

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
July 19, 2012

In the Matter of M. S. HOSANG, Minor.

No. 307889
Macomb Circuit Court
Family Division
LC No. 2008-000669-NA

Before: O'CONNELL, P.J., and JANSEN and RIORDAN, JJ.

PER CURIAM.

Respondent M. Freeman appeals by right an order terminating his parental rights to the minor child pursuant to MCL 712A.19b(c)(i), (g), and (j). We affirm.

I. HEARSAY EVIDENCE

Respondent first argues that the trial court erred by allowing petitioner to introduce hearsay testimony at the termination hearing. When respondent's counsel initially objected to testimony on the basis that it was hearsay, the trial court overruled the objection and stated that hearsay evidence was admissible, as long as it was reliable. Although we agree with respondent that the trial court improperly admitted hearsay evidence at the termination hearing, this error was harmless, and respondent is not entitled to relief.

A trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion.¹ To the extent an evidentiary question requires application of a court rule or statute, this Court's review is de novo.²

We agree with respondent that the trial court erred in ruling that hearsay testimony was admissible against respondent. Under the one-parent doctrine, a trial court's jurisdiction in a child protective proceeding "is tied to the children."³ Accordingly, a petitioner is not required to establish a statutory ground for jurisdiction with respect to every parent before the court can act

¹ *In re Archer*, 277 Mich App 71, 77; 744 NW2d 1 (2007).

² *Id.*

³ *In re CR*, 250 Mich App 185, 205; 646 NW2d 506 (2002).

in its dispositional capacity.⁴ However, whether a parent was subject to an adjudication affects the type of evidence that may be considered at a hearing to terminate parental rights. Whereas a parent who has been subject to an adjudication can have parental rights terminated on the basis of all relevant and material evidence, including evidence that is not legally admissible,⁵ when termination is sought with respect to a parent who was not subject to an adjudication, the termination decision must be based on legally admissible evidence.⁶

In this case, the court acquired jurisdiction over the child solely on the basis of the mother's no-contest plea. Because respondent was not subject to the adjudication, the trial court's statement that hearsay evidence was admissible at the termination hearing regarding respondent was incorrect. Petitioner was required to present legally admissible evidence to prove the statutory grounds for termination.

However, a child protective proceeding is subject to the harmless error rule in MCR 2.613(A),⁷ which provides that an "error in the admission . . . of evidence . . . is not ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take this action appears to the court inconsistent with substantial justice." Thus, "[t]he mere existence of hearsay at [a] termination hearing does not warrant reversal."⁸ Respondent offers six instances of hearsay testimony that he argues was improperly admitted at the termination hearing.⁹ Although we agree that most of the examples provided involve hearsay testimony, the trial court later indicated that its decision with respect to respondent was based on legally admissible evidence and its stated findings support that conclusion. There is no indication that the challenged hearsay testimony affected the trial court's decision. Accordingly, under these circumstances, our refusal to grant relief is not inconsistent with substantial justice.

II. MEANINGFUL PARTICIPATION

⁴ *Id.*

⁵ See MCR 3.977(H)(2).

⁶ MCR 3.977(F)(1)(b). See also *In re CR*, 250 Mich App at 205-206.

⁷ See MCR 3.902(A). See also *In re Utrera*, 281 Mich App 1, 14; 761 NW2d 253 (2008).

⁸ *In re CR*, 250 Mich App at 207.

⁹ To the extent that respondent suggests that he was prejudiced by the admission of other unspecified testimony, he has not established a right to relief. "It is not sufficient for a party to simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims[.]" *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998) (citation and quotations omitted).

Next, relying on *In re Mason*,¹⁰ respondent argues that reversal is required because he was not afforded a meaningful opportunity to participate in the proceedings and in reunification services due to his incarceration. This argument lacks merit.

