

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

October 12, 2010

In the Matter of R. A. CELL, Minor.

No. 296598

Oakland Circuit Court

Family Division

LC No. 08-753271-NA

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

PER CURIAM.

Respondent mother appeals by right the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(i) (condition that led to adjudication continues to exist and no reasonable likelihood condition will be rectified), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood child will be harmed if returned to parent). We affirm.

Respondent pleaded to allegations in the petition, allowing the trial court to take jurisdiction over the minor child, and to allegations in a supplemental petition that provided the trial court with clear and convincing evidence to terminate her parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). The allegations included that respondent (1) made numerous allegations that the minor child had been sexually molested by her father, (2) coached the minor child to say that her father sexually molested her, (3) violated court orders regarding appropriateness at visitation, and (4) held inappropriate conversations with the minor child during visits. Petitioner provided services to respondent, including a psychological evaluation, individual therapy, parenting classes, and visitation.

Respondent argues that petitioner did not make reasonable efforts toward reunification pursuant to MCL 722.638 and that the trial court erred in its best interests determination. Respondent, however, failed to raise the issue of whether petitioner made reasonable efforts in the trial court. Thus, this issue therefore is not preserved for appellate review. This Court's review of an unpreserved claim that petitioner failed to make reasonable efforts to reunite a respondent with her child is limited to determining whether a plain error occurred that affected her substantial rights. *People v Carines*, 460 Mich 750, 762-764; 597 NW2d 130 (1999); *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). "Generally, an error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings." *Utrera*, 281 Mich App at 9. Even if plain error occurs, reversal is warranted only if the error seriously affected the fairness, integrity, or public reputation of the proceedings. *Id.*

The statute requires the state to make “[r]easonable efforts to reunify the child and family.” *In re Rood*, 483 Mich 73, 100; 763 NW2d 587 (2009), quoting MCL 712A.19a(2). The adequacy of the state’s attempts to provide services “may bear on whether there is sufficient evidence to terminate a parent’s rights.” *Rood*, 483 Mich at 89, citing *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). This is true because, if the state does not provide adequate services to a parent, the trial court may lack the evidence by which to decide whether the parent, if provided with appropriate services, would have been 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. *Rood*, 483 Mich at 115-118. In other words, the respondent must establish that she would have fared better if the agency had offered the services in question. *Fried*, 266 Mich App at 543. Therefore, if the petitioner fails to make reasonable efforts, the trial court “is not required to terminate parental rights.” *Rood*, 483 Mich at 105, citing MCL 712A.19a(6)(c).

Petitioner’s efforts were reasonable in this case. Respondent had the opportunity to demonstrate her ability to parent by participating in, and benefiting from, the many services provided by petitioner, including a psychological examination, parenting classes, individual therapy, and supervised visitation. Respondent simply failed to cooperate or benefit from the services provided. The trial court ordered respondent to act appropriately during visits with the minor child, and respondent continually violated the trial court’s orders. Respondent continued to make allegations that the minor child had been sexually molested, coach the minor child into making allegations that she had been sexually molested, and videotape her visits with the minor child even after the trial court ordered her not to do so. She made excuses for her failure to comply with court orders and appear at court hearings, and she then recanted the excuses claiming them to be dreams. Respondent failed to take medication prescribed for her mental health issues, claiming she had no insurance, yet was able to take medication for pain without having insurance. She was discharged from court ordered therapy for failure to attend four sessions in a row. Respondent did seek out her own therapist, but she did not disclose information to him that was critical for her to benefit from the therapy.

Respondent argues that petitioner did not make reasonable efforts because a termination petition was filed before disposition occurred. The record does not support this. An order of disposition was entered on February 3, 2009, after respondent pleaded to the allegations in the petition. When the trial court addressed petitioner’s motion to suspend parenting time on April 17, 2009, and after hearing the guardian ad litem’s report of respondent’s inappropriateness at visitation with the minor child, the trial court suspended respondent’s visitation and ordered petitioner to file a termination petition. Respondent did not appear in court on that date. The termination petition was filed on April 20, 2009 pursuant to the trial court’s order.

The evidence does not support a finding that respondent would have fared better had additional services been offered or had she be given additional time or chances before the filing of the termination petition. The trial court did not clearly err when it found the evidence clear and convincing to terminate respondent’s parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). MCR 3.977(K).

The trial court also did not clearly err in determining, after a best interests hearing, that terminating respondent’s parental rights was in the child’s best interests. MCL 712A.19b(5). A trial court may consider evidence on the whole record in making its best interests determination. *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000).

Respondent continuously violated court orders, continued to make allegations of sexual molestation perpetrated on the minor child, made excuses for failing to comply with court orders and failing to appear at court hearings that were not credible. Respondent's testimony and actions were filled with inconsistencies. She was not forthright with the therapists she dealt with in terms of her issues. She was more concerned with her own best interests than the best interests of the child. The child had been in her care for 20 percent of her life, and respondent remained incapable of providing the child with the permanence and stability that she needed.

Affirmed.

/s/ Brian K. Zahra
/s/ Michael J. Talbot
/s/ Patrick M. Meter