Third District Court of Appeal

State of Florida

Opinion filed June 24, 2020.
Not final until disposition of timely filed motion for rehearing.

Nos. 3D19-2379 and 3D19-2323
Lower Tribunal No. 16-139K

D.M., a juvenile, and R.M., the Father,
Appellants,

vs.

Department of Children and Families, et al.,
Appellees.

Appeals from the Circuit Court for Monroe County, Bonnie J. Helms, Judge.

Law Office of Richard F. Joyce, P.A., and Richard F. Joyce, for appellant D.M., the Child; R.M., the Father, in proper person.

Karla Perkins, for appellee Department of Children & Families; Laura J. Lee (Tallahassee) and Thomasina F. Moore (Tallahassee), for appellee Guardian ad Litem Program.

Before EMAS, C.J., and MILLER and GORDO, JJ.

EMAS, C.J.

ON MOTION FOR REHEARING

Upon consideration of the motion for rehearing filed by the Department of Children and Families, we grant the motion, withdraw our previous opinion, and substitute the following opinion in its stead.

INTRODUCTION

In these consolidated appeals, the Child, D.M., and the Child's Father, R.M., appeal from a final judgment terminating the parental rights of the Father and of the Mother.[1] Upon our review, we affirm the final judgment terminating the parental rights of both the Father, R.M, as well as the Mother, A.M.. However, we write to address the applicability of Florida Rule of Juvenile Procedure 8.520(c) where the basis for the termination of parental rights is a statutory voluntary surrender under section 39.806(1)(a), Florida Statutes (2018).

BACKGROUND AND PROCEDURAL HISTORY

D.M. was born in September 2007 and has endured a heartbreaking history with his parents. When D.M. was just a few weeks old, the Mother's parental rights to D.M.'s half-sibling were terminated. Soon after, D.M. was sheltered from both

[1] As will be seen *infra*, the Mother (A.M.) voluntarily surrendered her parental rights to D.M. and has not appealed the final judgment terminating her rights. However, D.M. objected to the trial court's acceptance of the Mother's surrender of her parental rights, and D.M. has appealed that portion of the final judgment terminating the parental rights of the Mother. D.M. does not challenge that portion of the final judgment terminating the parental rights of R.M., the Father.

parents as a result of domestic violence in the home. In 2010, when D.M. was three years old, the Mother surrendered her parental rights to D.M. (though no final judgment of termination of parental rights was rendered at that time) and D.M. was placed in the custody of the Father.

When the Father was later convicted and sentenced to prison, D.M. was sheltered once more, and sheltered yet again in 2014 when he was sexually molested by his adult half-brother.

In 2016, when D.M. was nine years old, the Mother initiated D.M.'s commitment to a mental health facility pursuant to the Baker Act (§ 394.451 et. seq., Fla. Stat. (2016)) because D.M. attempted to suffocate his younger brother with a pillow. When D.M.'s treatment was complete and he was to be discharged from the facility, the Mother refused to pick him up, resulting in D.M. being sheltered once again.

The Department of Children and Families ("the Department") filed a dependency petition and, on March 8, 2017, D.M. was adjudicated dependent. The Mother has failed and refused, and has continued to fail and refuse, to complete her case plan and has failed to provide any support to D.M., who has been residing in various therapeutic foster care placements and in-house psychiatric programs for mental health and behavioral issues.

In March 2018, the Department moved to terminate the parental rights of the Mother and the Father. In the operative Petition, the Department alleged as grounds for Termination of Parental Rights: 1) abandonment of D.M. by the Mother and Father (§ 39.806(1)(b), Fla. Stat. (2018)); 2) conduct by the Mother and Father toward D.M. demonstrating that the continuing involvement of the parent-child relationship threatens the life, safety, well-being, or physical, mental, or emotional health of D.M., irrespective of the provision of services (§ 39.806(1)(c)); 3) failure of the Mother and Father to substantially comply with case plans for a period of twelve months following an adjudication of dependency or placement in shelter care (§ 39.806(1)(e)1.); 4) D.M. has been in the care of the Department during twelve of the last twenty-two months and the Mother and Father have failed to substantially comply with the case plan so as to permit reunification (§ 39.806(1)(e)3.); and (5) on three or more occasions, D.M. or another child of the Mother and Father has been placed in out-of-home care, and the conditions leading to those out-of-home placements were caused by the Mother and Father (§ 39.806(1)(*l*)).