In *In re Mason*, the Supreme Court held that a mere present inability to personally care for a child as a result of incarceration is not a basis for termination.¹¹ Accordingly, the Court reversed an order terminating parental rights where the respondent was not given the opportunity to participate in services over a 16-month period during which he was incarcerated.

In this case, respondent was incarcerated from February 2009 until November 2010. A hearing on a petition to terminate respondent's parental rights was originally held in November 2009, but after the trial court learned that respondent had not received a copy of the parent-agency agreement until October 2009, it conferred with the parties, who then agreed to dismiss the petition. After respondent was released from prison in November 2010, reunification services were provided. The trial court's findings regarding the statutory grounds for termination were based on respondent's lack of progress after his release from prison. Unlike the incarcerated parent in *In re Mason*, the record clearly discloses that respondent was afforded a meaningful opportunity to participate in reunification services. Accordingly, respondent's argument is without merit.

III. STATUTORY GROUNDS FOR TERMINATION

Respondent next argues that the trial court erred in finding that a statutory ground for termination existed. We disagree.

In an action to terminate parental rights, the petitioner must prove by clear and convincing evidence that at least one statutory ground for termination in MCL 712A.19b(3) exists.¹² The trial court's decision is reviewed for clear error.¹³ A finding is clearly erroneous when the reviewing court is left with the firm and definite conviction that a mistake was made.¹⁴

Respondent's parental rights were terminated under MCL 712A.19b(3)(c)(i), (g) and (j), which permit termination if:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

¹⁰ 486 Mich 142; 782 NW2d 747 (2010).

¹¹ *Id.* at 160.

¹² MCR 3.977(A)(3) and (H)(3); *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000).

¹³ MCR 3.977(K); *In re Trejo*, 462 Mich at 356.

¹⁴ *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

The conditions that led to the child's adjudication involved unexplained injuries to the child while in the care of her mother, as established by the mother's no-contest plea. Although the mother's no-contest plea also indicated that respondent was incarcerated, there was no allegation that respondent was responsible for the child's injuries, and respondent was no longer incarcerated at the time of the termination hearing. Further, the mother had released her parental rights, so she was no longer a risk to the child. Under these circumstances, the trial court erred in relying on MCL 712A.19b(3)(c)(i) as a basis for terminating respondent's parental rights. However, only one statutory ground for termination need be proven.¹⁵ In light of the evidence that respondent was unable to manage his anger, failed to attend therapy and anger management classes, did not successfully complete parenting classes, failed to establish stable housing or employment, failed to comply with drug screens, and was inconsistent with his visitation, the trial court did not clearly err in finding that MCL 712A.19b(3)(g) and (j) were both established by clear and convincing evidence. Therefore, any error in relying on MCL 712A.19b(3)(c)(i) as an additional basis for termination was harmless.¹⁶

IV. BEST INTEREST OF THE CHILD

Finally, respondent argues that termination of his parental rights was not in the child's best interests. We disagree.

Once a statutory ground for termination is established, the trial court must terminate parental rights if it finds that termination is in the child's best interests.¹⁷ The trial court's best

¹⁵ *In re Ellis*, 294 Mich App 30, 33; ___ NW2d ___ (2011) (citations omitted).

¹⁶ *In re Powers*, 244 Mich App 111, 119; 624 NW2d 472 (2000).

¹⁷ MCL 712A.19b(5).

interest decision is also reviewed for clear error.¹⁸ Here, the evidence showed that the child did not have a significant bond with respondent. Respondent was incarcerated shortly after the child was born, and the child had been in foster care since approximately four months of age. Further, the child exhibited signs of severe emotional distress after visits, and her emotional state improved when visitation was discontinued. Accordingly, the trial court did not clearly err in finding that termination of respondent's parental rights was in the child's best interests.

Affirmed.

/s/ Peter D. O'Connell

/s/ Kathleen Jansen

/s/ Michael J. Riordan

¹⁸ *In re JK*, 468 Mich at 209.