STATE OF MICHIGAN

COURT OF APPEALS

In re K. A. PUTMAN, Minor.

UNPUBLISHED
May 17, 2016

No. 329854
Saginaw Circuit Court
Family Division
LC No. 13-033963-NA

Before: HOEKSTRA, P.J., and O'CONNELL and MURRAY, JJ.

PER CURIAM.

Respondent-father appeals as of right an order terminating his parental rights to his daughter, KP, under MCL 712A.19b(3)(c)(*i*) (conditions that led to adjudication continue to exist), MCL 712A.19b(3)(g) (failure to provide proper care and custody), and MCL 712A.19b(3)(j) (reasonable likelihood of harm). Because the trial court did not clearly err by terminating respondent's parental rights, we affirm.

I. FACTS AND PROCEDURAL HISTORY

Respondent moved to South Dakota before respondent-mother gave birth to KP. Respondent paid child support, sent birthday gifts, and occasionally talked with KP on the phone, but he never visited KP and had in fact never met KP before the instant proceedings began. The Department of Health and Human Services (DHHS) filed a petition for child protective proceedings alleging, with regard to respondent, that he did not provide consistent financial support or any physical or emotional support for his daughter.[1] The petition also alleged that respondent never visited KP or offered a care plan for her. The court held a preliminary hearing in December of 2013 and took testimony that petitioner sent notice to respondent at his last known address, but received no response. The court proceeded with the petition despite respondent's absence. See MCR 3.965(B)(1).

Respondent was also not present at the adjudication trial on January 28, 2014. However, petitioner received personal notice, and the court continued with the adjudication satisfied that

[1] The petition also made allegations against respondent-mother and a different respondent-father with whom respondent-mother also had children that were the subject of the petition. The court terminated their parental rights as well.

respondent had received notice. It then determined that the allegations against respondent were true based on the testimony provided by respondent-mother. The court declared respondent-mother's children, including KP, temporary wards and placed them with respondent-mother under the supervision of petitioner. The plan at that time was for reunification with respondent-mother, and the case service plan prepared in January of 2014 involved services for respondent-mother and her boyfriend.

Petitioner later filed a supplemental petition to remove the children from respondent-mother's care. Respondent participated for the first time by phone on March 3, 2014 at the emergency hearing related to the supplemental petition. At that time, he admitted that he was not "really providing" care for KP. However, rather than see KP go to foster care, he stated that "I guess I could come back and step in if I need to." The plan at that time was still for reunification with respondent-mother, and no services were being provided to respondent in South Dakota. The court decided to keep the children in foster care, and the court informed respondent that he could participate by phone at the next hearing.

The court adjourned the next hearing and left a message for respondent, informing him of the adjournment. Respondent appeared at the next hearing on March 18, 2014 via telephone and testified that he sent KP Christmas gifts every year, was out-of-state when she was born, and had never met her in person. He claimed that he had talked to KP via telephone some months before, but that it was difficult to contact her because respondent-mother rarely had minutes on her phone. Respondent admitted that he was behind on child support, but explained the deficiency by citing his transition to a new job. When asked about a care plan for KP, he asserted that he could provide care for her in South Dakota and respondent offered to retrieve KP the following day. The court encouraged respondent to contact petitioner and explained that it could not simply turn KP over to him because there were allegations against him and she was a ward of the court. The court found that respondent had provided little if any financial, emotional, or physical support, had failed to visit KP, and had failed to offer a care plan. In terms of the services available to respondent, the Child Protective Services Investigator testified that respondent was not being asked to participate in services at that time.

The court held a review hearing in June of 2014 and permanency planning hearings in August, September, and October of 2014 and in January of 2015. Respondent did not appear at these hearings by telephone, and the court noted each time that respondent was not present or had not called in despite receiving notice of the hearing. During this time, the primary goal remained reunification of KP with her mother. When services were discussed in relation to respondent, respondent was described as "not participating" and he was reported to have "refused" services. The child foster care reports for this timeframe stated:

> [Respondent] has had limited contact with DHS. He has declined the invitation to participate in services for reunification with his daughter. [Respondent] has never physically met his daughter. He has not had physical contact with his daughter in the last five years. He has also stated that he was not going to make any trips to Saginaw.

In March of 2015, respondent's sister, Victoria Krupnek, filed an emergency motion to have KP placed with her. Krupnek asserted that KP had stayed with her on some weekends

while KP's maternal aunt had cared for KP. Respondent attended the motion in person and testified in support of Krupnek's motion, stating that he intended for KP to live with his sister so that he could develop a relationship with KP. Respondent also explained that he had moved back to Michigan about two weeks before the hearing. At this hearing, the foster care worker testified regarding respondent's participation to date, explaining:

> I have personally spoken to [respondent] probably in June of [2014] and he personally told me that he had no interest in [KP] or where she goes and how - - how he did not want to be contacted, he had no indication [sic] of coming to Saginaw to care for [KP]. And at that point we had a hearing on August 8th which the he - - he did not attend . . . . and there has been no contact from [respondent] since that time.

