STATE OF MICHIGAN

COURT OF APPEALS

In re GILLRIE, Minors.

UNPUBLISHED
January 26, 2016

No. 327051
Wayne Circuit Court
Family Division
LC No. 13-514182-NA

In re GILLRIE, Minors.

No. 327052
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Before: RIORDAN, P.J., and JANSEN and FORT HOOD, JJ.

PER CURIAM.

In Docket No. 327051, respondent-mother appeals as of right the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(*i*), (g), and (j). In Docket No. 327052, respondent-father appeals as of right the same trial court order, which also terminated his parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(*i*), (g), and (j). We affirm in both appeals.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

In August 2013, petitioner, the Department of Health and Human Services ("DHHS"), filed a petition for temporary custody of the children on grounds of physical neglect, lack of housing, criminality, and substance abuse by respondent-mother and respondent-father. Both respondents had been incarcerated, and the family was homeless. The family had a history of involvement with Children's Protective Services (CPS) and CPS had offered them services, but both respondents continued to struggle with drug addictions and other issues.

The DHHS filed a petition after police officers picked up respondent-mother and the two minor children in Dearborn, Michigan. According to the police report, respondent-mother was arrested for outstanding warrants. The report also indicated that the children, who were ages four and six at the time, were filthy and underweight. One child did not have shoes, and both children's feet were scabbed and calloused from walking numerous miles per day with respondent-mother. All of the family's possessions appeared to be in a stroller.

At subsequent hearings in September 2013, the trial court accepted pleas of admission entered by both respondents concerning the allegations in the petition[1] and it exercised jurisdiction over the children. DHHS prepared a parent-agency agreement and an initial service plan for both respondents, which required the parents to participate in parenting classes, individual counseling, substance abuse services, and weekly random drug screens; provide proof of suitable housing and a legal source of income; maintain visitation with the children; obey all court orders; and maintain regular contact with caseworkers. The trial court ordered both respondents to comply with the service plans prepared by DHHS and obey all court orders.

Over the next 15 months, respondents sporadically participated in services. Although they initially engaged in visits with the children, they failed to regularly attend scheduled visitation. As the months passed, respondents stopped visiting the children, and the children stopped asking about their parents. Additionally, although they intermittently participated in services, both respondents were "early terminated" from services on multiple occasions due to nonattendance. Despite multiple re-referrals, respondents failed to complete their service programs. Respondents also failed to provide weekly random drug screens. While respondent-father provided proof of employment early in the proceedings, he did not continue to do so. Both respondents also failed to maintain contact with caseworkers assigned to their cases. Their whereabouts were unknown at several points throughout the proceedings, and they failed to appear at some of the hearings. Both were briefly incarcerated, and they failed to participate in the services offered by DHHS and Orchards Children's Services following their release from jail.

In December 2014, the trial court authorized a petition for the termination of respondents' parental rights. At the March 17, 2015 hearing on the termination petition, both respondents appeared and testified. Neither of them had seen the children since April 2014.

Respondent-father testified that he relapsed into drug use and was incarcerated between September 2014 and November 2014. Upon his release, he began working 20 hours per week at a plumbing company, which involved a full journeyman's apprenticeship. He also began participating in services and an Opiate Court program, which included frequently meeting with his probation officers and the judge overseeing his case, submitting to searches of his home, attending Alcoholics Anonymous/Narcotics Anonymous meetings five to seven days per week, attending counseling sessions two times per week, and completing daily drug and alcohol testing. All of his drug and alcohol screens had been negative. However, the caseworker testified that respondent failed to submit documentation of these services or return information releases that the caseworker sent to him shortly before the termination hearing. Respondent-father confirmed that he would be sent to jail if he failed to comply with the Opiate Court program. In addition, respondent-father explained that he had not attempted to visit his children since his release from jail because he "was pretty much being told by every party that [his] parental rights were being terminated," so he believed that it would be destructive to start a relationship with the children

[1] Although respondent-father's attorney initially indicated that respondent-father did not contest the allegations in the petition, respondent-father subsequently testified on the record regarding each allegation in the petition.

when he would be unable to continue it in the future. He only visited the children four times during the pendency of the case.

