STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
October 14, 2010

In the Matter of MILLER, Minors.

No. 297507
Genesee Circuit Court
Family Division
LC No. 07-123038-NA

Before: FORT HOOD, P.J., and JANSEN and WHITBECK, JJ.

PER CURIAM.

Respondent mother appeals as of right from an order that terminated her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(*i*), (c)(*ii*), (g), and (j). The rights of the children's father were also terminated in the same order, but he is not participating in this appeal.

Respondent first argues that DHS failed to adequately and properly notify her of the termination hearing by personally delivering the summons to her. A failure to provide proper notice of termination proceedings by personal service as required by MCL 712A.12 is a jurisdictional defect that renders all proceedings void with regard to the individual who was deprived of notice. *In re Terry*, 240 Mich App 14, 21; 610 NW2d 563 (2000). However, MCL 712A.13 provides that "if the judge is satisfied that it is impracticable to serve personally such summons or the notice provided for in the preceding section, he may order service by registered mail addressed to their last known addresses, or by publication thereof, or both, as he may direct." It is error for a trial court "to allow only for notice by publication without first further inquiring regarding the whereabouts of respondent and attempting to determine if reasonable efforts were made to locate her by [the agency] for service by certified or registered mail." *In re Adair*, 191 Mich App 710, 714; 478 NW2d 667 (1991).

Respondent's argument is simply without merit. During the termination hearing, foster care supervisor William Redman admitted that his last contact with respondent was in March 2008. At that time, Redman had *signed* the termination petition. However, the drafted petition still needed to be signed by the agency's attorney and *filed* with the court. Until the petition was formerly filed on April 16, 2008, there was nothing to serve upon respondent. Therefore, service could not have been effectuated at the March 2008 hearing, as respondent contends. Although respondent asserts that the delay in filing the petition was intentional, she fails to delineate any advantage the agency would have gained in doing so.

The agency's motion for alternate service included an affidavit of diligent search, revealing that the worker checked the telephone book, DHS files, Department of Corrections, the

police department, Friend of the Court, and the County Jail, but could not locate respondent. Service was first attempted at an apartment respondent shared with the father, but it was vacant. Service was then attempted at "D-4186 Corunna Rd., Flint, Michigan 48532 on Saturday, April 24, 2009 at 5:19 p.m." The deputy that attempted service noted that "[t]his address goes to The Economy Motel and the manager on duty stated there is no room in her name and her name is not familiar." Thus, after efforts to personally serve respondent failed, the court authorized service by publication. Nonetheless, the agency continued to make an effort to personally serve respondent. There is simply no support for her contention that the agency failed to adequately and properly afford respondent notice of the termination hearing.

Respondent next argues that the trial court erred in terminating her parental rights and that the decision was not in the children's best interests. We disagree and hold that the trial court did not clearly err in finding that statutory grounds for termination of respondent's parental rights were established by clear and convincing evidence. *In re Trejo Minors*, 462 Mich 341, 355; 612 NW2d 407 (2000).

The trial court asserted temporary jurisdiction over the two older children on September 18, 2007, based on respondent's admissions that she had stabbed the father in the arm during a domestic dispute. The youngest child was born in May 2008 and was temporarily placed in respondent's care until July 15, 2008, when the trial court asserted jurisdiction over him based on respondent's admission that she tested positive for cocaine and had unstable housing. Respondent was ordered to submit to substance abuse services, submit to random drug screens, attend domestic violence counseling, find and maintain a legal source of income, complete parenting classes, and attend counseling.

Although respondent mother completed domestic abuse counseling, she did not benefit from the service. There were two noted instances of domestic violence since the court asserted jurisdiction over the children. In December 2008, it was alleged that the father shot up the apartment he shared with respondent. In January 2009, the father assaulted respondent at a motel where she was staying. On appeal, respondent focuses on the fact that the father was the aggressor and that she was the victim. She argues that she was not responsible for any violence since she stabbed the father. Still, the fact that respondent was the victim did not change the fact that she stayed in a relationship with the father in spite of his abusive tendencies. Though counseled against staying in the relationship, respondent mother did not heed the advice.

In addition to the continued domestic violence issue, respondent continued to struggle with substance abuse, testing positive for cocaine on numerous occasions from May 2008 to January 2009. There was no record that respondent ever completed an IARC assessment.

