

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
June 12, 2012

In the Matter of A. N. ARANJO, Minor.

No. 307143
Saginaw Circuit Court
Family Division
LC No. 10-032749-NA

In the Matter of A. N. ARANJO, Minor.

No. 307144
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In the Matter of S. J. MORA, Minor.

No. 307145
Saginaw Circuit Court
Family Division
LC No. 09-032077-NA

In the Matter of S. MORA, Minor.

No. 307146
Saginaw Circuit Court
Family Division
LC No. 09-032077-NA

Before: BORRELLO, P.J., and O'CONNELL and TALBOT, JJ.

PER CURIAM.

In these consolidated appeals, Angelita Schneller (the mother of minor children ANA and SJM), Jesse Aranjó (the father of ANA), and Sergio Mora (the father of SJM), each appeal as of right from the trial court's order terminating their parental rights to the minor children. The

court terminated the parental rights of Schneller and Aranja because the conditions that led to adjudication continued to exist,¹ the failure to provide proper care or custody,² and the reasonable likelihood that the children would be harmed if they were returned to the parent's home.³ The court terminated the parental rights of Mora because of his failure to provide proper care or custody,⁴ and the reasonable likelihood that the child would be harmed if he were returned to Mora's home.⁵ We affirm.

I. STANDARD OF REVIEW

In an action to terminate parental rights, the petitioner must prove a statutory ground for termination by clear and convincing evidence.⁶ The trial court's decision is reviewed by this Court for clear error.⁷ A finding is clearly erroneous when "the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made."⁸ Once a statutory ground for termination is established, the trial court shall order termination of parental rights if it finds that termination is in the child's best interests.⁹ The trial court's best interests decision is also reviewed for clear error.¹⁰

II. DOCKET NO. 307143

Aranjo argues that the trial court erred in finding that the statutory grounds for termination¹¹ were each established by clear and convincing evidence. We disagree. Department of Human Services (DHS) presented evidence that Aranja refused to fully engage in reunification services, including counseling to address the ongoing chaotic and hostile relationship between himself and Schneller. Although that relationship adversely affected both parents' ability to parent, Aranja showed no inclination to either resolve the problems in therapy or to separate from Schneller. Contrary to Aranja's assertion, the relationship problems were not limited to mere "arguing." DHS presented evidence of much more serious problems, including

¹ MCL 712A.19b(3)(c)(i).

² MCL 712A.19b(3)(g).

³ MCL 712A.19b(3)(j).

⁴ MCL 712A.19b(3)(g).

⁵ MCL 712A.19b(3)(j).

⁶ MCL 712A.19b(3); MCR 3.977(A)(3) and (H)(3); *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000).

⁷ MCR 3.977(K); *In re Trejo*, 462 Mich at 356.

⁸ *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

⁹ MCL 712A.19b(5).

¹⁰ *In re JK*, 468 Mich at 209.

¹¹ MCL 712A.19b(3)(c)(i), (g) and (j).

domestic abuse that led to police contact. The evidence demonstrated that Schneller's other child, SJM, was significantly distressed and harmed by his exposure to the volatile relationship. Because of Aranja's failure to benefit from services and his inability to either stabilize or end his relationship with Schneller, there is no reasonable likelihood that Aranja will be able to provide proper care and custody of ANA within a reasonable time, and it is reasonably likely that ANA would experience the same distress and harm experienced by SJM if she were returned to Aranja's home. Therefore, the trial court did not clearly err in finding that the grounds for terminating Aranja's parental rights were established.

Aranjo also contends that the trial court erred in finding that termination of his parental rights was in the child's best interests. We disagree. In light of the evidence that ANA was in need of permanence and stability to form proper attachments at her stage of development, and the evidence that she was likely to be adversely affected by exposure to her parents' tumultuous relationship, the trial court did not clearly err in finding that termination of Aranja's parental rights was in ANA's best interests.

