STATE OF MICHIGAN

COURT OF APPEALS

In re COPELAND, Minors.

UNPUBLISHED
May 17, 2016

No. 330370
Kalamazoo Circuit Court
Family Division
LC No. 2014-000260-NA

Before: RIORDAN, P.J., and SAAD and MARKEY, JJ.

PER CURIAM.

Respondent-mother appeals the trial court's order that terminated her parental rights to the minor children NC, UC, ZC, WC, and IC, under MCL 712A.19b(3)(c)(*i*) (conditions of adjudication continue to exist), (c)(*ii*) (failure to rectify other conditions), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood that child will be harmed if returned to the parent). For the reasons provided below, we affirm.

In December 2013, respondent lived with the five minor children at the Gospel Mission homeless shelter in Kalamazoo, and she was about to be evicted because of her failure to properly supervise the children. With assistance from the Department of Health and Human Services (DHHS),[1] respondent obtained a house. However, she was evicted in July 2014 for failure to pay rent. Respondent and the five minor children moved into the YWCA. In August, 2014, respondent went to a park in Kalamazoo with the children and a man. Apparently, respondent and the man engaged in sexual activity in the park. The children left the park without respondent and were without adult supervision in the early morning hours until police reunited them with respondent. The children were removed from respondent's custody the next day. When the children entered foster care, they exhibited feral eating habits and poor personal hygiene. Although respondent's participation in visits with the children was fairly consistent, she failed to demonstrate an ability to properly care for them. The children frequently left the visitation room without her noticing. She did not follow through in discipline. And she frequently brought the children inappropriate snacks, including food to which the youngest child, IC, was allergic. Also, respondent displayed signs of mental illness, including incoherent speech

[1] The Department of Human Services initiated this case, but it has since been merged into the newly created Department of Health and Human Services (DHHS). We therefore refer to the newly formed Department in this opinion.

and delusions, yet, she refused services to address this problem. The trial court terminated respondent's rights to all the children and any putative fathers' parental rights to NC and UC. The father of ZC, WC, and IC retained his parental rights to those children.

I. REUNIFICATION EFFORTS

Respondent argues that the DHHS failed to make reasonable efforts at reunification when it failed to adequately address her mental health issues. We review this unpreserved argument for plain error affecting respondent's substantial rights. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). "When a child is removed from a parent's custody, the agency charged with the care of the child is [usually] required to report to the trial court the efforts made to rectify the conditions that led to the removal of the child." *In re Plump*, 294 Mich App 270, 272; 817 NW2d 119 (2011). Thereafter, "[a trial] court is not required to terminate parental rights if the State has not provided to the family of the child . . . such services as the State deems necessary for the safe return of the child to the child's home." *In re Rood*, 483 Mich 73, 104; 763 NW2d 587 (2009). If the DHHS "fails to take into account the parents' limitations or disabilities and make any reasonable accommodations, then it cannot be found that reasonable efforts were made to reunite the family." *In re Terry*, 240 Mich App 14, 26; 610 NW2d 563 (2000). However, "[w]hile the DH[H]S has a responsibility to expend reasonable efforts to provide services to secure reunification, there 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).

Here, the DHHS was aware of respondent's psychological problems, and it made reasonable efforts to provide services to address and accommodate them. The DHHS offered respondent mental health services and numerous other services including cognitive therapy, parenting classes, visits, a parenting visitation coach, financial advice, and housing assistance. Contrary to respondent's argument, the DHHS tried to tailor these services to accommodate respondent's mental deficits. However, respondent refused to participate in the services offered. She refused services even after caseworkers explained to her the value and efficacy of the services. Even after the goal was changed to adoption, respondent remained unwilling to engage in services to address her mental health issues. Thus, the DHHS "expend[ed] reasonable efforts to provide services to secure reunification," and respondent failed in her responsibility "to participate in the services that [we]re offered." *Id.*

Respondent further claims that the DHHS's purported failure to provide reasonable services to secure reunification was the only reason the grounds for termination existed. While "[t]he adequacy of the petitioner's efforts to provide services may bear on whether there is sufficient evidence to terminate a parent's rights," *In re Rood,* 483 Mich at 89, as already discussed, the DHHS did expend reasonable efforts to provide services to respondent, and her claim necessarily fails.[2]

[2] Respondent also argues in her brief on appeal that the trial court erred in finding that termination of her parental rights was in the best interests of the children. However, this issue is

II. RESPONDENT'S PLEA DURING ADJUDICATION

Respondent also argues that the trial court erred when, during adjudication, it failed to inform respondent that her plea could be used against her in a future proceeding to terminate her parental rights.[3] We review this unpreserved issue for plain error affecting respondent's substantial rights. *In re Utrera*, 281 Mich App at 8. "[A]n error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings." *Id.* at 9.

"Child protective proceedings are initiated by the state's filing [of] a petition in the family division of the circuit court requesting the court to take jurisdiction over a child." *In re Kanjia*, 308 Mich App 660, 664; 866 NW2d 862 (2014). "In Michigan, child protective proceedings comprise two phases: the adjudicative phase and the dispositional phase. Generally, a court determines whether it can take jurisdiction over the child in the first place during the adjudicative phase." *In re Sanders*, 495 Mich 394, 404; 852 NW2d 524 (2014) (citation omitted). A trial court may take jurisdiction over a child after the parent admits allegations in the petition. *Id.* at 405.

MCR 3.971(B) provides, in pertinent part, that

> [b]efore accepting a plea of admission or plea of no contest, the court must advise the respondent on the record or in a writing that is made part of the file:
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> * * *
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> (4) of the consequences of the plea, including that the plea can later be used as evidence in a proceeding to terminate parental rights if the respondent is a parent.

A trial court commits plain error "in failing to advise the respondent that her plea could later be used in a proceeding to terminate parental rights in violation of MCR 3.971(B)(4)." *In re Hudson*, 483 Mich 928 (2009).

There is no dispute that the trial court failed to advise respondent that her plea could "later be used as evidence in a proceeding to terminate parental rights" and thus violated MCR 3.971(B)(4). As *In re Hudson* instructs, this is plain error. However, the trial court's finding that termination of respondent's rights were properly terminated was wholly supported by the record apart from any admissions that respondent made at adjudication. Therefore, the trial court's

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not listed in respondent's statement of the questions presented, as required by MCR 7.212(C)(5), which means that the issue is abandoned. *Ypsilanti Fire Marshal v Kircher (On Reconsideration)*, 273 Mich App 496, 543; 730 NW2d 481 (2007). In any event, after our review of the record, we are not left with a definite and firm conviction that the trial court made a mistake in its best-interests determination. See *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014).

[3] We disagree with the DHHS that this issue constitutes a collateral attack on the adjudication because mother is not challenging the trial court's jurisdiction over the minor children.

failure to so inform respondent does not require reversal because it did not affect the outcome of the proceedings. See *In re Utrera*, 281 Mich App at 8.

Affirmed.

/s/ Michael J. Riordan
/s/ Henry William Saad
/s/ Jane E. Markey