STATE OF MICHIGAN

COURT OF APPEALS

In re LUCAS/HEINZE, Minors.

UNPUBLISHED
April 12, 2016

No. 328666
Crawford Circuit Court
Family Division
LC No. 13-004147-NA

Before: BOONSTRA, P.J., and WILDER and METER, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating her parental rights to two minor children, SH and JL, pursuant to MCL 712A.19b(3)(b)(*ii*) (failure to protect child from physical abuse) and MCL 712A.19b(3)(c)(*ii*) (failure to rectify other conditions causing the child to come within the court's jurisdiction). We affirm.

Respondent and KL are the biological parents of JL.[1] Respondent and JH are the biological parents of SH. In September 2012, the children were removed from respondent and JH's home after JH "smacked" JL "in the face." The children were subsequently returned to the home after JH showed sufficient progress with services. The caseworker at the time testified that respondent, however, did not sufficiently progress and that there had been prior Child Protective Services (CPS) complaints made against respondent that mentioned her "extremely low ability to function as a parent." The caseworker stated that "everybody agreed" that JH would need to be responsible for the children's healthcare and other important matters "because it was evident that [respondent] couldn't do it."

The children were returned to respondent and JH in July 2013, only to be removed again in November 2013, when CPS received a complaint that JH kicked a chair at JL and said, "Ha Ha," after it hit the boy in the face. A petition was brought against respondent and JH[2] and they requested a trial on the allegations. After the trial, the trial court issued an order and opinion on

[1] KL's parental rights to JL were also terminated; he is not a party to this appeal.

[2] KL was also listed as a respondent and participated minimally in these proceedings. He was incarcerated when the original petition was filed and was released from jail in April 2014, and his whereabouts thereafter are unknown.

February 12, 2014, finding that there was sufficient evidence that JH committed an assault on JL and assuming jurisdiction on that basis. The court ordered both respondent and JH to engage in services, which they commenced in March 2014.

On June 2, 2014, the Michigan Supreme Court held that "due process requires a specific adjudication of a parent's unfitness before the state can infringe the constitutionally protected parent-child relationship." *In re Sanders*, 495 Mich 394, 422; 852 NW2d 524 (2014). At a review hearing held in the case at hand in August 2014, the parties and the court discussed the effect of *In re Sanders* on this case and the court determined that it would need to review the record because it could not remember what evidence was presented against respondent at the trial. At a November 2014 review hearing, the court concluded that respondent "was not adjudicated on." The court was also informed that respondent had left JH, and the court authorized petitioner to initiate termination proceedings against JH.[3]

A supplemental petition containing numerous allegations against respondent was filed on December 4, 2015, and an amended petition seeking termination of her parental rights at the initial dispositional review hearing was filed on March 9, 2015. At the subsequent bench trial, testimony focused on respondent's inability to parent both children at the same time and her failure to benefit adequately from parenting classes and domestic relations counseling. Respondent's history as a domestic abuse victim was also of concern, with testimony that both fathers had engaged in domestic violence against respondent and JL. The court assumed jurisdiction over the children and "over all parties" because it found that "[n]obody did anything" to protect the children from their exposure to domestic abuse.

At the termination hearing, the caseworkers again testified to respondent's inability to care for her children independently. One caseworker thought that it would be a "disaster" if the children were returned to respondent, considering her limited parenting skills and her history of abusive relationships.

The court found that respondent "[f]undamentally . . . has failed to comply with the parent agency agreement . . . by not showing benefit from services." The court noted that some of respondent's lack of compliance with the plan may have been due to her limited parenting skills, "something she might not have had a really good prospect for correcting," but stated that the "exposure to violence was something she could have taken action on but she chose not to." The court concluded:

> The Court finds this record supports statutory grounds for termination under 712A.19(b)(3)(b)(ii). Further, [respondent's] past record failing to protect her children from domestic violence both as to witnessing it and being victims of it, clearly indicates a reasonable likelihood of injury in the foreseeable future were the children returned. This record also supports termination under MCL 712A.19(b)(3)(c)(ii) given lack of progress under the service plan.

[3] JH voluntarily gave up his parental rights to SH.

The court also found that termination would be in the children's best interests because there was a "very limited bond" between respondent and her children and "she has never shown the ability to handle both of them at once for short visits and has never progressed to unsupervised visits." The court noted that the children had a stronger bond with the foster parents, in part due to the length of time they had been apart from respondent.

Respondent argues that the initial adjudication hearing violated due process because it encompassed the one-parent doctrine and suggests that the proceedings continued to deprive her of due process. "Generally, whether child protective proceedings complied with a respondent's substantive and procedural due process rights is a question of law that this Court reviews de novo." *In re TK*, 306 Mich App 698, 703; 859 NW2d 208 (2014).

We agree with respondent, as did the trial court, that in light of *In re Sanders*, the original adjudication was insufficient for the trial court to exercise dispositional authority over respondent. However, the violation was cured when an adjudication addressing respondent was thereafter held. After hearing testimony from caseworkers, service providers, and respondent, the court found clear and convincing evidence to assume jurisdiction. We do not find that ruling clearly erroneous. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004).

While the second adjudication could have been held sooner, we note, initially, that respondent agreed to adjourn the adjudication for good cause in February 2015. Moreover, respondent did not object to the delay in the proceedings in the trial court, and thus review under the plain error doctrine is appropriate. *In re Utrera*, 281 Mich App 1, 8-9; 761 NW2d 253 (2008). We find no prejudice under this doctrine, given the substance of the evidence presented. See *id*. at 9 ("Generally, an error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings.").

Respondent also argues that the court erred by considering her failure to benefit from the services she was unconstitutionally ordered to participate in when it terminated her parental rights. We disagree. The court was aware of the *In re Sanders* issue and explicitly mentioned it and how it rendered certain of the services respondent participated in "voluntary."[4] The court stated that it did not "have to disregard services, even voluntary services that somebody does when it considers whether or not the statutory factors are met . . . ." The court correctly looked at all pertinent evidence relating to parental ability and correctly conformed with the law by affording respondent an adjudication. Under the circumstances, we find no basis for reversal.

Finally, respondent argues that the court erred by finding clear and convincing evidence to terminate respondent's parental rights under MCL 712A.19b(3)(c)(*ii*) because petitioner, by allegedly failing to provide accommodations for respondent's cognitive limitations, did not make reasonable efforts towards reunification. Respondent's argument leaves unchallenged the court's conclusion that termination was warranted under § 19b(b)(*ii*). "Only one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights, even

[4] Respondent herself characterizes the services as "voluntary" in her appellate brief.

if the court erroneously found sufficient evidence under other statutory grounds." *In re Ellis*, 294 Mich App, 30 32; 817 NW2d 111 (2011). At any rate, we have reviewed the record and found that respondent did not timely raise a request for accommodation and that respondent was provided with appropriate services. A caseworker testified that he "set up parenting time classes to work around [respondent's] cognitive disabilities[.]"

Affirmed.

/s/ Mark T. Boonstra
/s/ Kurtis T. Wilder
/s/ Patrick M. Meter