STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of TREVIAN MAURICE FLY and AVIANNA ALEXIS LYNEA FLY, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

OCTAVIAN FLY,

Respondent-Appellant.

UNPUBLISHED
September 8, 2009

No. 290712
Ingham Circuit Court
Family Division
LC Nos. 07-002083-NA
07-002084-NA

Before: M. J. Kelly, P.J., and K. F. Kelly and Shapiro, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating his parental rights to his children pursuant to MCL 712A.19b(3)(c)(i), (g) and (j). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Respondent first argues that the trial court erred when it allowed the prosecutor to elicit testimony regarding the children's foster home. We disagree.

We review a trial court's decision to admit evidence for an abuse of discretion. *Shuler v Mich Physicians Mut Liability Co*, 260 Mich App 492, 509; 679 NW2d 106 (2004).

Respondent correctly asserts that the availability of a suitable alternative home is not a factor in the determining whether the petitioner has established a statutory ground for termination of parental rights. *In re Mathers*, 371 Mich 516, 530; 124 NW2d 878 (1963). However, the determination of a child's best interests may encompass the consideration of available suitable alternative homes. *Id*. (explaining that evidence regarding the advantages of a potential foster home may be relevant to an order of disposition). Here, the trial court specifically stated that it was taking testimony concerning the children's interaction in foster care placement as relevant to its determination concerning the effect of termination on the children's best interests. In making its findings, the trial court did not use this evidence as a factor to determine whether petitioner had established the existence of grounds for termination. The trial court did not reversibly err.

Respondent next argues that the court erred in finding that petitioner made reasonable efforts to prevent the children's removal and to rectify the conditions leading to adjudication. We disagree.

The general rule in a child protective proceeding is that if the Department of Human Services (the agency) recommends against placing a child in the parent's custody, it must report to the court "what efforts were made to prevent the child's removal from his or her home or the efforts made to rectify the conditions that caused the child's removal from his or her home" or explain "the reasons why services were not provided." MCL 712A.18f(1); MCR 3.965(D)(1). If reunification is the agency goal, upon removal the agency is required to provide an initial case service plan within 30 days identifying specific goals to be achieved by the parties and projected time frames for meeting those goals, and update that case service plan every 90 days. MCL 712A.18f(5); MCR 3.965(E)(1), (3). The service plan must include a schedule of services to be provided to the parent, child, and foster parent to facilitate the child's return to his or her home or to facilitate the child's permanent placement. MCL 712A.18f(3)(d). At each dispositional hearing the trial court reviews the case service plan and evidence to determine whether the parties have made reasonable efforts to prevent removal or rectify the conditions leading to adjudication, and enters appropriate orders. MCL 712A.18f(4); MCR 3.973(F)(1), (2), (3).

Here, the trial court reasonably found that the agency consistently made reasonable efforts to facilitate reunification, but that respondent only partly availed himself of services and did not sufficiently benefit from them. Respondent consistently refused to participate in drug screenings. The agency reports indicate that respondent appeared to have no interest in satisfying any of his other requirements from the time the court took jurisdiction of the children in late 2007 until July 2008, and apparently was so belligerent to the caseworkers that he would not even acknowledge that he should be required to do anything to obtain custody of the children. The testimony of petitioner's caseworker established that respondent initially attempted to participate in petitioner's later efforts at reunification in July 2008, but then stopped participating in August 2008. While respondent maintains that his services were interrupted when he was incarcerated in September 2008, he had already stopped participating in his counseling classes prior to that event, and he did not contact the organization conducting his parenting classes when he was released in December. The reports from his attendance, particularly the report from August 27, 2008, contain little in respondent's favor. He not only refused to participate in the "homework" portion of the program, his in-class participation was little better, and his belligerence was notably disruptive to the other participants.

Given the evidence presented, we find that the record showed that the agency consistently made reasonable efforts to facilitate reunification, but respondent did not avail himself of services or sufficiently benefit from them. No error occurred.

Affirmed.

/s/ Michael J. Kelly
/s/ Kirsten Frank Kelly
/s/ Douglas B. Shapiro