

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED  
January 15, 2015

*In re* EDWARDS, Minors.

No. 320583  
Macomb Circuit Court  
Family Division  
LC No. 2013-000391-NA

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Before: FORT HOOD, P.J., and HOEKSTRA and O'CONNELL, JJ.

PER CURIAM.

Respondent-father, A. Edwards, appeals as of right the trial court's order terminating his parental rights to his three minor children under MCL 712A.19b(3)(c) (conditions exist that are not likely to be rectified within a reasonable time), (g) (failure to provide proper care and custody), and (j) (likelihood of harm to the children if returned to the parent). We affirm.

I. FACTS

Between June 2009 and July 2010, the Department of Human Services (the Department) received ten reports of drug abuse, domestic violence, improper supervision, and neglect in the home that Edwards shared with the children and their mother, K. Shotts. Following the Department's petition for protective custody in July 2010, Edwards pleaded no contest to allegations that there was no gas service in the home, he was incarcerated on charges of stalking and domestic violence, and his oldest daughter was hospitalized. Various Children's Protective Services workers testified about those allegations. The trial court found that it had jurisdiction over the children and ordered Edwards to comply with a case service plan.

Edwards's service plan required him to maintain regular contact with the Department, acquire a safe home, address anger management and domestic violence issues, and maintain a lawful and substance free lifestyle. At the July 2011 review hearing, the trial court found that Edwards had substantially complied with his service plan. By February 2011, Edwards and the children had unsupervised day visits.

Through September 2012, Edwards attended his review hearings, and the trial court found that he was substantially complying with his service plan. At the July and September 2012 review hearings, the trial court noted that Edwards's main barrier to reunification was his lack of appropriate housing for the children. In January 2013, the children's caseworker testified

that there were still serious problems with Edwards's home, including that neither the furnace nor water heater functioned.

In April 2013, the children were placed with Shotts for reunification. Edwards failed to attend his April and July 2013 review hearings and failed to maintain contact with the Department. The trial court ordered Edwards's parenting time to be supervised because of his lack of contact with the Department and the court.

The children were removed from Shotts's home in October 2013, after she passed out and left the children unsupervised. The Department found drug paraphernalia in Shotts's home, which was in deplorable condition. The Department temporarily placed the children with Edwards because no other home was available, but it later removed them because of Edwards's lack of participation in the case. Edwards did not appear at his October 2013 review hearing. The Department petitioned to terminate Edwards's parental rights, alleging as additional grounds that he had failed to protect and failed to support the children, used drugs, failed to comply with drug screens, and violated his probation multiple times.

At the termination hearing, Angela Forney, the children's foster care case supervisor through the Department, testified that Edwards completed some portions of his service plan. But Edwards did not provide documentation to show that he complied with his substance abuse services or probation requirements. The Department discovered that Edwards tested positive for cocaine and drugs for which he did not have a prescription. In November 2013, Edwards twice refused to provide random drug screens at the Department and failed to provide drug screens through probation.

Carla Brownlee, Edwards's probation officer, testified that Edwards violated his probation many times. Edwards's violations included failing to enroll in anger management counseling and drug testing, testing positive for opiates in November 2010, driving on a suspended license in June 2011, failing to report and provide drug screens in September 2011, failing to provide proof of counselling, failing to maintain contact with Brownlee for about one year, and failing to report in March 2013. Brownlee testified that Edwards's anger management program discharged him for nonattendance.

According to Forney, Edwards had not maintained suitable housing or contact with the Department. The Department frequently attempted to contact Edwards and accommodate his work schedule. Despite the Department's offer to transport him, Edwards did not visit the children after January 2013. Forney opined that the children would not be safe in Edwards's care because he had not consistently participated in the case and did not provide information that was necessary to develop a safety plan for the children.

