

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DAMONTA JOSZEF GOINS,
DORRYEN JAMAHL GOINS, LORENZO
ARDELL BROWN, ALMONZO JUNIUS JAMES
BROWN, and LAKENDRICK MYSHAWN
GATES, JR., Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ELIZABETH ALLEN,

Respondent-Appellant,

and

ALMONZO BROWN, LAKENDRICK GATES,
and DESHAWN WILLIAMS,

Respondents.

In the Matter of LAKENDRICK MYSHAWN
GATES, JR., Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ELIZABETH ALLEN, ALMONZO BROWN, and
DESHAWN WILLIAMS,

Respondents,

and

UNPUBLISHED
December 3, 2009

No. 290223
Monroe Circuit Court
Family Division
LC No. 07-020141-NA

No. 290224
Monroe Circuit Court
Family Division
LC No. 07-020141-NA

LAKENDRICK GATES,

Respondent-Appellant.

Before: K. F. Kelly, P.J., and Jansen and Fitzgerald, JJ.

PER CURIAM.

In Docket No. 290223, respondent Elizabeth Allen appeals by right the order terminating her parental rights to the minor children under MCL 712A.19b(3)(b)(i),¹ (c)(i), (g), and (j). In Docket No. 290224, respondent Lakendrick Gates appeals by right the same order terminating his parental rights to minor child Lakendrick Myshawn Gates, Jr., under MCL 712A.19b(3)(c)(i),² (g), and (j). We affirm.

In Docket No. 290223, Allen argues that the trial court erred by terminating her parental rights under § 19b(3)(b)(i) because she did not intentionally harm Lakendrick by ingesting a bag of cocaine before his birth. She contends that she was unaware of the potential effects of cocaine on her unborn child. The trial court terminated Allen’s parental rights under this subsection because Allen “intentionally ingested a baggy of cocaine while she was pregnant with Lakendrick and Lakendrick tested positive for cocaine and marijuana at birth.” The trial court’s reasoning necessarily assumes that Lakendrick’s positive drug tests at birth properly may be considered a “physical injury” within the meaning of § 19b(3)(b)(i). We need not resolve this issue, however, because the trial court did not clearly err by finding that termination of Allen’s parental rights was justified under §§ 19b(3)(c)(i), (g), and (j). MCR 3.977(J); *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). Petitioner was required to prove only one statutory basis for termination in order to justify terminating Allen’s parental rights. *In re Trejo*, 462 Mich 341, 355-356; 612 NW2d 407 (2000).

Although Allen completed parenting classes and individual therapy, she violated her probation and pleaded no contest to possessing cocaine in June 2008, approximately one year after the children were removed from her care. She admitted that she had a substance abuse problem involving marijuana and that she had smoked marijuana daily since she was 12 years old. Nonetheless, she stopped attending AA/NA meetings because she became frustrated that her unsupervised visitation had been suspended. Allen concedes that she failed to comply with

¹ Although the trial court’s order references MCL 712A.19b(3)(i), petitioner did not request termination under that subsection, which is not factually applicable to this case. The substance of the trial court’s decision clearly indicates that the court instead relied on MCL 712A.19b(3)(b)(i) as a basis for termination, in addition to the other cited statutory grounds.

² Although the trial court’s order does not specify the subsection of MCL 712A.19b(3)(c) on which the court relied, petitioner did not seek termination under subsection (c)(ii), and it is clear from the court’s findings that it applied subsection (c)(i) as a statutory basis for terminating Gates’s parental rights.

the requirement that she attend AA/NA meetings. Further, although she denied having a substance abuse problem involving cocaine and contended that the only time she ingested cocaine was to avoid a cocaine delivery charge, the evidence showed that she previously tested positive for cocaine on at least one previous occasion while pregnant with Lakendrick. Thus, the evidence showed that Allen had failed to effectively address her substance abuse issues.

In addition, Allen had no legal employment at the time of termination and her only employment during the lower court proceedings was for three or four months at a Comfort Inn. That job ended in December 2007, more than one year before the time of termination. Thus, she had no income to support herself and her five children. Her plan was for the family to live together with her mother and younger sister in a four-bedroom mobile home. She was also pregnant and expected to give birth to her sixth child at any time. She acknowledged that her unborn child's father was a felon and that three of her children's fathers had criminal histories. The trial court noted Allen's tendency to associate with felons and allow them to become a part of her children's lives. During family assessment interviews, two of the children disclosed that Gates had beaten them with a belt and that Allen did not object to his behavior. Allen also minimized domestic violence that she had suffered, herself. The evidence further showed that two of the children engaged in inappropriate sexual behavior in their foster home, which they claimed to have learned from Gates and engaged in with both Allen and Gates.

We cannot conclude that the trial court clearly erred by finding that the conditions that led to the adjudication continued to exist and were not likely to be rectified within a reasonable time. Nor did the trial court clearly err by finding that Allen had failed to provide proper care or custody for the children, that there existed no reasonable expectation that she would be able to do so within a reasonable time, and that there existed a reasonable likelihood that the children would be harmed if returned to Allen's care.³

In Docket No. 290224, Gates argues that he was denied his right to procedural due process. Because he did not preserve this issue for our review by raising it below, our review is limited to plain error affecting his substantial rights. *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999).