Respondent completed parenting classes, but showed no indication that she benefited from the classes. Respondent did not regularly visit with the children. Her last visit was in December 2008. There were numerous times when respondent failed to appear at visits. Respondent was not allowed to visit with the children until she provided three consecutive negative drug screens, which she failed to do.

Foster care supervisor William Redman knew nothing about respondent's current situation. He testified that he did not know where respondent lived, if she worked, and if she continued to take illegal drugs. Her absence, lack of involvement, and lack of progress meant

that the conditions leading to adjudication continued to exist with no reasonable likelihood that the conditions would have been rectified within a reasonable time for purposes of subsection 19b(3)(c)(*i*). It is unclear from the trial court's findings exactly what "other conditions" it believed existed, compelling termination pursuant to subsection 19b(3)(c)(*ii*). Respondent's increased drug use may have been a factor as well as her effective disappearance since December 2008. Regarding subsection 19b(3)(g), respondent had no proof of income or housing. She had a drug problem and continued to be in a volatile relationship. It was clear that, without regard to intent, respondent was not in a position to provide the children with proper care or custody and would not be within a reasonable time. Finally, respondent's continued involvement with the father placed the children at risk, given the parties' history of violence against one another, and termination was proper pursuant to subsection 19b(3)(j).

Having found statutory grounds for termination of respondent's parental rights proven by clear and convincing evidence, the trial court was then obligated to determine whether termination of respondent's parental rights was in the children's best interests. MCL 712A.19b(5). Redman testified that the children were all placed together in a foster home and were doing well. He believed that termination of respondent's parental rights was in the children's best interests because of the length of time the children had been in care. Respondent also failed to visit with the children in the six months preceding the termination hearing, and before that her visits were often missed or "no shows." Under those circumstances, it would be difficult for respondent to argue that there was an appreciable bond between her and the children. Any positive reports regarding respondent's interaction with the children during visits are significantly outweighed by her failure to engage in services and maintain consistent contact with the children. The children had been in care for well over a year and, if anything, respondent's situation had only worsened. They were entitled to permanence and stability.

Finally, respondent argues that she was denied the effective assistance of counsel at the termination hearing. Because respondent failed to file a motion for a new trial or request a *Ginther*[1] hearing in the trial court, our review is limited to mistakes apparent on the record. *People v Davis,* 250 Mich App 357, 368; 649 NW2d 94 (2002).

Again, respondent's claim is without merit. Respondent did not attend the termination hearing and did not assist her attorney in preparing a case. Counsel indicated that he had no witnesses to present because "[m]y client's not here today." In the absence of a *Ginther* hearing, respondent merely makes blanket assertions without record support of what her attorney could have or should have done to advocate on her behalf.

Respondent complains that counsel failed to make an opening statement, but it is not uncommon for the parties to waive opening statements in these cases. Respondent also claims that counsel should have cross-examined Redman more vigorously to elicit the fact that respondent was the victim in recent instances of domestic violence. However, that was already made clear on the record. Respondent misses the point in focusing on the father as the perpetrator. Redman explained that he did not believe respondent benefited from domestic

[1] *People v Ginther,* 390 Mich 436, 441; 212 NW2d 922 (1973).

violence counseling because she continued to stay with the father. It was her lack of insight that formed the basis for Redman's opinion. Finally, respondent argues that more could have been done to elicit favorable testimony regarding respondent's interactions with the children during visits. Specifically, respondent points to a report prepared by a Catholic Services worker that indicated respondent's interactions with the children during visits were appropriate. Yet respondent fails to acknowledge that she had not visited with the children in over six months. Again, although she completed parenting classes, respondent failed to show insight. She effectively abandoned the children by missing numerous visits and then failed to provide the requisite number of drug screens to continue visitation. Respondent has not shown that: (1) that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms; (2) that there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different; and (3) that the resultant proceedings were fundamentally unfair or unreliable. *People v Pickens,* 446 Mich 298, 302-303; 521 NW2d 797 (1994); *People v Odom,* 276 Mich App 407, 415; 740 NW2d 557 (2007); *People v Effinger,* 212 Mich App 67, 69; 536 NW2d 809 (1995).

Affirmed.

/s/ Karen M. Fort Hood
/s/ Kathleen Jansen
/s/ William C. Whitbeck