Respondent-mother testified that she was incarcerated between November 2014 and February 2015 and still had an outstanding warrant at the time of the termination hearing. She was drug free from December 2013 through April or May 2014, but subsequently relapsed. She had turned in negative drug screens for her probation, but did not notify her caseworker of these screens. She claimed that she had attempted to visit the children in October 2014, but her sister told her that visitation had been terminated.[2] At the time of the termination hearing, she was living with a friend in Detroit and was unemployed, although she intended to find a job once she secured a birth certificate or identification card.

The trial court found clear and convincing evidence to terminate respondents' parental rights under MCL 712A.19b(3)(c)(*i*) (failure to rectify conditions of adjudication), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood of harm if the children were returned to the parent's home). It expressly determined that DHHS made reasonable efforts to facilitate reunification of the family and rectify the conditions that instigated the children's removal from respondents' care. The trial court also concluded that termination of respondents' parental rights was in the best interests of the children despite the children's placement with a relative, noting the length of time that the children had been in foster care, the children's need for stability and permanent planning for their growth and development, respondents' failure to demonstrate significant progress throughout the case, and the fact that the relative-caregiver was willing to provide long-term care the children.

Both respondents now appeal. Respondent-mother first argues the statutory bases for the termination of her parental rights. Both respondents contend that DHHS failed to make reasonable efforts to reunite them with their children, and that the trial court erred in concluding that termination of their parental rights was in the best interests of the children.

II. STATUTORY BASIS FOR TERMINATION

In Docket No. 327051, respondent-mother contends that the trial court clearly erred in finding a statutory basis for termination, arguing that the termination of her parental rights was not supported by clear and convincing evidence. We disagree.

A. STANDARD OF REVIEW

In order to terminate parental rights, the trial court must find that a statutory basis for termination under MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). "This Court reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination." *In re White*, 303 Mich App 701, 709; 846 NW2d 61 (2014). "A finding is clearly

[2] Contrary to respondent-mother's understanding, court orders continued to provide for supervised visitation.

erroneous [if] although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010) (quotation marks and citation omitted; alteration in original).

B. ANALYSIS

The trial court did not clearly err in finding that clear and convincing evidence supported termination of respondent-mother's parental rights under MCL 712A.19b(3)(g). Contrary to respondent-mother's claims on appeal, the record—and respondent's own testimony at the termination hearing—confirms the trial court's finding that, except for sporadic progress, respondent largely failed to participate in services offered by DHHS. She did not complete or even participate substantially in court-ordered counseling, substance abuse services, or parenting classes. Additionally, respondent-mother relapsed into drug use, and she was incarcerated for three months during the case. She still had an outstanding warrant at the time of the termination hearing. Although she claimed that she tested negative for illegal substances while on probation, she never provided documentation of those negative screens. Further, respondent-mother failed to visit the children more than a few times throughout the course of the child protective proceedings, and she had not seen her children in approximately one year at the time of the termination hearing. She did not have a source of income, although she testified that this was related to difficulties in securing an identification card or birth certificate. She also did not have her own housing, as she was staying with a friend. A parent's failure to comply with a case service plan can be evidence of the parent's inability to provide proper care and custody. See *In re Trejo*, 462 Mich 341, 360 n 16, 360-361; 612 NW2d 407 (2000), abrogated in part by statute on other grounds as stated in *In re Moss*, 301 Mich App 76, 83 (2013); see also *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). Although respondent-mother testified at the termination hearing that she was committed to her sobriety and completing the parent-agency agreement, this stated commitment was too little, too late, given her lack of progress throughout the course of the proceedings.

Therefore, in light of respondent-mother's lack of progress in the nineteen months after the children were removed from her care, the trial court did not clearly err in concluding that respondent-mother "fails to provide proper care or custody for the child[ren,] and there is no reasonable expectation that [respondent-mother] will be able to provide proper care and custody within a reasonable time considering the child[ren]'s age[s]." MCL 712A.19b(3)(g). Accordingly, the trial court properly found that a statutory basis for termination existed under MCL 712A.19b(3)(g).