Gates relies primarily on *In re Rood*, 483 Mich 73, 92; 763 NW2d 587 (2009), in which our Supreme Court recognized that the most basic requirement of procedural due process includes an opportunity to be heard at a meaningful time and in a meaningful manner. The opportunity to be heard includes notice reasonably calculated to apprise a party of the pendency of an action and afford him an opportunity to present his objections. *Id.* Our Supreme Court recognized that "[i]n Michigan, procedures to ensure due process to a parent facing removal of his child from the home or termination of his parental rights are set forth by statute, court rule, DHS policies and procedures, and various federal laws[.]" *Id.* at 93.

³ On appeal, Allen challenges only the trial court's finding that the statutory grounds for termination were proven by clear and convincing evidence. She does not challenge the trial court's best-interests determination under MCL 712A.19b(5).

Gates first argues that, contrary to statutory and court rule provisions, he was never provided with proper notice of hearings and that notice was sent to an address different from the one he provided on the record. At a hearing on June 28, 2007, Gates stated that he resided at 3857 Pennsylvania in Detroit. Thereafter, Gates appeared at hearings on July 26, 2007, and October 22, 2007, and failed to appear at hearings on January 22, 2008, February 15, 2008, and February 20, 2008. At a hearing on March 12, 2008, the referee indicated that Gates had “been kind of missing for a while.” The referee further inquired, “Are you back on the scene? Do you intend to parent?” Gates responded affirmatively. He never stated that he had not received notice of the hearings that he failed to attend. In fact, when petitioner requested that Gates’s visitation be suspended because he failed to participate in any aspect of his service plan, Gates responded that he “want[ed] to fix it.”

Gates thereafter failed to appear at a hearing on April 9, 2008, but appeared at the next hearing on May 8, 2008. Again, he never indicated that he had not been notified of the hearing that he missed. Although Gates argues that notice of his missed hearings was not sent to the address that he provided, he testified that he had not resided at that address since January 2008, when he began residing at 6323 Vinewood in Detroit. Thus, if notice had been sent to the Pennsylvania Street address that he provided on the record, he may well not have received it anyway. Gates’s service plan required him to report a change of address within two days, but he failed to comply with this requirement. Moreover, Gates admitted that he had received certain other notices sent by the trial court. Thus, the record tends strongly to establish that Gates’s failure to attend the various hearings was a result of his own failure to participate rather than the result of a true lack of notice.

The record also belies Gates’s contention that he was never provided with a copy of his service plan. The record shows that Gates was provided with his service plan at the hearing of July 26, 2007. At that time, he indicated that he was willing to complete the requirements of the plan. At the hearing of October 22, 2007, Gates received a copy of an updated service plan and indicated that he found the requirements acceptable. On March 12, 2008, the referee postponed a hearing to allow Gates to review the requirements of the service plan. Gates stated that there was nothing in the plan that he wished to discuss and indicated that he wanted to start attending substance abuse classes. At a hearing on May 8, 2008, the referee again reviewed the service plan requirements with Gates. Thus, the record shows that Gates was provided with his service plan on numerous occasions.

Gates next argues that the foster care worker failed to comply with a provision of the DHS Children’s Foster Care Manual (CFF), which requires that foster care workers meet with a parent face-to-face in the parent’s home and by phone at specified intervals during a child’s placement in foster care.⁴ Gates also contends that petitioner failed to comply with its own protocol with respect to locating “absent” parents.⁵ Gates argues that all reunification efforts in this case were focused on Allen rather than him. The record belies this contention and clearly indicates that Gates failed altogether to participate in services despite the opportunity to do so.

⁴ See *In re Rood*, *supra* at 97-98, which discusses several provisions of the CFF.

⁵ See *In re Rood*, *supra* at 98 n 32, for a description of the APP.

He failed to complete a substance abuse assessment notwithstanding the fact that his caseworker discussed the assessment with him several times. He simply never followed through with the requirement. He also failed to participate in random drug screens, failed to complete a parenting class, failed to obtain legal employment, and failed to obtain appropriate housing. He further violated the terms of his parole, contrary to his service plan. In addition, he admitted that his caseworker had provided him with referrals to complete his service plan, but apparently never took advantage of these referrals. The record amply establishes that Gates was provided an opportunity to participate in the proceedings.

Finally, Gates argues that petitioner failed to consider a relative placement for Lakendrick instead of placing him in foster care. He contends that petitioner failed to contact his mother to determine if she would be an appropriate placement. The record indicates that the referee advised Gates that his mother should contact the caseworker if she was interested in providing care for Lakendrick. There is no evidence that Gates's mother would have been an appropriate placement or that she was willing to care for Lakendrick. In any event, the failure to place Lakendrick with Gates's mother does not establish that Gates was denied a meaningful opportunity to participate in the proceedings. We perceive no error in this regard.

Quite simply, we conclude that Gates has failed to establish any plain error that affected his substantial rights or that he was otherwise denied his right to procedural due process.⁶

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Kathleen Jansen
/s/ E. Thomas Fitzgerald

⁶ Gates does not specifically challenge the trial court's finding that the statutory grounds for termination were proven by clear and convincing evidence or the trial court's best-interests determination under MCL 712A.19b(5).