Andrea Williams, the children's foster care case supervisor through Starr Commonwealth Services, testified that Edwards did not respond to his caseworkers' attempts to contact him or comply with his service plan. According to Tenia Denard, the children's caseworker from January to May 2013, Edwards did not contact her, return her calls, respond to her attempts to contact him, or consistently attend parenting time. Edwards did not provide documentation about his income, and his home was inappropriate for the children. Brittany Jackson, the children's caseworker from May to September 2013, and Cherrie St. Pierre, the children's

caseworker from September 2013 to January 2014, and Roger Finkbeiner, the children's caseworker from January 2014 on, offered similar testimony.

Edwards testified that he had previously been strongly involved with the children, including the oldest child's medical needs. However, Edwards admitted that he had decided not to participate in his service plan or his probation program. According to Edwards, he chose not to contact the Department because Shotts was attempting to sabotage his efforts to reunite with the children. Edwards also admitted that he had changed residences at least once a year since the oldest child was born.

Regarding the children's best interests, Denard testified that the oldest child has cerebral palsy and requires regular physical and occupational therapy. Finkbeiner testified that the oldest child's therapy needed to be consistent to be effective. Forney testified that the older two children are bonded to Edwards. However, Forney was concerned that Edwards could not provide the children with stability or permanency. Forney testified that the children were thriving in their current foster care placements. Finkbeiner testified that the older two children missed their parents, but were otherwise doing well in foster care.

Following the termination hearing, the trial court found clear and convincing evidence to terminate Edwards's parental rights under MCL 712A.19(b)(3)(c), (g), and (j). It found that the inappropriate conditions in Edwards's home had not been rectified and that additional conditions existed. It found that the children had been subjected to "deplorable and filthy physical conditions with no food available[.]" It found that Edwards had not demonstrated an ability to maintain stable housing, income, and the ability to care for the children. It found that Edwards admitted that he chose not to participate in services and that his decision prevented it from safely returning the children to his care.

The trial court found that Edwards's failures to maintain contact with the Department, work to obtain care of the children, and obtain suitable housing, showed that he could not care for the children on a long-term basis or provide them with a safe and stable environment. It found that Edwards did not intend to harm the children, but that it was likely that the children would be harmed by Edwards's neglect.

The trial court also found that terminating Edwards's parental rights was in the children's best interests. It found that the oldest child had a disability and special needs, but Edwards demonstrated that he could not consistently meet those needs. It found that Edwards's home was inappropriate for the youngest children, who had been in foster care for most of their lives. The trial court found that Edwards and the children clearly had a bond and loved each other. But it found that Edwards's inability to meet the children's needs for safety, security, consistency, and stability outweighed that bond.

## II. STANDARDS OF REVIEW

This Court reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination, its determination regarding the children's best interests, and its determination that the Department engaged in reasonable efforts to reunify a child with his or her parents. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782

NW2d 747 (2010); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A finding is clearly erroneous if, after reviewing the entire record, we are definitely and firmly convinced that the trial court made a mistake. *Mason*, 486 Mich at 152.

### III. REASONABLE EFFORTS TOWARD REUNIFICATION

Edwards contends that the trial court erred when it found that the Department reasonably attempted to reunify him with the children because it failed to contact him, and the children had a large number of caseworkers over the pendency of the case. We disagree.

To properly preserve this issue, a party must timely raise it before the trial court. See *In re Terry*, 240 Mich App 14, 27; 610 NW2d 563 (2000). This Court reviews unpreserved issues for plain error affecting a parent's substantial rights. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). An error is plain if it is clear or obvious, and it affects the parent's substantial rights if it would have altered the outcome of the proceeding. *Id.* at 9.

A parent has a fundamental constitutional liberty interest in the care and custody of his or her children. *Santosky v Kramer*, 455 US 745, 753; 102 S Ct 1388; 71 L Ed 2d 599 (1982). The trial court must make reasonable efforts to reunify a child with his or her parent unless aggravating circumstances are present. MCL 712A.19a(2). However, "there exists a commensurate responsibility on the part of [parents] to participate in the services that are offered." *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012).

In this case, various caseworkers testified extensively about the services they offered Edwards. Forney, Williams, St. Pierre, and Finkbeiner each testified that, beginning in April 2013, Edwards failed to respond to their efforts to contact him. Edwards did not participate in substance abuse services or comply with services offered through his probation. He did not take advantage of transportation services. Edwards admitted that he chose not to participate.

