

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
January 19, 2012

In the Matter of J.O.A. PHILPOT, Minor.

No. 304409
Wayne Circuit Court
Family Division
LC No. 08-481964

Before: JANSEN, P.J., and WILDER and K.F. KELLY, JJ.

PER CURIAM.

Respondent appeals of right from the trial court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(g), (j), and (n)(ii). We affirm.

Respondent first argues that he was denied his due process rights. Specifically, respondent claims that petitioner failed to provide him with services, that the trial court erred by denying respondent the opportunity to confront certain witnesses, that the trial court improperly released his attorney during the proceedings, and that there was an improper delay in recognizing him as the child’s legal father. We disagree. We review this unpreserved constitutional issue for plain error affecting respondent’s substantial rights. *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999).

“The United States and Michigan constitutions preclude the government from depriving a person of life, liberty, or property without due process of law. US Const, Am XIV; Const 1963, art 1, § 17. ‘A procedural due process analysis requires a dual inquiry: (1) whether a liberty or property interest exists which the state has interfered with, and (2) whether the procedures attendant upon the deprivation were constitutionally sufficient.’” *Hinky Dinky Supermarket, Inc v Dep’t of Community Health*, 261 Mich App 604, 605-606; 683 NW2d 759 (2004), quoting *Jordan v Jarvis*, 200 Mich App 445, 448; 505 NW2d 279 (1993).

It is well established that the first inquiry is met because in a termination of parental rights proceeding “parents stand to lose their constitutional right to the care and custody of the child forever.” *In re HRC*, 286 Mich App 444, 455; 781 NW2d 105 (2009). And for the second inquiry, constitutionally sufficient procedures “generally require[] notice of the nature of the proceedings, an opportunity to be heard in a meaningful time and manner, and an impartial decision maker.” *Cummings v Wayne Co*, 210 Mich App 249, 253; 533 NW2d 13 (1995).

First, respondent claims that petitioner’s failure to supply a treatment plan violated his due process rights. However, from the date of the first disposition, the trial court ordered

respondent to comply with the terms of his parole and to attend the circuit court's Clinic for Child Study ("the Clinic") in order to be evaluated. As such, although petitioner did not initially provide respondent with services, respondent did have a court-ordered parent-agency treatment plan from the date of the first disposition. At a subsequent hearing, both petitioner and the caseworker indicated that, after respondent was released from parole and attended the Clinic, respondent would be given a treatment plan. However, in order to do so, the caseworker indicated that she needed information in writing from respondent's parole officer regarding completion of the terms of his parole. But after respondent was released from parole and attended the Clinic, he disappeared and did not contact the caseworker or attend any hearings until the date of the termination hearing, a year and a half later. In addition, he did not supply either the caseworker or the trial court with any information from his parole officer regarding his compliance with the terms of parole. Respondent claims that he could not provide the necessary release because he was not given the appropriate paperwork to sign. Respondent, however, was given notice at one of the review hearings that petitioner needed these records to determine what the treatment plan would be once respondent was released from parole. To ensure that the caseworker received this information, respondent simply could have requested that his parole officer forward the information to the caseworker. At that time, his parole officer would have provided respondent with the appropriate releases. Thus, petitioner's failure to issue a treatment plan is directly related to respondent's failure to provide the required information. The absence of a DHS-issued plan is attributable to respondent; therefore, respondent's due process rights are not implicated.

Next, respondent claims that he was denied due process when the court proceeded without him or his attorney being present. Respondent focuses on the December 14, 2009, hearing, where defendant and his attorney did not appear and the court went forward with the proceedings. Respondent claims that this action "denied [him] being able to confront [those witnesses on that day]." However, respondent does not explain how he and his attorney's failure to appear is the equivalent of the court *denying* them the ability to participate. Due process only requires an "opportunity" to be heard. *Hinky Dinky Supermarket*, 261 Mich App at 606. Respondent had an opportunity to be heard at the hearing but, for whatever reason, did not take advantage of it. As a result, respondent has failed to show how his and his attorney's absences denied him due process.

Respondent also argues that the trial court improperly dismissed his attorney during the proceedings. However, the court only dismissed the attorney when both the attorney and respondent failed to appear for the December 14, 2009, hearing. When respondent did appear in court next, the trial court appointed another attorney to represent him and adjourned the termination hearing so respondent and his new attorney could be prepared. Thus, respondent failed to establish how the dismissing of his old attorney and the appointing of a new one adversely affected his due process rights.

Finally, respondent appears to argue that he was denied his right to due process when it purportedly took seven months for the court to acknowledge him as the father. However, respondent has waived any such argument. Respondent cites no authority and does not articulate any analysis on this issue. Instead, respondent's brief on this topic states in its entirety the following: "It took the Court seven (7) months to getting around to acknowledging [respondent] as the legal father." A party may not merely announce his or her position and leave it to this

Court to discover and rationalize the basis for his or her claims.” *In re Temple Marital Trust*, 278 Mich App 122, 139; 748 NW2d 265 (2008). Thus, any claim related to the timing of him being recognized as the child’s father is abandoned.

Therefore, respondent has failed to show that the actions of the trial court and petitioner denied him his due process rights. Not only did respondent fail to contact petitioner and fail to appear in court for a year and a half, his plan for the minor child at the termination hearing was to have either the child’s mother, whose rights were also terminated, or respondent’s sister take care of the child because he did not have himself “together” enough to have custody. We find that respondent failed to establish the existence of any plain error that affected a substantial right, and his due process claim fails.

Next, respondent argues that the trial court erred in determining that it was in the child’s best interests to terminate his parental rights.¹ We disagree. This Court reviews the trial court’s findings of fact in termination proceedings for clear error. MCR 3.977(K); *In re Gazella*, 264 Mich App 668, 672; 692 NW2d 708 (2005). The trial court’s best-interest determination is also reviewed for clear error. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

The trial court did not clearly err in finding that termination of respondent’s parental rights was in the minor child’s best interests. Respondent acknowledged at the termination hearing that he did not have the proper “living arrangement” to care for the child and was unable to do so at that time. Furthermore, respondent admitted seeing the child only twice, once when the child was born in 2006 and again in 2009, and acknowledged that the child probably did not know who respondent was. The minor child had been in the temporary care of the trial court for two and a half years when the termination hearing was held, and respondent had not contacted the caseworker or attended any of the hearings for one and a half of those years. The child needed a stable and supportive home, which respondent was unable to provide. As a result, the trial court finding that termination was in the child’s best interest was not clearly erroneous.

Affirmed.

/s/ Kathleen Jansen
/s/ Kurtis T. Wilder
/s/ Kirsten Frank Kelly

¹ We note that, to the extent respondent argues that any of the statutory conditions under MCL 712A.19b(3) were not satisfied, the argument is abandoned because respondent’s brief neither refers to any statutory factors nor articulates how the trial court clearly erred when it terminated his parental rights under the factors. See *In re CR*, 250 Mich App 185, 199; 646 NW2d 506 (2001).