parenting. Further, the trial court noted respondent father lacked credibility and concluded that conflict with the foster parents and caseworker was the result of respondent father's "own doing." The evidence showed the trial court did not err in finding petitioner provided respondent father reasonable reunification services.

Lastly, respondent father contends he was denied the procedural due process right to notice of the allegation that the early parenting he provided the younger child was neglectful and contributed to her physical and emotional deficits. Respondent father did not assert violation of his due process right to notice in the trial court, and failed to preserve this issue for review. *Phinney v Perlmutter*, 222 Mich App 513, 544; 564 NW2d 532 (1997). Respondent father's unpreserved claim of constitutional error is reviewed for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 764-765; 597 NW2d 130 (1999). An error affects substantial rights if it causes prejudice, meaning that it affects the outcome of the proceedings. *In re Utrera*, 281 Mich App 1, 9; 761 NW2d 253 (2008).

A petition in a child protective proceeding must include the essential facts that constitute an offense against the child, MCR 3.961(B)(3), and adequate due process procedures generally require notice. *In re CR*, 250 Mich App 185, 204; 646 NW2d 506 (2001), citing *Bundo v Walled Lake*, 395 Mich 679, 696; 238 NW2d 154 (1976). No due process violation occurred in this case because respondent father was aware that the child's physical and emotional deficits and need for therapies were a factor in the case. He admitted perpetrating domestic violence on respondent mother in the children's presence, and the Children's Trauma Assessment Center report admitted into evidence midway during the proceeding concluded early exposure to domestic violence and substance abuse significantly contributed to the child's deficits. While the two termination petitions did not allege the child's deficits were solely the fault of respondent father, both alleged the younger child's self-infliction of injury.

Even if respondent father received no notice of that particular allegation, the outcome of the case was not prejudiced because the trial court based termination not merely on respondent father's contribution to the child's deficits, but on several other facts, including his long-standing

immaturity, inability to put the children's needs before his own, and instability in the relationship with the girlfriend who supported and housed him.

Affirmed.

/s/ Elizabeth L. Gleicher

/s/ Brian K. Zahra

/s/ Kirsten Frank Kelly