III. DOCKET NOS. 307144 AND 307145

Schneller asserts that the trial court erred in finding that statutory grounds for termination of her parental rights existed. We disagree. Schneller's ongoing volatile relationship with Aranja, the resulting harm to SJM caused by that relationship, and Schneller's continued failure to understand her children's needs even after receiving therapy, justified termination of her parental rights.¹² Although Schneller made progress in maintaining sobriety and left a favorable impression on in-home service providers, the trial court did not clearly err in giving greater weight to the evidence that Schneller remained too emotionally unstable to provide her children with a safe and consistent home environment.

The court also did not clearly err in finding that termination of Schneller's parental rights was in her children's best interests. Given the evidence of the harm to SJM and the reasonable likelihood that ANA would be exposed to a similar risk of harm, as well as the children's needs for permanence and stability, the trial court did not clearly err in finding that termination of Schneller's parental rights was in the children's best interests.

IV. DOCKET NO. 307146

Mora argues that the trial court erred in terminating his parental rights.¹³ We disagree. This Court would note that Mora does not directly address the statutory requirements. Mora remained in Florida throughout most of the proceedings. The evidence showed that his involvement was limited to sending support payments for SJM and participating in periodic telephone contact with SJM. He chose to unjustifiably rely on Schneller to reacquire custody of

¹² MCL 712A.19b(3)(c)(i), (g) and (j).

¹³ MCL 712A.19b(3)(g) and (j).

SJM and, as a result, he did not involve himself in reunification services, he refused to cooperate with a home study at his own residence in Florida, and he never came forward with a care plan of his own for SJM. Given Mora's lack of involvement and lack of interest in caring for SJM personally, the trial court did not clearly err in finding that there was no reasonable likelihood that Mora would be able to provide proper care and custody within a reasonable time. In addition, considering that Mora had not done anything to acquire parenting skills and the length of time since he had last seen the child, there was a reasonable likelihood that the child would be harmed if returned to Mora's home. Accordingly, the trial court did not clearly err in finding that the grounds for termination¹⁴ were established. Similarly, considering Mora's lack of preparation for parenting and dealing with SJM's serious emotional problems, and the length of time Mora and SJM had been physically separated, the trial court did not clearly err in finding that termination of Mora's parental rights was in the child's best interests.

Mora also argues that the trial court violated his right to due process by failing to include him by telephone in all hearings, and by failing to ascertain whether he was able to communicate with DHS and understand the legal ramifications of the proceeding. We disagree. Mora never argued below that a failure to adequately address the alleged language barrier or to more adequately involve him in the proceeding affected his right to due process. Accordingly, this issue is not preserved for appellate review. "Whether proceedings complied with a party's right to due process presents a question of constitutional law that we review de novo."¹⁵ But this Court reviews unpreserved issues for plain error affecting substantial rights.¹⁶

The United States and Michigan Constitutions preclude the government from depriving a person of life, liberty, or property without due process of law.¹⁷ "Due process requires fundamental fairness, which is determined in a particular situation first by considering any relevant precedents and then by assessing the several interests that are at stake."¹⁸ "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."¹⁹

It is undisputed that parents have a fundamental liberty interest in the care, custody, and management of their child, which "does not evaporate simply because they have not been model

¹⁴ *Id.*

¹⁵ *In re Rood*, 483 Mich 73, 91; 763 NW2d 587 (2009).

¹⁶ *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

¹⁷ US Const, Am XIV; Const 1963, art 1, § 17.

¹⁸ *In re Rood*, 483 Mich at 92 (internal quotation marks omitted).

