STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
October 21, 2010

In the Matter of K. MICOFF, Minor.

No. 296890
Oakland Circuit Court
Family Division
LC No. 08-750569-NA

Before: WILDER, P.J., and SERVITTO and SHAPIRO, JJ.

PER CURIAM.

Respondent father appeals as of right from an order that terminated his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(*i*), (g), and (j). The child's mother voluntarily terminated her parental rights and is not participating in this appeal. We affirm.

Respondent argues that the trial court erred in terminating his parental rights and that he was not offered reasonable reunification services. We disagree and find 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*, 462 Mich 341, 355; 612 NW2d 407 (2000).

On August 28, 2008, the Department of Human Services ("DHS") filed a petition seeking temporary jurisdiction of the minor child. The petition alleged that, on June 25, 2008, the mother and the grandmother were involved in a physical altercation at a motel in which they were living. The petition also alleged that respondent was a probation absconder for his 2007 convictions for domestic violence and interfering with electronic communication. There was an October 2007 domestic violence incident between the child's mother and respondent in which respondent engaged in assaultive behavior against the mother for three weeks.

Respondent's lengthy appellate brief focuses almost exclusively on the fact that respondent never signed a parent-agency agreement ("PAA"). Respondent seems to argue that the failure to have a signed copy of the PAA rendered all reunification efforts defective and inferior. The trial court was well within its right to conclude that the absence of a signed PAA did not relieve respondent's obligation to perform the PAA's requirements. Additionally, contrary to respondent's bald assertions, it was clear that the several workers involved in this case endeavored to encourage his participation. Respondent failed to participate—not because he was unaware of what was required, the workers fell short of providing services, or there were problems with the mail, all of which he argues—but because he was afraid of being arrested on

an outstanding warrant and because he was content to sit back and do nothing in the hopes that the child would be reunited with her mother.

Respondent did not appear for the preliminary hearing on August 28, 2008. Notice of the hearing was posted on his door. Respondent did not appear for the pretrial hearing on September 17, 2008. He spoke with the worker following the preliminary hearing and admitted that he did not appear because he was a probation absconder and feared that he would be arrested. The referee issued a bench warrant for respondent, hoping to compel his appearance. The referee's goal was not to have respondent arrested but simply to determine respondent's position in the neglect proceeding. Respondent did not appear at a pretrial hearing on October 24, 2008. At that time, the trial court incorporated respondent into the case through *In re CR*,[1] and respondent was ordered to comply with the PAA. Respondent's first appearance at a court hearing was January 23, 2009. The worker now had respondent's most current address and telephone number. She did not bring the PAA to the hearing, nor did she send the PAA to respondent in the mail because she wanted to go over all of the provisions with respondent. Of great importance was the statement of respondent's attorney that "I have a copy of the original [PAA]. It's my understanding it's the same, other than the dates have been changed. He had an opportunity to review it today and he's fine with that." The referee confirmed with respondent's attorney that there was a PAA in place for his client to follow. Thus, respondent was well aware of what was expected of him as far back as January 2009.[2]

Still, respondent did not satisfy the PAA's requirements, as revealed at the April 24, 2009, hearing for which respondent failed to appear. The new worker reported that it took her nearly three weeks to make contact with respondent. Once she did, respondent had two visits that appeared to go well. Respondent requested that the visits be changed from Fridays to Tuesdays, but he was unable to attend afterward despite the change. Respondent requested another change in the visitation day, but the foster parent could not accommodate him. The worker spoke with respondent on April 22, 2009. He was cordial and agreeable and seemed ready "to accept responsibility and do the things that are required, that are on the treatment plan but getting him to actually do those things is another thing." She sent him a letter, asking him to participate in the PAA and undergo a psychological evaluation. Respondent missed the first evaluation on April 1, 2009, because "he simply forgot." He also missed the rescheduled appointment on April 15, 2009, but denied any knowledge that there was an appointment scheduled for that day. The worker advised respondent that he needed to participate in a domestic violence group at HAVEN as well as a parenting program.

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[1] *In re CR*, 250 Mich App 185; 646 NW2d 506 (2002).

[2] Respondent also argues that he did not receive an initial service plan within 30 days of placement, MCL 712A.18f. However, this argument is unpreserved, respondent has failed to argue that he requested review of plan, and respondent has failed to demonstrate how the alleged error affected his substantial rights in light of his receipt of the PAA.