KP's guardian ad litem opposed Krupnek's motion because Krupnek apparently had visits with KP without petitioner's approval, and the caseworker opposed the motion because it would remove KP from her half-siblings in the same placement. The petitioner also challenged Krupnek's standing to bring the motion. The court denied the motion holding that Krupnek did not have standing and that it would not interfere with the petitioner's discretion in the placement of the children.

The court adjourned the next permanency planning hearing, and at the reconvened hearing on May 6, 2015 a caseworker testified that respondent was exercising parenting time for one hour each week. However, the caseworker also testified that petitioner had filed a petition for termination of parental rights for all the parents in the case, including respondent. She explained that she referred respondent for a psychological evaluation in order to determine what services he needed, but that respondent's attorney had cancelled the evaluation.

The termination hearing began on July 23, 2015. At the termination hearing, respondent asserted that he sold his business in South Dakota and moved back to Michigan in March of 2015 because he heard that petitioner wanted to terminate parental rights. Respondent contacted the caseworker upon his return to Michigan in March 2015 and arranged for a meeting with her. According to respondent, his attorney cancelled his psychological evaluation out of fear that petitioner would use the results to terminate parental rights. He rescheduled the appointment when he discovered that petitioner would use the results to tailor services to his needs, but the psychologist cancelled the appointment. He independently sought out a counselor to evaluate him. Respondent also sought out and completed parenting classes on his own.

Consistent with her representations at the various hearings, the caseworker testified that she made phone contact with respondent and that he indicated that he was not part of KP's life. According to the caseworker, respondent refused her invitation to participate in services. After this conversation, she did not hear from respondent for "a long time." She asserted that the next time she heard from respondent was about a year later on March 16, 2015, when he came in to her office for an appointment. She reiterated that respondent's attorney had cancelled the psychological evaluation and that she did not know what services he could benefit from absent guidance from an evaluation. She testified that she and respondent eventually developed a parent/agency treatment plan that respondent signed on July 15, 2015. The caseworker opined that the largest barrier to reunification was that respondent had "no relationship" with KP.

KP's therapist testified that KP suffered from anxiety and distress stemming from her initial visits with respondent, but that there was a decrease in the child's anxiety over the course of respondent's visits, and she more recently had become noncommittal about the visits. The therapist observed respondent's visits with KP and opined that respondent needed assistance transitioning the visits from playtime to parenting time. A court-appointed special advocate testified that he did not believe there was a bond between KP and respondent based on his observation of parenting time.

Licensed professional counselor Charles Wood performed a psychosocial evaluation of respondent at respondent's request. Wood determined that respondent was mentally stable and did not have any pathological issues, but he did have anxiety regarding the case involving KP. Wood believed that six months would be an appropriate amount of time for the court to allow respondent to develop a parental relationship with KP.

The trial court held that there was clear and convincing evidence to terminate respondent's parental rights under MCL 712A.19b(3)(c)(*i*), (g) and (j). Discussing respondent, the trial court explained:

> Regarding [respondent], he has failed to establish a relationship with [KP] and was unwilling to become involved and declined services until 14 months after the Court assumed jurisdiction. He was not helpful in developing a service plan upon coming into this case so, so late. [KP's] reaction to him caused her emotional harm requiring counseling in order to continue visits. All testified that they really are barely playmates and a long way off from a healthy parent/child relationship. . . . [A] great deal of time and therapy would be needed to even begin to develop any type of normal parent/child relationship where [KP] would be comfortable with her father.

Given respondent's lack of relationship with KP and the 18 months she had already spent in foster care, the trial court also determined that terminating respondent's parental rights was in KP's best interests. Respondent now appeals as of right.

II. ANALYSIS

On appeal, respondent contends that the trial court's decision to terminate parental rights was clearly erroneous and a deprivation of due process. In particular, respondent asserts that he was not provided with proper notice of the proceedings, that he should have been afforded an opportunity to participate in all court proceedings via telephone, and that petitioner failed in its statutory obligation to provide respondent with meaningful services aimed at reunification. According to respondent, there is no evidence that he would be unable to care for KP in a reasonable time and, in the absence of services aimed at reunification, termination of his parental rights was clearly erroneous and not in KP's best interests. We disagree.

