STATE OF MICHIGAN

COURT OF APPEALS

In re G. COURTNEY, Minor.

UNPUBLISHED
December 8, 2015

No. 326491
Crawford Circuit Court
Family Division
LC No. 14-004207-NA

Before: SAAD, P.J., and STEPHENS and O'BRIEN, JJ.

PER CURIAM.

Respondent-mother, T. Courtney ("respondent"), appeals as of right the trial court's order terminating her parental rights to the minor child, GC, pursuant to MCL 712A.19b(3)(j). We affirm.

As a 14-year-old, respondent gave birth to her first child, KP, in California in 1998. Child protective services investigator Craig Sharp obtained the limited records that pertained to that child. Apparently, in 2001, respondent was the victim of domestic violence and called authorities because of the physical abuse. When the police arrived, they found both parents under the influence of methamphetamines, and the home was in a deplorable condition. KP was found wearing a soiled diaper with pieces of glass from a broken lamp with her in the crib. Although KP was removed from the home at that time, respondent testified that she voluntarily released her parental rights three years later, in 2004, to allow KP to be adopted by her grandmother, who could provide a better life for the child.

In 2010, petitioner sought termination of respondent's parental rights to her second child, SM. The circumstances that brought SM into care included domestic violence between the parents and substance abuse issues involving alcohol and opiates. Although the agency had a policy regarding the filing of automatic petitions for termination of parental rights because of a prior release of rights, the agency eliminated the termination request in the petition because of the extensive period of time since the last removal and provided services. Respondent did not comply with or benefit from services. Ultimately, because custody was given to the biological father, termination of respondent's parental rights to SM was not pursued. Although respondent was not precluded from visiting SM, she only exercised it three to four times in the last three years.

Respondent gave birth to GC on August 6, 2014, and he suffered from neonatal abstinence syndrome. Apparently, respondent used opiates (heroin) during her pregnancy, although she asserted that she curtailed her drug use and treated with Subutex, an anti-addiction

medication after learning of the pregnancy. However, because respondent stopped taking the medication before the delivery, GC endured tremors and was hospitalized for nearly one month. As a result of the child's condition, petitioner filed a petition to terminate respondent's parental rights at the initial disposition stage, and also noted the prior voluntary relinquishment of her parental rights to KP.

Despite the filing of the petition, GC's foster care worker, Stephen Reinke, opined that respondent "essentially started a reunification plan" because the case commenced in August 2014, but the hearing regarding the termination of her parental rights was adjourned until February 2015. Respondent was advised to use the six-month period to engage in counseling with Catholic Human Services, visit with the child, and submit to drug screens. Workers visited respondent's home in case the trial court decided not to terminate her rights, and the home was found to be appropriate. However, respondent was terminated from counseling because of her lack of participation and did not consistently visit the child, even failing to see the child for 35 days. Additionally, respondent relapsed; she admitted to marijuana use, but alleged that other drugs found in her system were caused by a valid prescription for dental work. Respondent alleged that her inadequacies were caused by the depression she experienced from GC's removal. She also explained that she failed to visit the child because of illness. Nonetheless, the trial court terminated her parental right to GC, finding that respondent neglected to address her substance abuse issues, her domestic relationships, and her mental health, and concluded that termination was in GC's best interests.

Respondent first contends that the trial court erred by accepting the mandatory petition to terminate parental rights pursuant to petitioner's policy manual. We disagree. This issue is reviewed for plain error affecting substantial rights because respondent did not raise it in the trial court. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

Generally, the interpretation and application of a statute presents a question of law that an appellate court reviews de novo. *Whitman v City of Burton*, 493 Mich 303, 311; 831 NW2d 223 (2013). "Application of the law to the facts presents a question of law subject to review de novo." *Book-Gilbert v Greenleaf*, 302 Mich App 538, 542; 840 NW2d 743 (2013). The power to make laws rests with the Legislature. *In re Complaint of Rovas Against SBC Mich*, 482 Mich 90, 98; 754 NW2d 259 (2008). Although administrative agencies have "quasi-legislative" powers, such as the authority to make rules, the agencies cannot exercise legislative power by creating new laws or changing the laws enacted by the Legislature. *Id*. An agency's interpretation of a statute is not binding on the courts, rather, "[s]tatutory construction is the domain of the judiciary[.]" *Id*. The objective of statutory interpretation is to give effect to the legislative intent by examining the plain language of the statute. *In re AJR*, 496 Mich 346, 352; 852 NW2d 760 (2014). When the language of the statute is unambiguous, further judicial construction is not required, and it is presumed that the Legislature intended the language plainly expressed. *Id*. at 352-353.