¹⁹ *Hinky Dinky Supermarket, Inc v Dep't of Community Health*, 261 Mich App 604, 606; 683 NW2d 759 (2004), quoting *Jordan v Jarvis*, 200 Mich App 445, 448; 505 NW2d 279 (1993).

parents or have lost temporary custody of their child to the State.”²⁰ 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 decisionmaker.”²¹

Mora contends that the trial court failed to afford him a meaningful opportunity to be heard because it failed to include him in proceedings by telephone and failed to provide a Spanish language translator throughout most of the proceedings. The record indicates that arrangements were made for a certified interpreter at the first adjudicative hearing, but the interpreter became unavailable. The trial court, however, protected Mora’s due process rights by severing the allegations concerning Mora because it would not accept a plea from him in the absence of a certified interpreter. Moreover, Mora expressly agreed to participate with the services of Andy Reyes, a non-certified interpreter, with knowledge of Reyes’s association with DHS, and the trial court instructed Reyes that he was bound by the attorney-client privilege not to repeat any communications between Mora and his counsel to DHS. Mora’s express agreement to proceed under these circumstances waives any error.²²

At the second adjudicative hearing, the trial court dismissed without prejudice the allegations against Mora because the court, through no fault of Mora, was unable to include him in the proceedings by teleconference. Mora’s parental rights, however, remained in jeopardy because under the one-parent doctrine, the court’s jurisdiction “is tied to the children, making it possible, under the proper circumstances, to terminate parental rights even of a parent who, for one reason or another, has not participated in the protective proceeding.”²³ Nevertheless, Mora was represented by counsel at this stage of the proceedings and, because the court did not acquire jurisdiction over SJM on the basis of any allegations pertaining to Mora, legally admissible evidence was required to terminate his parental rights.²⁴ Mora does not contend that the trial court’s decision was not based on legally admissible evidence. Under the circumstances, Mora has not established a plain due process violation.²⁵

Further, Mora does not dispute that he was continually notified of the status of the proceeding. Mora admitted that he received mailings of reports from the trial court and DHS. He explained below that he was aware of the proceeding, but declined to participate because he

²⁰ *In re Rood*, 483 Mich at 76, quoting *Santosky v Kramer*, 455 US 745, 753; 102 S Ct 1388; 71 L Ed 2d 599 (1982); see also *In re HRC*, 286 Mich App 444, 455; 781 NW2d 105 (2009).

²¹ *Cummings v Wayne Co*, 210 Mich App 249, 253; 533 NW2d 13 (1995).

²² *Holmes v Holmes*, 281 Mich App 575, 587-588; 760 NW2d 300 (2008).

²³ *In re CR*, 250 Mich App 185, 205; 646 NW2d 506 (2002).

²⁴ *Id.* at 205-206.

²⁵ *Id.* at 205-209; *In re Utrera*, 281 Mich App at 8.

relied on Schneller's representation that she was working toward reunification. Once again, these circumstances do not establish a due process violation.²⁶

Lastly, Mora argues that the trial court erred by failing to inquire about his Mexican citizenship or the possibility that SJM might qualify for dual citizenship with Mexico. We disagree. Mora's failure to raise this issue below limits this Court's review to plain error affecting substantial rights.²⁷

Mora asserts that the trial court was required to investigate whether the child might qualify for Mexican citizenship because, if he did, it "might give rise to a duty to involve the Mexican government if there was a risk he would lose his parents." Mora, however, does not cite any legal authority indicating that the child's possible status as a Mexican citizen was legally relevant. Although Mora observes that the trial court asked Schneller whether the child had any Indian heritage, that inquiry was required because of the rights and protections afforded to Indian children.²⁸ Mora fails to cite any statute or other authority applying similar rights or protections to Mexican children, or to children that may have dual citizenship with another nation. Accordingly, Mora has not established a plain error.²⁹

Affirmed.

/s/ Stephen L. Borrello
/s/ Peter D. O'Connell
/s/ Michael J. Talbot

²⁶ *In re CR*, 250 Mich App at 205-209; *In re Utrera*, 281 Mich App at 8.

²⁷ *In re Utrera*, 281 Mich App at 8.

²⁸ Indian Child Welfare Act, 25 USC 1901 et seq.

²⁹ *In re Utrera*, 281 Mich App at 8.