A. STANDARD OF REVIEW

The trial court's decision that a ground for termination of parental rights has been proved by clear and convincing evidence is reviewed for clear error. *In re White*, 303 Mich App 701, 709; 846 NW2d 61 (2014). We also review the trial court's best interests determination for clear

error. *Id.* at 713. Likewise, a court's factual findings are reviewed for clear error, "giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004). Whether proceedings complied with a party's right to due process is a question of constitutional law that this Court reviews de novo. *In re TK*, 306 Mich App 698, 703; 859 NW2d 208 (2014).

B. NOTICE OF THE ADJUDICATION

Respondent first argues that the trial court should have waited to proceed with the adjudication until it was sure that respondent had received notice. Respondent alleges that mail was initially sent to the wrong address in South Dakota, that publication in a Saginaw newspaper was not sufficient notice, that there was no proof of service, and that the return of service card for notice sent by certified mail had not yet returned to the court at the time the adjudication was held. In these circumstances, respondent contends that the trial court should not have proceeded with the January 28, 2014 adjudication.

"A natural parent has a fundamental liberty interest 'in the care, custody, and management' of his child . . . ." *In re Rood*, 483 Mich 73, 91; 763 NW2d 587 (2009) (citation omitted). When the state interferes with parental rights, it must provide the parent with fundamentally fair procedures. *Id.* at 91-92. "Due process in civil cases generally requires notice of the nature of the proceedings, and an opportunity to be heard in a meaningful time and manner, and an impartial decisionmaker." *In re Juvenile Commitment Costs*, 240 Mich App 420, 440; 613 NW2d 348 (2000).

Under MCL 712A.12, "[a] parent of a child who is the subject of a child protective proceeding is entitled to personal service of a summons and notice of proceedings." *In re SZ*, 262 Mich App 560, 564; 686 NW2d 520 (2004). See also MCR 3.920(B)(2)(b). Typically, "[i]n the absence of personal service or a waiver of personal service, jurisdiction is not established and the court's orders are void." *In re Dearmon*, 303 Mich App 684, 694; 847 NW2d 514 (2014). "However, in cases in which personal service is impracticable, substituted service is permissible" and it is sufficient to confer jurisdiction on the court. *In re SZ*, 262 Mich App at 565.

In this case, contrary to respondent's arguments regarding lack of service, the record indicates that respondent received the summons for the January 28, 2014 adjudication via personal service on December 23, 2013. The referee at the adjudication specifically noted that respondent had received personal service, and we see no error in the referee proceeding with the adjudication. Although respondent is correct that notice was additionally published in a Saginaw newspaper and not a South Dakota newspaper, MCR 3.920(B)(5)(c), any arguable error in this regard did not deprive respondent of due process given that he received personal service. In short, respondent's arguments regarding service of notice concerning the adjudication lack merit.

C. TELEPHONE PARTICIPATION

Respondent also contends that the trial court violated due process because it did not include him in certain hearings by telephone. Respondent cites *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010), for the proposition that the state is not relieved of its duty to engage an absent parent in court proceedings merely because the parent is incarcerated. Respondent argues

that the state should also have a similar duty to arrange telephonic communications for parents living out-of-state.

However, as respondent observes, *In re Mason*, 486 Mich at 152-153, addressed the state's failure to arrange appearance by telephone for an incarcerated parent, and we conclude that these telephone requirements do not apply in this case. In particular, *In re Mason* considered the procedures set forth in MCR 2.004, which requires the petitioning party and the court to arrange for appearance by telephone for incarcerated parents whose children are the subject of a protective proceeding. See MCR 2.004(A) to (C). By its plain terms, MCR 2.004 applies to parents incarcerated with the Department of Corrections in Michigan. See *In re BAD*, 264 Mich App 66, 74; 690 NW2d 287 (2004) (holding MCR 2.004 did not apply to a parent incarcerated in Arizona). Neither the court rule nor *In re Mason* impose any specific telephone communication requirements which would apply to respondent in this case. Instead, the facts show that respondent had notice and he was free to appear in-person or to call via telephone in the same manner that he called for the March 3, 2014 hearing. In sum, respondent was not denied due process by the trial court's failure to follow the procedures in MCR 2.004.[2]

D. REUNIFICATION SERVICES

Next, respondent contends that petitioner failed in its statutory duty to engage him in reunification services. Under MCL 712A.19a(2), except in cases involving certain aggravating circumstance, "reasonable efforts to reunify the child and family must be made in all cases." See *In re Mason*, 486 Mich at 152. In particular, our Supreme Court described the petitioner's duty to engage parents with a service plan as follow:

> If the court orders placement of a child outside the child's home, the DHS must prepare an initial services plan within 30 days of the child's placement. MCL 712A.13a(8)(a). Before the court enters an order of disposition, the DHS must prepare a case service plan, which must include, among other things, a "[s]chedule of services to be provided to the parent, child, and if the child is to be placed in foster care, 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). "If a child continues in placement outside of the child's home, the case service plan shall be updated and revised at 90-day intervals. . . ." MCL 712A.18f(5). Further, at each review hearing, the court is required to consider, among other things, "[c]ompliance with the case service plan with respect to services provided or offered to the child and the child's parent, . . . whether the parent . . . has complied with and benefited from those services," and "[t]he extent to which the

[2] Respondent briefly suggests on appeal that he was confused at the March 3 hearing with regard to the nature of proceedings, such that the court should have offered him a lawyer. This argument is without merit for the simple reason that the court expressly informed respondent of his right to hire an attorney or to have one appointed by the court if there was a financial need. Despite this information, respondent indicated that he was comfortable proceeding without an attorney.

> parent complied with each provision of the case service plan, prior court orders, and an agreement between the parent and the agency." MCL 712A.19(6)(a) and (c). [*In re Mason*, 486 Mich at 156.]

In addition, in cases involving both a custodial and a non-custodial parent, petitioner has an obligation to provide notice and services to the non-custodial parent and to consider the non-custodial parent as a potential placement in the event that efforts to reunite the child with the custodial parent prove unsuccessful. See *In re Rood*, 483 Mich at 119. In this regard, our Supreme Court described the petitioner's duties toward a noncustodial parent as follows:

> Reunification efforts may be initially directed at a custodial parent when appropriate, consistent with the statutory preferences for a child's "own home." But if these efforts are unfruitful, the state must also make reasonable efforts to reunify the child with the noncustodial parent. Accordingly, unless the noncustodial parent is statutorily disqualified from becoming his child's custodian, the state must notify the noncustodial parent of his right to be evaluated as a potential placement and of his statutory right to receive services if appropriate. [*In re Rood*, 483 Mich at 121-122.]

Without appropriate services, termination of parental rights may be considered premature. See MCL 712A.19a(6)(c); *In re Mason*, 486 Mich at 152; *In re Newman,* 189 Mich App 61, 66–69; 472 NW2d 38 (1991).

Turning to the present case, the facts are analogous to *Mason* and *Rood* insofar as petitioner focused its initial efforts toward reunification of KP with her mother and, early in the proceedings, the record clearly shows that petitioner did not provide services to respondent in South Dakota or ask anything of respondent. However, unlike *Mason* and *Rood*, the facts also demonstrate that respondent was provided with notice of the ongoing proceedings against him and afforded an opportunity to participate in the proceedings. Cf. *In re Rood*, 483 Mich at 112-114. Moreover, while petitioner focused its initial efforts on respondent-mother, the facts also demonstrate that petitioner invited respondent to participate in services but that this overture was rebuffed by respondent. According to the foster care worker, she spoke with respondent in June of 2014, at which time respondent flatly refused services and indicated that he did not want to participate.[3] True to these statements, despite the ongoing proceedings, respondent made no effort in the case for close to a year, until March of 2015 when he returned to Michigan. After respondent's move to Michigan, petitioner arranged for respondent to have visitation with KP and petitioner asked respondent to undergo a psychological evaluation so that petitioner could craft an appropriate service plan for respondent. Rather than comply with this rather simple request, respondent cancelled the scheduled evaluation.

In other words, the facts indicate that respondent refused all services early in the proceedings and then thwarted petitioner's efforts to provide services after his move to

[3] While respondent denied refusing services, the credibility of witnesses was a question for the trial court. See *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008).

Michigan. Given these facts, we do not think that the trial court clearly erred by concluding that petitioner had fulfilled its statutory obligation to expend reasonable efforts toward reunification. Although it is true that petitioner has a statutory obligation to provide reasonable services, there also "exists a commensurate responsibility on the part of respondents to participate in the services that are offered." *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). Having refused services in June of 2014 and hindered the development of a case service plan in 2015, respondent cannot now complain that services were inadequate or that he should be given additional time to work toward reunification with KP. Instead, the facts demonstrate that respondent had no relationship with KP, that he failed to provide her with emotional support, and that he made no effort to remedy these barriers over the course of more than a year despite the ongoing child protective proceedings against him and his opportunity to participate in services. On this record, the trial court did not clearly err by finding statutory grounds for termination and, given respondent's nonexistent bond with KP, the trial court did not clearly err in its best interests determination. Consequently, the trial court did not clearly err by terminating respondent's parental rights. See MCL 712A.19b(5).

Affirmed.

/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell
/s/ Christopher M. Murray