

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
September 23, 2010

In the Matter of S.L.M. HOARD, Minor.

No. 296622
Washtenaw Circuit Court
Family Division
LC No. 2009-000103-NA

Before: TALBOT, P.J., and METER and DONOFRIO, JJ.

PER CURIAM.

Respondent, the mother of S.L.M. Hoard, appeals as of right from a circuit court order terminating her parental rights to the child under MCL 712A.19b(3)(g) and (i). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Respondent argues that the trial court erred in terminating her parental rights because the Department of Human Services (DHS) failed to make reasonable efforts to reunify her with the child. Because respondent did not preserve this issue by raising it below, our review “is limited to determining whether a plain error occurred that affected substantial rights.” *In re Egbert R Smith Trust*, 274 Mich App 283, 285; 731 NW2d 810 (2007), *aff’d* 480 Mich 19 (2008).

The DHS is required to initiate child protective proceedings if it determines that a child is at a risk of harm and the parent’s rights to another child have been voluntarily or involuntarily terminated following the initiation of child protective proceedings. MCL 722.638(1)(b). “[I]f a parent is a suspected perpetrator or is suspected of placing the child at an unreasonable risk of harm due to the parent’s failure to take reasonable steps to intervene to eliminate that risk,” the DHS must request termination at the initial dispositional hearing. MCL 722.638(2). If the court orders that the child be placed outside the home, the DHS must “prepare an initial services plan within 30 days of the juvenile’s placement.” MCL 712A.13a(8)(a). The plan is to include a “[s]chedule of services to be provided to the parent, child, and . . . the foster parent, to facilitate the child’s return to his or her home or to facilitate the child’s permanent placement.” MCL 712A.18f(3)(d). “Reasonable efforts to reunite the child and the family must be made in all cases,” subject to certain exceptions, one of which is that “[t]he parent has had rights to the child’s siblings involuntarily terminated.” MCL 712A.19a(2)(c).

It is undisputed that respondent’s parental rights to two other children were previously involuntarily terminated following the initiation of child protective proceedings. Further, the child was at an unreasonable risk of harm because respondent was unable to provide custody due to her incarceration, respondent had not made arrangements to have an alternative custodian care

for the child, and the child did not have a legal father who could take custody. Therefore, a petition for permanent custody was properly filed under MCL 722.638(2), and reunification efforts were not required under MCL 712A.19a(2)(c).

Respondent's reliance on *In re Mason*, 486 Mich 142; 782 NW2d 747 (2010), is misplaced. Although the Court in that case held that "[t]he mere present inability to care for one's children as a result of incarceration does not constitute grounds for termination" under §§ 19b(3)(c)(i), (g), or (h), *Mason*, 486 Mich at 160-165, there was no indication in *Mason* that the respondent had had his parental rights to another child previously terminated. Whether a parent is incarcerated or not, a prior termination is, either alone or in combination with other circumstances, a basis for termination, MCL 712A.19b(3)(i), (l), and (m), and respondent does not take issue with the trial court's determination that the conditions in § 19b(3)(i) were proven by clear and convincing evidence.

Respondent also argues that the trial court erred in finding that termination of her parental rights was in the child's best interests. We review the trial court's decision regarding the child's best interests for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCR 3.977(K). The child was removed from respondent's custody at birth and respondent had not been able to visit the child due to her incarceration. Thus, they had not developed a bond. Further, respondent had a history of cocaine abuse, had not been successful in her attempts to raise other children, and had only vague plans for how she intended to care for this child upon her release from prison. The trial court did not clearly err in finding that termination of respondent's parental rights was in the child's best interests.

Affirmed.

/s/ Michael J. Talbot
/s/ Patrick M. Meter
/s/ Pat M. Donofrio