STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
September 25, 2012

In the Matter of K. M. LOVELL, Minor.

No. 308712
Macomb Circuit Court
Family Division
LC No. 2009-000343-NA

In the Matter of LOVELL/STRIBLING, Minors.

No. 308800
Macomb Circuit Court
Family Division
LC Nos. 2009-000343-NA
2009-000344-NA

Before: JANSEN, P.J., and BORRELLO and BECKERING, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the trial court's order terminating their parental rights to the minor children under MCL 712A.19b(3)(c)(*i*), (g), and (j).[1] We affirm.

Initially, respondent-father contends that he was deprived of the right to effective assistance of counsel where his attorney failed to file a timely judge demand. MCR 3.912(B) requires that judge demands be filed timely and in writing. In this case, the judge demand was made at the termination hearing. In reviewing this issue, our review is limited to mistakes apparent from the record because no motion for a new trial or for an evidentiary hearing was filed in the trial court. See *People v Rodriguez*, 251 Mich App 10, 38; 650 NW2d 96 (2002). Having reviewed the record, we find that respondent-father has not demonstrated that failure to file a timely judge demand was a serious error or outcome-determinative mistake. See *People v*

[1] Respondent-mother's rights were terminated as to both children. Respondent-father was the parent of one of the children in this matter, and his parental rights were terminated as to that child.

Lloyd, 459 Mich 433, 446; 590 NW2d 738 (1999). Indeed, respondent-father has not provided any argument on appeal to explain how the alleged error was prejudicial; a party may not merely assert an error and leave it to this Court to discover and rationalize the basis for his claims or unravel and elaborate his arguments. *LME v ARS*, 261 Mich App 273, 286-287; 680 NW2d 902 (2004).

Next, respondents claim that the trial court failed to secure their presence at certain early hearings while they were incarcerated and that the trial court's failure to do so violated MCR 2.004 as explained by our Supreme Court in *In re Mason*, 486 Mich 142, 152-155; 782 NW2d 747 (2010). Respondent-father's argument centers on an August 12, 2009, hearing, that was noticed as a pretrial hearing but at which adjudication and disposition took place. Respondent-mother focuses on a review hearing held on November 10, 2009. We review this unpreserved issue for plain error. See *In re HRC*, 286 Mich App 444, 450; 781 NW2d 105 (2009).

Under the holding in *Mason*, 486 Mich at 152, 155-160, 166-170, an incarcerated respondent who does not fit within the exceptions of MCL 712A.19a(2)(a) must be allowed to attend hearings and participate in services.[2] In the present case, respondents did not come within the "aggravated circumstances" enumerated in the statute, which are murder, voluntary manslaughter, or a felony assault that results in serious bodily injury to the child or another child of the parent, or having one's rights involuntarily terminated. MCL 712A.19a(2)(b), (c). Respondents also did not fit within the additional circumstances listed in MCL 722.638(1), such as abandonment of a young child or severe abuse of the parent's child or a sibling. The Department of Human Services (DHS) and the court were thus required to involve respondents in the proceedings.

Nevertheless, we conclude that MCR 2.004 was not violated in this case. "MCR 2.004 requires the court and the petitioning party to arrange for telephonic communication with incarcerated parents whose children are the subject of child protective actions." *Mason*, 486 Mich at 152-153, citing MCR 2.004(A)-(C). However, MCR 2.004 only applies in actions involving the termination of parental rights "in which a party is incarcerated under the jurisdiction of the Department of Corrections" (DOC). MCR 2.004(A). In this case, there is no record evidence that respondent-father was incarcerated under the jurisdiction of the DOC at the time of the August 12, 2009, hearing. Similarly, there is no record evidence that respondent-mother was incarcerated under the jurisdiction of the DOC at the time of the November 10, 2009, hearing. Rather, the record evidence shows that respondent-father and respondent-mother were incarcerated in the Macomb County Jail at the time of these hearings. Therefore, MCR 2.004 did not apply in this case. See MCR 2.004(A). There is no plain error.