The Department offered reunification services, but Edwards simply failed to participate in them. We are not definitely and firmly convinced that the trial court made a mistake when it found that the Department made reasonable efforts to reunify Edwards and the children.

### IV. STATUTORY GROUNDS FOR TERMINATION

Edwards contends that the trial court clearly erred when it found that MCL 712A.19b(3)(c), (g), and (j) provided grounds to terminate his parental rights. We disagree.

The Department has the burden to prove by clear and convincing evidence that at least one statutory ground supports terminating parental rights. MCL 712A.19b(3); *Trejo*, 462 Mich at 357. MCL 712A.19b(3)(c) provides that the trial court may terminate a parent's rights if either of the following exist:

- (i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

MCL 712A.19b(3)(g) provides that the trial court may terminate a parent's rights if

[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

And MCL 712A.19b(3)(j) provides that the trial court may terminate parental rights if

[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

A parent's failure to participate in and benefit from a service plan provides evidence supporting each of these statutory grounds. *In re White*, 303 Mich App 701, 710-711; 846 NW2d 61 (2014).

In this case, the record evidence overwhelmingly demonstrated that Edwards failed to comply with and benefit from his service plan. We agree with the trial court's succinct summary of Edwards's behavior throughout the three-and-a-half year pendency of this case:

When he was in violation of his probation, he stopped reporting. When he was not complying with the parent-agency agreement, he stopped contacting the workers and he didn't come to court. When he could have reported [Shotts's] neglect, he failed to do so. When he didn't want to deal with Ms. Shotts, he sent his girlfriend to pick up the children. And when he could have visited the children after their most recent removal, he failed to make the arrangements to do so.

Edwards's service plan was designed to assist Edwards in providing a safe and stable environment for his children so that the trial court could return them to his care. While Edwards initially complied with his service plan, he abruptly ceased participating in it in April 2013. Edwards all but cut himself off from contact with the Department and his children, and he admitted that he chose to stop participating.

Edwards demonstrated that he could not provide a safe and stable home. Edwards's housing issues, probation violations, drug use, and failure to visit the children further supported the statutory grounds. We are not definitely and firmly convinced that the trial court made a mistake when it found that statutory grounds supported terminating Edwards's parental rights.

## V. THE CHILDREN'S BEST INTERESTS

Edwards briefly contends that the trial court clearly erred when it found that terminating his parental rights was in the children's best interests because he loved the children and he participated in their lives before the Department removed them from his care. We disagree.

If it finds that statutory grounds support terminating a parent's rights, the trial court must order the parent's rights terminated if it finds from a preponderance of evidence that termination is in the children's best interests. MCL 712A.19b(5); *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013). To determine whether termination of a parent's parental rights is in a child's best interests, the court should consider a wide variety of factors that may include "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). The trial court may also consider "the parent's compliance with his or her case service plan, the parent's visitation history with the child, [and] the children's well-being while in care[.]" *White*, 303 Mich App at 714.

In this case, various caseworkers testified that Edwards failed to comply with his case service plan and failed to visit the children. Forney and Finkbeiner testified that the children were doing well in their respective placements. It was undisputed that Edwards and the children loved each other and were bonded. However, Edwards testified that he had not had a given home for more than a year since the oldest child was born. Edwards inconsistently involved himself in the children's lives throughout the case. Given the record in this case, we are not definitely and firmly convinced that the trial court made a mistake when it found that the children's needs for permanence and stability outweighed their bond with Edwards, who could not meet those needs.

## VI. CONCLUSION

We conclude that the trial court did not clearly err when it found that the Department made reasonable efforts to reunify Edwards with the children, that statutory grounds supported terminating Edwards's parental rights, and that termination was in the children's best interests. Edwards voluntarily stopped participating in reunification services, and the record demonstrated that he would not be able to provide a safe, stable environment for the children.

We affirm.

/s/ Karen M. Fort Hood

/s/ Joel P. Hoekstra

/s/ Peter D. O'Connell