Child protective proceedings are divided into two different phases known as the adjudicative phase and the dispositional phase. *In re Kanjia*, 308 Mich App 660, 663; 866 NW2d 862 (2014). The adjudicative phase merely involves the court's determination whether it has jurisdiction over the minor child by determining whether the respondent's conduct created an environment in which it was unfit for the juvenile to live because of neglect, cruelty,

drunkenness, criminality, or depravity. *In re Wanger*, 305 Mich App 438, 445; 853 NW2d 402 (2014), rev'd on other grounds ___ Mich ___ (2015). The acquisition of jurisdiction and the burden of proof was set forth in *In re PAP*, 247 Mich App 148, 152-153; 640 NW2d 880 (2001):

> In child protective proceedings, the trial court must first determine whether it may exercise jurisdiction over the child. *In re Brock*, 442 Mich 101, 108; 499 NW2d 752 (1993). "To acquire jurisdiction, the factfinder must determine by a preponderance of the evidence that the child comes within the statutory requirements of MCL 712A.2[.]" *In re Brock*, *supra* at 108-109; MCR 5.972(C)(1). The procedural safeguards used in adjudicative hearings protect parents from the risk of erroneous deprivation of their liberty interest in the management of their children. *In re Brock*, *supra* at 111. Jurisdiction over a minor child is acquired by trial, plea of admission, or plea of no contest. MCR 5.971, 5.972; *In re Miller*, 178 Mich App 684m 686; 445 NW2d 168 (1989). Parents may demand a jury determination of the facts in the adjudicative phase of child protective proceedings. MCR 5.911(A); *In re Brock*, *supra* at 108; *In re Miller*, *supra* at 686. "If the court acquires jurisdiction, the dispositional phase determines what action, if any, will be taken on behalf of the child." *In re Brock*, *supra* at 108. The termination of parental rights requires further dispositional hearings and proof of the statutory elements for termination by clear and convincing evidence. *Id*. at 111-112; MCL 712A.19b(3).

Once the court acquires jurisdiction over the child, the dispositional phase occurs. *In re Kanjia*, 308 Mich App at 664. During the dispositional phase, the court has broad authority to effectuate orders designed to protect the welfare of the child that include establishing what action, if any, must be taken on behalf of the child. *Id*.; *In re AMAC*, 269 Mich App 533, 537-538; 711 NW2d 426 (2006). The trial court's authority includes "ordering the parent to comply with [petitioner's] case service plan and ordering [petitioner] to file a petition for the termination of parental rights[.]" *Kanjia*, 308 Mich App at 664.

Contrary to respondent's assertion, petitioner's policies are not *approved* by the trial court, and there is no allegation that petitioner's policies created new law or altered existing laws enacted by the Legislature. *In re Complaint of Rovas*, 482 Mich at 98. To the extent that respondent submits that petitioner's policies are codified in MCL 722.638, the statute's plain language does not require approval by the trial court. *In re AJR*, 496 Mich at 352-353. Rather, MCL 722.638(1) requires petitioner to "submit a petition for authorization" to the court if petitioner *determines* certain criteria are established. The allegations in the *petition* and proofs are examined by the factfinder to determine whether jurisdiction should be assumed, not petitioner's underlying determination regarding the conditions that require the filing of a mandatory petition. Curiously, in the present case, respondent requested a jury trial at the adjudication phase. During the trial, petitioner presented proofs regarding respondent's prior contacts with agencies regarding her children, but more importantly, presented medical testimony regarding respondent's addiction and treatment during her pregnancy and the impact on GC. Respondent does not contest the process involved and the evidence offered in support of the assumption of jurisdiction and the jury's determination.