Following the commencement of the adjudicatory hearing,[2] the Mother executed an Affidavit of Voluntary Surrender of her parental rights to D.M., averring, inter alia, that it was in the Child's best interest to be placed for adoption

[2] The adjudicatory hearing took place over a period of several days and the Mother's Affidavit of Voluntary Surrender was submitted on the second day of the hearing.

by the Department.[3] During the adjudicatory hearing, the trial court reviewed the Affidavit of Surrender and engaged the Mother in a colloquy about her decision to surrender her parental rights to the Child. Following the colloquy, and satisfied that the Mother made her decision knowingly, freely and voluntarily, the trial court accepted the Mother's surrender of her parental rights. D.M. objected to the trial court's acceptance of the Mother's surrender of her parental rights, asserting it was not in the Child's best interest to permit the Mother to do so.

Following the adjudicatory hearing the trial court entered a final judgment terminating the parental rights of both the Mother and the Father. These consolidated appeals by the Father and the Child followed.

DISCUSSION

We affirm without discussion the termination of the parental rights of the Father, R.M.[4] We also affirm the termination of the parental rights of the Mother,

[3] See § 39.806(1)(a), Fla. Stat. (2018) (providing that grounds for the termination of parental rights may be established when the parent has "voluntarily executed a written surrender of the child and consented to the entry of an order giving custody of the child to the department for subsequent adoption and the department is willing to accept custody of the child.")

[4] During the pendency of the appeal, R.M.'s appointed counsel filed a motion seeking to withdraw from further representation and representing that, following a full review of the record, it was counsel's considered opinion that the appeal was without merit. Pursuant to Jimenez v. Dep't of Health & Rehab. Servs., 669 So. 2d 340 (Fla. 3d DCA 1996), we withheld ruling on the motion to withdraw to permit the Father to file a brief in support of the appeal. The Father did not file a brief. We grant counsel's motion to withdraw and affirm the final judgment as to the Father, R.M.

A.M. However, we write to address the applicability of Florida Rule of Juvenile Procedure 8.520(c) to a final judgment of termination based upon the parent's execution of a voluntary surrender of parental rights pursuant to statute.

> The standard of review for a final judgment terminating parental rights is "whether the judgment is supported by substantial and competent evidence" that the statutory requirements were met. See T.V. v. Dep't of Children & Family Servs., 905 So. 2d 945, 946 (Fla. 3d DCA 2005). This standard is "highly deferential." C.G. v. Dep't of Children & Families, 67 So. 3d 1141, 1143 (Fla. 3d DCA 2011).

D.M. v. Dep't of Children and Families, 79 So. 3d 136, 138 (Fla. 3d DCA 2012). See also I.T. v. Dep't of Children & Families, 277 So. 3d 678, 683 (Fla. 3d DCA 2019) (additionally providing: "A 'finding that evidence is clear and convincing enjoys a presumption of correctness and will not be overturned on appeal unless clearly erroneous or lacking in evidentiary support.' Thus, our review of a termination of parental rights case is 'highly deferential.'" (Internal citations omitted)).

Further, before terminating parental rights, "the trial court must find that the Department established by clear and convincing evidence the following: (1) the existence of at least one statutory ground for terminating parental rights set forth in section 39.806(1); (2) termination is in the manifest best interest of the child; and (3) termination is the least restrictive means to protect the child from serious harm." L.Q. v. Dep't of Children & Families, 282 So. 3d 958, 962 (Fla. 3d DCA 2019).

Section 39.806 provides fourteen separate statutory grounds for termination, any one of which may serve as a basis for the termination of parental rights. The first of these fourteen enumerated grounds—section 39.806(1)(a)—provides for termination where the parent executes a voluntary surrender:

> (1) Grounds for the termination of parental rights may be established under any of the following circumstances:
>
> (a) When the parent or parents have voluntarily executed a written surrender of the child and consented to the entry of an order giving custody of the child to the department for subsequent adoption and the department is willing to accept custody of the child.
>
> 1. The surrender document must be executed before two witnesses and a notary public or other person authorized to take acknowledgments.
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> 2. The surrender and consent may be withdrawn after acceptance by the department only after a finding by the court that the surrender and consent were obtained by fraud or under duress.

Importantly, because the Mother executed a voluntary surrender of her parental rights in accordance with section 39.806(1)(a), it was not necessary for the Department to establish at an adjudicatory hearing the existence of any other statutory ground for termination as to her. In other words, the execution of a voluntary surrender of the child and consent to the entry of an order giving custody of the child to the Department for subsequent adoption (and the Department's willingness to accept custody of the child) is alone sufficient for entry of a final judgment terminating parental rights.

Nevertheless, there remains the question of whether the final judgment terminating the Mother's parental rights pursuant to a voluntary surrender was invalid because it failed to comport with Florida Rule of Juvenile Procedure 8.520(c). That rule provides in pertinent part:

> (c) Plea of Admission or Consent. If the parent appears and enters a plea of admission or consent to the termination of parental rights, the court shall determine that the admission or consent is made voluntarily and with a full understanding of the nature of the allegations and the possible consequences of the plea and that the parent has been advised of the right to be represented by counsel. The court shall incorporate these findings into its order of disposition, **in addition to findings of fact specifying the act or acts causing the termination of parental rights**.
>
> (Emphasis added.)

