

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of LACIE Y. GEROW, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

NANCY GEROW,

Respondent-Appellant,

and

RANDALL BITTERS,

Appellee.

UNPUBLISHED
February 24, 2009

No. 286795
Alpena Circuit Court
Family Division
LC No. 08-006334-NA

Before: Donofrio, P.J., and K. F. Kelly and Beckering, JJ.

PER CURIAM.

Respondent Nancy Gerow appeals as of right from the order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(g), (i), and (m). We affirm.

Respondent contends that violations of her due process rights occurred when the trial court: (1) did not advise her of her right to trial on the allegations contained in the petition; (2) erroneously stated that reasonable efforts to prevent the child's removal from the home were not required due to the mother's involuntary termination of parental rights to a sibling of the child, and failed to make specific findings regarding the child's health and safety; and (3) when petitioner did not provide an initial services plan. Respondent failed to preserve these arguments below, and this Court reviews unpreserved constitutional errors for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999).

We find no plain error affecting respondent's substantial rights. First, although respondent was not advised at the preliminary hearing of her right to a trial on the allegations contained in the petition, we find no plain error where the child came into the court's jurisdiction based on the undisputed facts of respondent's arrest on drug charges, incarceration, and previous terminations. Further, she had a termination hearing before the circuit court judge where her

attorney had the opportunity to cross-examine petitioner's witnesses and call witnesses on respondent's behalf.

Next, the trial court's statement in its order after the preliminary hearing that reasonable efforts to prevent the child's removal from the home were not required due to the involuntary termination of respondent's parental rights to a sibling of the child was in error, because the prior termination of respondent's rights to four other children was voluntary. However, the same order noted that it was contrary to the welfare of the child to remain in the home because respondent was currently incarcerated, was expected to be incarcerated for more than two years, and had left the child in the care of the maternal grandparents with only temporary legal authority. Petitioner had contacted the child's biological father, who wished to obtain custody of the child. Therefore, as a practical matter, further reasonable efforts toward reunification were not required, the court did make findings regarding the child's welfare, and respondent has not demonstrated plain error.

With regard to respondent's final due process argument, it is true that, generally, when a child is removed from a parent's custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan. MCL 712A.18f(1), (2), and (4). However, where the petitioner requests termination in the initial petition, as petitioner did in this case, there is no need to develop and consider a case service plan to reunite the family because the goal is termination and because the trial court could terminate parental rights at the initial dispositional hearing. MCR 3.977(E); MCL 712A.19b(4). Thus, respondent has failed to demonstrate a plain error that affected her substantial rights.

With regard to the statutory grounds for termination, respondent concedes that MCL 712A.19b(3)(m) was proved by clear and convincing evidence, and that only one ground for termination need be proven. See *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003). Rather, respondent contends that the trial court's erroneous findings regarding the statutory grounds influenced its later findings regarding the best interests of the child. Respondent argues that, when the whole record is taken into account, the trial court's determination regarding the best interests of the child was not based on clear and convincing evidence, but rather was against the great weight of the evidence.¹

Respondent challenges the trial court's findings in its written opinion regarding her drug use, where the court stated that respondent's long-standing "addiction, prior to and after Lacey [sic] was born, has caused many incarcerations and inpatient drug rehabilitation." Respondent criticizes the characterization that such incarcerations and drug rehabilitation took place after Lacie was born. The court, however, was describing respondent's long-standing drug addiction before and after Lacie was born, not the timing of the incarcerations and drug rehabilitation.

¹ We note that the trial court's written opinion was dated July 11, 2008. Effective that date, MCL 712A.19b(5) was amended to provide that a court must affirmatively find that termination of parental rights was in a child's best interests before it can order termination of parental rights. Although the court cited the former version of the statute in its opinion, the court did find that it was in the child's best interests to terminate respondent's parental rights. Therefore, the court's misstatement of the statutory language was harmless error. MCR 3.902(A); MCR 2.613(A).

Furthermore, review of the record supports the court's findings, and reflects that respondent's drug use has caused two incarcerations, multiple convictions, inpatient drug rehabilitation, and led to her being arrested and incarcerated for drug offenses on February 3, 2008, prompting the current proceedings. Thus, the trial court did not clearly err.

Respondent next challenges the trial court's findings regarding her adult son, Danny. According to the court's opinion, respondent testified that her son lived in the house that she and Lacie lived in, that he too, had used illicit drugs, and that a syringe found in the house was his. The court noted, "Her conclusion was that Danny could stay and live in the house because he does his drinking and drugging out of the home." Respondent denies making this statement or drawing such a conclusion. However, our review of the record supports this characterization of respondent's testimony. Respondent testified that she knew Danny used drugs, and when asked if she had a problem with Danny being around Lacie, she responded that he was gone a lot and would go out of the house to drink with his friends.

Respondent next argues that the trial court placed greater weight on the testimony of her sister-in-law, Debra Gerow, than on the sometimes-conflicting testimony of her mother, Yvonne Gerow. "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004). Giving due regard to the trial court's opportunity to observe the testimony of Debra Gerow and of Yvonne Gerow, we cannot find that the trial court clearly erred with regard to the challenged findings. Respondent also contends that the trial court gave no consideration to the testimony of the two District Health Department employees. However, the trial court's failure to address this testimony in its opinion does not constitute clear error when the evidence is considered as a whole.

Respondent obviously loves her daughter. But the trial court noted that the child needed permanency and a proper environment where she could be consistently cared for and safely parented. Evidence showed that respondent was not able to provide such an environment for her child. Thus, 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/ Pat M. Donofrio
/s/ Kirsten Frank Kelly
/s/ Jane M. Beckering