Respondent appeared at the permanency planning hearing on July 22, 2009. At that time, he was incarcerated for a probation violation. The referee noted that it had been six months since respondent appeared at a hearing, indicating a desire to plan for his child. No progress had been made. The referee ordered the agency to file a termination petition.

At the termination hearing, respondent admitted that he did nothing since the time the minor child was made a temporary ward. He testified:

> The first court date I thought [the mother] would get custody of [the child] and everything would go as it always has where was the custody [sic]. She had custody and I just went about things. When I realized she was going crazy talking about suicide and stuff I knew I had to step up and start – you know, time to get custody myself. Can't count on [the mother] to do anything. So, yeah, it might have changed over the course of a year and a half or so.

Respondent claims that some of the services required under the PAA overlapped with services provided under his probation program. However, because respondent was an absconder, he freely admitted that he did not participate in the drug screens or domestic violence classes that were required under his probation program. Again, respondent freely admitted that he did nothing. The foregoing evidence clearly demonstrated that the conditions leading to adjudication continued to exist, that respondent was without the ability to care for his child within a reasonable amount of time, and that the young child would likely be harmed if returned to respondent's care. Respondent touts the fact that he had adequate employment and housing, but he failed to address the more serious issue of domestic violence. Furthermore, because of his failure to participate in parenting classes and visit with the child, there was no way for the agency to assess his parenting attributes and deficiencies.

Respondent's reliance on *In re Mason,* 486 Mich 142; 782 NW2d 787 (2010), and *In re Rood,* 483 Mich 73; 763 NW2d 587 (2009) is misplaced. Both *Mason* and *Rood* involved situations in which a father's due process rights were violated during child protective proceedings because the father's participation in the proceedings was not facilitated. There are few, if any, similarities between respondent's case and *Rood* or *Mason*. In those cases, there was no attempt to engage the fathers in services or even to keep them apprised of the case as it progressed. In respondent's case, there was testimony regarding the various workers' attempts to actively engage respondent in services. Unlike either of the fathers in *Mason* and *Rood,* respondent was presented with a PAA, detailing its requirements. As discussed above, the fact that the PAA was unsigned is of no consequence where both respondent and his attorney acknowledged early on that they were fully aware of its contents and had no objections. Unlike either of the fathers in *Mason* and *Rood,* respondent failed to participate at hearings, not for lack of notice, but because he was afraid of being arrested on an outstanding warrant. Also unlike *Mason* and *Rood*, the focus in respondent's case was not entirely on the mother as custodial parent. It was true that the initial plan was to reunify the child with her mother, but the evidence also showed that the agency attempted to reach out to respondent on numerous occasions to no avail. Again, respondent cannot argue that he was unaware of what was happening or what was expected of him.

Similarly, respondent's complaint that the agency failed to follow its own rules rings hollow. The agency actively sought to engage respondent in services. It prepared various service plans throughout the course of the proceedings. It attempted to accommodate respondent's schedule and even moved parenting time upon his request. Respondent argues that the agency was deficient in failing to "actively seek and engage a missing parent." However, respondent was not "missing." He was absent out of fear of being arrested. Although respondent was finally arrested and jailed in July 2009, he spent most of the time *out* of jail and simply failed to participate in services.

After ascertaining that the statutory grounds for termination were proven by clear and convincing evidence, the trial court was then obligated to determine whether termination of respondent's parental rights was in the child's best interests. MCR 3.977(K); *Trejo,* 462 Mich at 356-357. In terminating respondent's parental rights, the trial court noted that respondent "has done nothing to indicate that he is able and willing to improve the situation for [his daughter] . . . and has little more than a biological connection to this child." The court did not err in concluding as much. The worker testified that respondent did absolutely nothing to plan for the child. Respondent admitted he did nothing and visited with the child only twice in the 15 months she had been in foster care. Workers testified that he was entitled to additional parenting times, but he effectively denied himself the right by failing to contact them and failing to participate. It could not be said that any appreciable bond existed between respondent and the young child where he saw her only twice in over a year. The child was entitled to permanence and stability.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Deborah A. Servitto
/s/ Douglas B. Shapiro