S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

In re I. K. TYLER, Minor.	UNPUBLISHED December 20, 2016
	No. 332642 Wayne Circuit Court Family Division LC No. 14-516040-NA

Before: GADOLA, P.J., and FORT HOOD and RIORDAN, JJ.

PER CURIAM.

Respondent father appeals by right the trial court order terminating his parental rights to his minor child under MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (g) (without regard to intent, failure to provide proper care or custody), (h) (parent imprisoned and child will be deprived of a normal home for more than two years), and (j) (risk of harm if child returned to parent). We affirm.

At the time respondent's daughter, then seven weeks old, was removed from her mother, respondent was incarcerated for violating probation on the underlying charge of larceny from a person. Respondent has a lengthy criminal history, which includes assault of a police officer, absconding from bond, failure to pay child support, several convictions for felony assault and larceny, home invasion, and domestic violence. The child's mother had disappeared and was never located during the over two years this case was pending.

On appeal, respondent does not claim error concerning the statutory grounds upon which his termination was based. Instead, respondent first argues that the trial court clearly erred in finding that the Department of Health and Human Services (DHHS) made reasonable efforts toward reunification. Because respondent did not raise the issue of reasonable efforts in the trial court, this issue is not preserved for appeal, and this Court's review is limited to plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). An error is plain if it is clear or obvious, and the error affected the respondent's substantial rights if it affected the outcome of the lower court proceedings. *Id*.

In child protection proceedings, the DHHS has a duty to expend reasonable efforts to rectify the conditions that led to the child's removal and to reunify the child with the respondent. MCL 712A.18f(4); *In re Mason*, 486 Mich 142, 156; 782 NW2d 747 (2010). This obligation is not excused when a parent is incarcerated. *Id.* at 152. Although the DHHS cannot refer an incarcerated parent to social service agencies for services, it must provide a case service plan. *Id.* at 156-158. In determining whether the DHHS fulfilled its duties to an incarcerated parent

under the court rules and statutes, this Court considers whether the parent was "afforded a meaningful and adequate opportunity to participate." *Id*. at 152.

The record shows that respondent's initial DHHS worker did not live up to the duties owed to respondent. However, once that initial worker was replaced, the record confirms that the DHHS made reasonable efforts toward reunification and that respondent was "afforded a meaningful and adequate opportunity to participate." The services available to respondent were limited by his incarceration. Petitioner had no control or authority over the services that were available at the prison. However, a case service plan was established and the record further confirms that the DHHS worker contacted and spoke with respondent's prison counselor several times concerning respondent's participation in the services and remained in contact with respondent. The record also shows that respondent participated in numerous services while in prison and the counselor reported to the worker that he had benefited from them. Any additional services that were needed would have to wait until respondent was released from prison. In addition, the record confirms that the agency and the court arranged for respondent to be available at every hearing either by phone or video. Respondent's complaints concerning his attorney were immediately addressed by the court. When respondent's attorney continued in noncompliance with his obligations, the court replaced him with another attorney who was responsive and fulfilled his obligations to respondent. In addition, the trial court made sure that respondent had the opportunity to confer with his counsel by telephone. All of the relatives whose names respondent provided to the worker were investigated as possible placements for the minor child. However, they were all eliminated on the basis of either insufficient income, drug-related problems, or because they had stated they did not want the responsibility. The record confirms that respondent was given the opportunity to adequately and meaningfully participate in his case. We find that the trial court did not plainly err in finding that the DHHS made reasonable efforts to reunite respondent with his child.

Next, respondent contends that the evidence failed to support the trial court's determination that termination was in the best interests of the child. We disagree. Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court must find that termination is in the child's best interests before it can order termination of parental rights. MCL 712A.19b(5). Whether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 88-89; 836 NW2d 182 (2013). This Court reviews a trial court's decision regarding a child's best interests for clear error. *In re Laster,* 303 Mich App 485, 496; 845 NW2d 540 (2013). In deciding whether termination is in the child's best interests, the court may consider a wide variety of factors, such as the parent's parenting ability, the child's bond to the parent, the child's need for permanency, stability, and finality, and the advantages of the foster home over the parent's home. *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012).

We find that the record supports the trial court's findings that respondent had never been a father to the child. He had "been a nice man that has sent some letters," but he had never provided for her and never lived with her. He had chosen to commit a crime that resulted in his incarceration and prevented him from being there for his daughter for almost her entire life. The record further supports the trial court's finding that respondent's expected release date of June

2016 was not certain, and that respondent anticipated that he would have to participate in a program that would require between 40 and 60 days to complete.

Further, respondent's plans for his future were, as the trial court found, pure speculation. He planned to live with his brother and mother, but he had never produced them as possible caregivers for the child and they had never come forward or attended any court hearing. There was no certainty that their home would be found suitable. Respondent planned that his brother would be able to get him a job at his brother's place of employment, but there was no verification that this plan was more than respondent's hope. Therefore, the trial court concluded that respondent did not have a realistic employment plan and further had a history of not supporting his other children. The court also found troubling the fact that respondent now wanted to get a DNA test to prove his biological paternity, based on "the statements of a drug abuser to a friend," although he had signed an affidavit of parentage. Upon release, respondent would have to slowly establish a relationship with the child while at the same time attend and benefit from services that the DHHS and court felt were needed, find a permanent home, and establish steady and legal employment.

At the best-interest stage in child protection proceedings, the best interests of the child in having "a normal family home is superior to any interest the parent has." *In re Moss*, 301 Mich App at 89. Although respondent completed a parenting class and other classes while in prison, he would not be able to demonstrate whether he had benefited from them until he was released. There was no bond whatsoever between respondent and the child. Letters mean very little to a two-year-old child who had no connection with the person who wrote them. Respondent would have to establish a bond with the child, which could take some time. Whether the child could be safe with respondent was questionable considering his criminal history and his failure to support and provide a home for his other children. Respondent had never provided a permanent, safe, and stable home for himself or any of his children. Without employment, there was no evidence that he could or would do so in the future.

The child needed permanency, stability, and finality. With the exception of about five weeks, she had lived her entire life without her biological parents. Her foster parents had provided a safe and stable home for her, had addressed and cared for her special needs, and desired to adopt her. The court acknowledged that respondent had participated in all services offered while incarcerated, but that the preponderance of the evidence established that the uncertainties of respondent's release from prison and the time that would be needed for him to demonstrate that he could provide a safe and stable home for his daughter, if indeed he would ever be able to do so, and the need for the child to have a safe and secure home and to attain permanency, outweighed respondent's desire to be given more time. The trial court did not

clearly err in finding by a preponderance of the evidence that termination of respondent's parental rights was in the child best interests.

Affirmed.

/s/ Michael F. Gadola
/s/ Karen M. Fort Hood
/s/ Michael J. Riordan