It would appear that, on its face, the rule requires that, even in the context of a "plea of admission or consent" to termination of parental rights, the trial court must make additional findings of fact specifying the act or acts causing the termination. The Department contends that this aspect of rule 8.520(c) is inapplicable because the termination of parental rights was pursuant to a statutory voluntary surrender under section 39.806(1)(a), not pursuant to a plea of admission or consent.

We agree with the Department's position and note that, by its express terms, rule 8.520(c) requires "findings of fact specifying the act or acts causing the termination of parental rights" only where "the parent appears and enters a plea of

admission or consent." Nowhere does the rule reference, or by its express terms apply to, a voluntary surrender under section 39.806(1)(a).[5]

More importantly, requiring a court to make findings of fact specifying the act or acts causing the termination of parental rights in the instant context would contradict the express legislative language contained in, and defeat the intent of, section 39.806(1)(a), by which a voluntary surrender may serve as the sole basis for a termination of parental rights. In other words, where the termination of parental rights is pursuant to the execution of a voluntary surrender under section 39.806(1)(a), there need not be any other "act or acts causing the termination of parental rights" and thus no basis for findings of fact that rule 8.520(c) would require in other contexts.[6]

We affirm the final judgments terminating parental rights in each of these consolidated appeals.[7]

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[5] Though not determinative, it is noteworthy that Florida Rule of Juvenile Procedure Form 8.984, entitled "Order Terminating Parental Rights (Voluntary)" does not require, or make provision for, the trial court to include findings of fact specifying the act or acts causing the termination of parental rights.

[6] To the extent that our sister court held to the contrary in C.B. v. B.C., 851 So. 2d 847, 849 (Fla. 5th DCA 2003) we certify conflict.

[7] The Child, D.M., also asserts that the trial court's acceptance of the Mother's surrender, over D.M.'s objection and without an independent evidentiary hearing, violated his due process rights. We note, initially, that D.M. cites no Florida statute, rule or case law in support of this proposition, nor did this court find any such Florida authority. At the time the Mother's surrender was accepted by the trial court, the adjudicatory hearing had already commenced, and the Child's testimony (in chambers) had been taken.

After acceptance of the Mother's surrender, the adjudicatory hearing continued, with additional evidence and testimony that supported termination as to both the Mother and the Father, including testimony from the Guardian ad Litem. While no one would dispute that a child has an interest in maintaining the integrity of family relationships, including relationships with his parents and siblings, it is equally clear that the Florida Legislature recognizes, protects and furthers that interest, having expressed that principle in language of statutory intent. See, e.g., § 39.001(1)(f), (*l*) Fla. Stat. (2018) (providing that among the purposes of chapter 39 are: "To preserve and strengthen the child's family ties whenever possible, removing the child from parental custody only when his or her welfare cannot be adequately safeguarded without such removal; [and] . . . [t]o provide judicial and other procedures to assure due process through which children, parents, and guardians and other interested parties are assured fair hearings by a respectful and respected court or other tribunal and the recognition, protection, and enforcement of their constitutional and other legal rights, while ensuring that public safety interests and the authority and dignity of the courts are adequately protected.") Pursuant to this express intent, the Legislature has enacted a panoply of laws (and the Florida Supreme Court has approved a number of corresponding procedural rules) furthering and protecting these interests of the child, including, for example: 1) providing, where appropriate, for the appointment of an attorney ad litem for the child, who shall represent the child's legal interests and shall have unlimited access to the child, see § 39.4085(20), Fla. R. Juv. P. 8.217; 2) providing for appointment of a guardian ad litem to represent the interests of the child, see §§ 39.807(2)(a), 39.4085(20), Fla. R. Juv. P. 8.217; 3) providing that the guardian ad litem must provide a statement expressing the wishes of the child, see § 39.807(2)(b)1; and 4) providing for the child, through the Guardian Ad Litem, to be served with process, be present at and participate in proceedings, see Fla. R. Juv. P. 8.505, 8.215.

Finally, the statutory scheme by which a parent may voluntarily surrender her parental rights, permits such a procedure only if: the Department accepts the surrender; the court finds that the surrender was voluntary; and the court finds that termination is in the manifest best interests of the child, thus requiring the court to consider the recommendations of the Guardian Ad Litem and the reasonable preferences and wishes of the child. See §§ 39.802(4) 39.806(1), 39.810(10),(11), Fla. Stat. (2019). We reject D.M.'s contention that these statutory provisions and procedural rules fail to adequately protect D.M.'s interests or that the trial court's acceptance of the Mother's voluntary surrender without an independent evidentiary hearing deprived D.M. of due process.