In MCL 722.638, the Legislature delineated criteria to determine when petitioner must file a petition, but all further determinations regarding the child's well-being and placement are removed from petitioner and rest with the court. *Jasinski v Tyler*, 729 F3d 531, 543-544 (CA 6 2013). Once the court assumes jurisdiction, the paramount concern is the placement and safety of the child. *Id*. at 544. Accordingly, respondent's contention[1] that the trial court must examine and approve petitioner's underlying basis for filing a mandatory petition is without merit.

Next, respondent alleges the trial court erred in accepting the reasonable efforts to reunify the family when the efforts offered by petitioner involved KP and SM, not GC, and deprived her of due process of law by failing to provide services. We disagree. Contrary to respondent's assertion, the trial court is entitled to terminate parental rights at the initial disposition, and shall order that efforts for reunification shall not be made. MCL 712A.19b(4); MCR 3.977(E). Even if the petition did not request termination at the initial disposition, the trial court has the authority to order petitioner to do so. *Kanjia*, 308 Mich App at 664. Finally, petitioner was not required to provide reunification services because termination was the agency's goal. *In re Moss*, 301 Mich App 76, 90-91; 836 NW2d 182 (2013).

In *In re AH*, 245 Mich App 77, 82-85; 627 NW2d 33 (2001), the respondent challenged MCL 722.638,[2] asserting that it deprived her of due process and equal protection rights because, as a parent whose parental rights were terminated in the past, she was treated differently without justification and requiring a petition be filed under specific circumstances was inflexible and created a risk that a person's rights would be terminated without process. This Court rejected the challenges. First, it held that MCL 722.638 was essentially a codification of the anticipatory neglect doctrine with an added requirement that there be a risk of harm to the child. *Id*. at 82-84. It was further concluded that a respondent was not deprived of procedural due process because petitioner was still required to meet its proofs, and the trial court had to render a determination regarding the request as well as analyze the child's best interests. *Id*. at 84-85. This claim of error does not entitle respondent to appellate relief.

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[1] Respondent also alleged that petitioner failed to hold a case conference in accordance with its policies, and her voluntary relinquishment of KP did not satisfy the criteria of MCL 722.638. Petitioner was alerted to GC's birth and the symptoms of drug withdrawal exhibited at birth. His condition demonstrates why the import is not on the ability of petitioner to research respondent's underlying contacts with child protective service entities in other states, but on obtaining the appropriate medical treatment and ensuring the safety of the child as soon as possible. Moreover, MCL 722.638(2) was satisfied because respondent subjected GC to an unreasonable risk of harm by ingesting drugs during her pregnancy, seeking treatment, and stopping the treatment contrary to medical advice. We also note that in closing argument at disposition, respondent's counsel conceded that the relinquishment of rights to KP constituted a termination of parental rights and did not challenge the criteria of MCL 722.638.

[2] Respondent contends that her issues raise questions of first impression. However, the phrasing of her issues is novel; the question of the constitutionality and scope of MCL 722.638 was challenged and rejected by this Court.

Lastly, respondent contends that the trial court erred by failing to receive a case service or treatment plan prior to termination. As indicated, there is no requirement that the agency engage a respondent in services when termination is the goal. *In re Moss*, 301 Mich App at 90-91. Although a plan was not ordered by the trial court, the agency workers nonetheless recommended that respondent engage in counseling, supervised visitation, and drug screens. They also notified her of where she could obtain the services and conducted a study of respondent's home and found it to be appropriate in case the trial court did not terminate her rights. Respondent initially engaged in services, but her counseling was terminated for lack of participation, and she significantly missed supervised visits, even failing to see the child for 35 days. The contention that respondent was not provided services is belied by the record, irrespective of the lack of a formal case service plan or agency agreement.[3]

Affirmed.

/s/ Henry William Saad
/s/ Cynthia D. Stephens
/s/ Colleen A. O'Brien

[3] Although respondent does not challenge the evidentiary standards to support the statutory ground for termination and GC's best interests, the evidence supported both rulings. *In re Moss*, 301 Mich App 76, 80, 83. The trial court found that respondent did not address her addiction issues, did not complete counseling, and did not engage in visitation, and therefore, GC could not be returned. GC was hospitalized for nearly one month because of his withdrawal symptoms. The record supports the trial court's findings.