STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of KYANDRE BROOKS, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

NEHEMIAH GREGORY,

Respondent-Appellant.

UNPUBLISHED
February 17, 2009

No. 283281
Washtenaw Circuit Court
Family Division
LC No. 05-000123-NA

Before: Sawyer, P.J., and Servitto and M. J. Kelly, JJ.

PER CURIAM.

Respondent appeals by right the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

Respondent argues that the trial court erred in terminating his parental rights because petitioner failed to make reasonable efforts toward reunification. We disagree. In general, when a child is removed from the parents' custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan and providing services so as to return the child to his or her home. MCL 712A.18f(1)-(4); *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). A claim that the respondent was not provided reasonable services directed toward reunification is relevant to the sufficiency of the evidence for termination of parental rights. *Id.* at 541. This Court reviews the trial court's decision under the clearly erroneous standard. MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999); *In re Gazella*, 264 Mich App 668, 672; 692 NW2d 708 (2005).

The record provides sufficient evidence that petitioner made reasonable efforts to locate respondent and provide services to him. When the minor child was removed from his mother's care in November 2005, the child's father was unknown to petitioner. It was not until four months later that respondent was identified as the child's putative father, although his name was spelled incorrectly and his whereabouts were still unknown. The caseworker subsequently filed an affidavit of diligent efforts to locate an absent parent, which demonstrated a search of records from directory assistance, Friend of the Court, federal and state correctional systems, yahoo yellow pages, respondent's last known address, among others. Approximately seven months after the child came into custody, respondent's mother met with the caseworker on June 29, 2006, and indicated that respondent lived with her, that the family had been told the minor child

was deceased, and that she came forward when she learned that he was alive. The caseworker provided the next hearing date, July 12, 2006, and asked respondent's mother to have respondent call the caseworker or show up at the hearing. Respondent did not contact the caseworker or show up at the next hearing, although his mother did, so the caseworker sent a letter by certified mail to respondent's mother's address, which was returned signed for by respondent. Respondent later denied that he received the letter or that the signature was his. He did not appear in the case until almost 11 months after the child came into the court's custody. This Court must accord deference to the trial court's assessment of the credibility of the witnesses before it. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The trial court had sufficient evidence to conclude that respondent was aware of the proceedings and the July 12, 2006, court date shortly after June 29, 2006, when his mother first learned about them. The trial court did not clearly err in finding that petitioner made reasonable efforts to locate respondent.

Respondent also contends that petitioner did not provide respondent with a "fair opportunity to comply with its demands," arguing that he had been provided with services for only three months or, at the most, from the time he received his DNA test results. This argument is disingenuous. At the latest, respondent knew that he was the child's biological father on January 5, 2007, nine months before the termination trial. Even if he had waited until the DNA test results to begin compliance, he would have had nine months to demonstrate his willingness and sincerity to comply with the requirements and have his son placed with him. Respondent was provided services through both petitioner and the probation department but failed to comply. He was provided with an outpatient substance abuse program through his probation officer and never attended. He was provided outpatient and in-home parenting classes through petitioner and did not comply. He was provided the ACCESS substance abuse program, the Dawn Farm substance abuse treatment program, and random drug screens. There is no support for the argument that petitioner did not provide sufficient services or a sufficient amount of time for respondent to comply. This case is not analogous to *In re Newman*, 189 Mich App 61; 472 NW2d 38 (1991), as respondent contends. Here, there was no evidence that respondent was mentally handicapped or unable to understand what he needed to do. Accordingly, the trial court did not clearly err in finding that petitioner made reasonable efforts toward reunification.

Next, respondent argues that the trial court erred in terminating his parental rights because the statutory grounds for termination were not proven by clear and convincing evidence. We disagree. On appeal from termination of parental rights proceedings, this Court reviews the trial court's findings under the clearly erroneous standard. MCR 3.977(J); *Sours*, *supra* at 633; *Gazella*, *supra* at 672. A finding of fact is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake was made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

Respondent contends the 182-day requirement of MCL 712A.19b(3)(c)(i) was not established because petitioner filed the petition to terminate his parental rights 112 days after his initial dispositional hearing. However, the statute does not require that petitioner wait 182 days to file the petition for termination. It provides that the court may not terminate a respondent's

parental rights until "182 or more days have elapsed since the issuance of an initial dispositional order." Respondent's parental rights were not terminated until at least 224 days after the initial dispositional order.[1] Thus, there was no violation of 182-day requirement. The conditions that led to respondent's adjudication were his addiction to marijuana and his continued criminal activities. Respondent failed to comply with any of the requirements of his treatment plan except for visitation. At the time of trial, respondent was still on probation for a crime committed in March 2005, because he had failed to comply with probation requirements and had two probation violations. Less than a month before the termination trial, he tested positive for marijuana. Respondent's history showed numerous attempts to provide services for drug treatment programs and failure to comply. There was clear and convincing evidence to support the statutory grounds for termination under MCL 712A.19b(3)(c)(i).