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[2] We note that the *Mason* Court's decision did not contain a due process analysis. *Mason*, 486 Mich at 166 ("We do not reach the question whether reversal could be independently required under a due process analysis."). Rather, the Court's decision was on the basis of the trial court's violation of "several statutes and court rules." *Id.*

Additionally, respondent-father generally asserts for the first time on appeal that he was "denied due process by not being able to participate in the adjudicative proceedings." We disagree. Respondent-father was provided procedural due process because he was given notice of the proceedings and had a meaningful *opportunity* to participate in them. See *In re Rood*, 483 Mich 73, 92, 118-119; 763 NW2d 587 (2009). Again, respondent-father's argument focuses on his absence from the August 12, 2009, hearing. The record in this case shows that respondent-father was served, by first-class mail, with notice of this hearing while he was incarcerated at the Macomb County Jail. Furthermore, respondent-father was personally served with a summons to appear at the August 12, 2009, hearing. Indeed, the summons ordered respondent-father to appear on that date and stated that "**FAILURE TO APPEAR** may subject you to the penalty for contempt of court . . . ." The summons warned respondent-father that the "hearing may result in a temporary or permanent loss of your rights to the child(ren)." And the summons explained to respondent-father that he had the right to an attorney:

> **RIGHT TO ATTORNEY:** As a respondent you have the right to be represented by an attorney. If you want an attorney, you should hire one immediately so the attorney will be ready on the hearing date. If you want an attorney but are not financially able to hire an attorney, you should contact the court immediately about a court-appointed attorney.

At the time of the August 12, 2009, hearing, the trial court had not received a notification that respondent-father requested a court-appointed attorney. A representative of Children's Protective Services provided sworn testimony at the hearing, stating that he had spoken to respondent-father and that respondent-father did not make a request to him for an attorney. Moreover, after the August hearing, the trial court appointed counsel for respondent-father. The caseworker visited respondent-father in jail and discussed the parent-agency agreement (PAA) with him. Proper notices of subsequent hearings were sent to respondent-father, and the court and DHS facilitated both respondent-father's presence at hearings and his participation in the PAA. The case went on for two-and-one-half years, and respondent-father had ample time to work on his PAA. Given the record in this case, we find no plain error with respect to respondent-father's due process argument.

Next, the parties argue that the court clearly erred in terminating their parental rights. Respondent-mother argues that the trial court clearly erred in finding statutory grounds for termination, and both respondents argue that the trial court made a clearly erroneous best-interest determination. To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence and that termination is in the best interests of the children. MCL 712A.19b(5); *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999); *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000). The trial court's decision terminating parental rights is reviewed for clear error. MCR 3.977(K); *Trejo*, 462 Mich at 356-357. A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

Respondent-mother completed a psychological evaluation and parenting classes, attended substance-abuse treatment and rehabilitation, and participated in a jobs program and may have

found employment. She maintains that she visited consistently and garnered positive reports from caseworkers of her interaction with the children. We find, however, that respondent-mother's spotty participation and insufficient benefit from services justified the court's ruling. The case was pending for two-and-one-half years. During that time, respondent-mother relapsed on drugs at least twice, committed new crimes, and was incarcerated four times. As late as January 2012, she tested positive for three substances. She also "disappeared" for many months and missed numerous drug screens. Respondent-mother failed to complete or even substantially complete her PAA, which is evidence that the children would continue to be at risk in her care. See *Trejo*, 462 Mich at 360-361 n 16. A parent must benefit from services to be able to provide a safe, adequate home. *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005), superseded by statute on other grounds in MCL 712A.19b(5). Despite many services, respondent-mother was unable to sufficiently remedy the conditions that caused the children to be removed. Based on her history, she would be unable to provide proper care or custody within a reasonable time. Accordingly, the trial court did not clearly err in finding clear and convincing evidence to satisfy MCL 712A.19b(3)(c)(*i*), (g), and (j).[3]

Finally, we find no clear error in the trial court's finding that termination of respondents' parental rights was in the children's best interests. MCL 712A.19b(5); MCR 3.977(H)(3), (K); *Trejo*, 462 Mich at 356-357; *Sours*, 459 Mich at 632-633. While the children had a bond with their parents and the parents for the most part displayed good parenting skills, their continued problems with drugs, crime, and instability meant that they could not provide a safe and drug-free home. Furthermore, as the trial court emphasized, respondents' children needed stability and permanency, which was something respondents could not provide in the reasonably near future. See *In re VanDalen*, 293 Mich App 120, 141; 809 NW2d 412 (2011) (considering child's need for stability and permanency). Therefore, the trial court did not clearly err in its best-interest ruling.

Affirmed.

/s/ Kathleen Jansen
/s/ Stephen L. Borrello
/s/ Jane M. Beckering

[3] Although respondent-father has not directly argued the issue of sufficiency of evidence under the statutory grounds, we would reach the same conclusion with respect to respondent-father.