We also find clear and convincing evidence to support the statutory grounds for termination under MCL 712A.19b(3)(g). Respondent provided no support for his child. When asked to bring a snack to visitation, he did not provide it and claimed he did not have money for "frivolous snacks and stuff like that." Respondent's failure to comply with the parent/agency agreement is evidence of his failure to provide proper care and custody for the child. *JK*, *supra* at 214. His failure to comply with the parent/agency agreement and his history of noncompliance with probation requirements and past services demonstrated that there was no reasonable expectation that he would be able to provide proper care and custody within a reasonable time considering the child's age.

Finally, we find clear and convincing evidence to support termination under MCL 712A.19b(3)(j). Respondent blamed his failure to comply with the parent/agency agreement on petitioner and made other excuses. He failed to accept responsibility for his actions. Respondent's extensive criminal history, his failure to comply with his probation requirements, and his continued use of marijuana demonstrated that the child would be at risk of harm if placed in his custody. The trial court did not clearly err in terminating respondent's parental rights.

We also find that the trial court did not clearly err in its determination of the minor child's best interests. Under the statute in effect when the termination order was entered in this case, once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court is required to order termination of parental rights, unless the court finds from evidence on the whole record that termination is clearly not in the child's best interest. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 353; 612 NW2d 407 (2000). The trial court's decision regarding the child's best interests is reviewed for clear error. *Id*. at 356-357. The evidence showed that the relationship between respondent and the child was not a bonded father/child relationship but was more like "a child with an adult playmate." Respondent did not come forward until over three months after he learned that the child was alive and in custody. Respondent never demonstrated a commitment to the child by compliance with the

[1] To compute 224 days, we utilize respondent's asserted date of April 3, 2007, as the initial dispositional order concerning him. However, we note that an earlier dispositional order was entered on February 14, 2007, in which the court ordered respondent to establish legal paternity and submit to drug screens.

treatment plan. His failure to comply showed that he did not consider the best interests of his child.

Finally, respondent argues that the trial court abused its discretion by admitting his juvenile records into evidence. Respondent did not object to the admission of his juvenile record at trial. "In order to preserve the issue of the improper admission of evidence for appeal, a party generally must object at the time of admission," *People v Knox,* 469 Mich 502, 508: 674 NW2d 366 (2004), "and specify the same ground for objection that it asserts on appeal," *People v Aldrich*, 246 Mich App 101, 113; 631 NW2d 67 (2001). Thus, this issue has not been preserved for appeal. This Court reviews an unpreserved issue for plain error affecting substantial rights, i.e., the error affected the outcome of the lower court proceedings. *People v Carines*, 460 Mich 750, 762-764; 597 NW2d 130 (1999).

Respondent's reliance on *Vangard Ins Co v Bolt*, 204 Mich App 271, 275; 514 NW2d 525 (1994), and *People v Allen*, 90 Mich App 128, 137; 282 NW2d 255 (1979), is misplaced. These cases do not stand for the proposition that respondent's juvenile history was not admissible in a termination proceeding. Respondent's reliance on MCR 3.977(G)(2) is similarly misplaced. That rule makes it clear that the rules of evidence do not apply in a termination proceeding and allows the admission of "all relevant and material evidence." The court records of respondent's juvenile adjudications are not "reports' within the meaning of the court rule. Respondent's juvenile record was relevant in light of the fact that the record showed his use of marijuana and his criminal activity as an adult remained essentially unchanged and uninterrupted from his juvenile conduct. In addition, addressing respondent's claim that notice of the petitioner's intention to use his juvenile records would have given him the opportunity to prepare for their introduction and question witnesses or call additional witnesses during the hearing, respondent has presented no information regarding which additional witnesses he would have called, what questions he would have submitted to the witnesses, or how it would have affected the outcome of the termination proceeding. The record clearly demonstrates that, absent evidence of respondent's juvenile history, the outcome of the proceedings would not have been different. Thus, respondent has failed to demonstrate plain error that affected his substantial rights. *Carines, supra* at 762-764.

Affirmed.

/s/ David H. Sawyer
/s/ Deborah A. Servitto
/s/ Michael J. Kelly