Because only one statutory ground must be established to support termination of a respondent's parental rights, *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009), we need not consider whether an independent statutory basis for termination existed under MCL 712A.19b(3)(c)(*i*) and (j). Nonetheless, in light of the circumstances discussed above, including respondent-mother's consistent failure to comply with her case service plan and failure to rectify the conditions that existed when the children were removed from her care, we conclude that a statutory basis for termination was also established under MCL 712A.19b(3)(c)(*i*) and (j). See also MCL 712A.19a(5); MCR 3.976(E)(2); *In re Trejo*, 462 Mich at 346 n 3.

III. SUFFICIENCY OF REUNIFICATION EFFORTS

In Docket Nos. 327051 and 327052, both respondents argue that DHHS failed to provide sufficient services for reunification, such that termination of their parental rights was improper. We disagree.

A. STANDARD OF REVIEW AND APPLICABLE LAW

To preserve an issue regarding the adequacy of the services provided during child protective proceedings, a respondent must object or otherwise raise the issue when the services are offered. *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012) ("The time for asserting the need for accommodation in services is when the court adopts a service plan . . . ." [Quotation marks and citation omitted.]). Likewise, a respondent fails to preserve his challenge to a case service plain if he waits until late in the proceedings to challenge the services offered. See *id*.; cf. *In re Terry*, 240 Mich App 14, 26-27; 610 NW2d 563 (2000).

Respondent-mother briefly asserted on at least one occasion that she was not receiving sufficient services, which effectively raised an issue regarding whether reasonable reunification efforts had been made with regard to respondent-mother. The trial court consistently concluded throughout the proceedings that DHHS had made reasonable efforts. Thus, in Docket No. 327051, this issue is arguably preserved. See *In re TK*, 306 Mich App 698, 703; 859 NW2d 208 (2014) ("In general, issues that are raised, addressed, and decided by the trial court are preserved for appeal."). We review the trial court's decision that petitioner made reasonable efforts to reunify the family for clear error. See *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005).

In Docket No. 327052, respondent-father does not assert that he preserved this issue by objecting or otherwise raising an issue regarding the adequacy of services in the trial court when the services were offered or when the court adopted a case service plan. Likewise, our review of the record confirms that respondent-father, at most, asserted a lack of services or lack of accommodation during the termination hearing, which was not sufficient to preserve the issue.[3] See *id*.; cf. *In re Terry*, 240 Mich App at 26-27. Thus, we deem this issue unpreserved with regard to respondent-father.

We review unpreserved issues for plain error affecting substantial rights. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). To demonstrate such an error, a respondent must show that (1) an error occurred, (2) the error was clear or obvious, and (3) "the plain error affected [the respondent's] substantial rights," which "generally requires a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings." *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). "When plain error has occurred, [r]eversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant

[3] Although respondent-father's counsel briefly mentioned transportation difficulties, an objection or issue regarding the services offered on the basis of respondent-father's lack of transportation was never raised throughout the proceedings.

or when an error seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence." *In re Utrera*, 281 Mich App at 9 (quotation marks and citation omitted; alterations in original).

"In general, when a child is removed from the parents' custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *In re Fried*, 266 Mich App at 542, citing MCL 712A.18f(1), (2), and (4); see also *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008). Reasonable efforts to reunify parents and children must be made "in all cases" except those involving aggravated circumstances that are not present here. MCL 712A.19a(2); *In re Mason*, 486 Mich at 152. Likewise, when the petitioner fails to offer services or provide a reasonable opportunity for a respondent to participate in services, the result is a gap in the evidentiary record that renders termination of parental rights improper and premature. *In re Mason*, 486 Mich at 152, 158-160.

However, "[w]hile the DH[H]S has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered." *In re Frey*, 297 Mich App at 248. When a respondent fails to adequately participate in, and benefit from, services that are actually offered by petitioner, he is not entitled to claim that petitioner was required to provide additional services. See *id*.

B. APPLICATION

First, contrary to respondent-mother's claim on appeal that no services were provided in this case, the record clearly shows that both respondents were referred and re-referred for numerous services, including, *inter alia*, visitation opportunities, drug screens, parenting classes, individual counseling, and substance abuse counseling.[4] Re-referrals were provided after respondents were "early terminated" from services multiple times due to nonparticipation. Although there was a delay in making service referrals at the beginning of the case, repeated referrals were made thereafter, and respondents were offered sufficient time and assistance to address their substance abuse and other issues. The fact that they failed to take advantage of, or benefit sufficiently from, the services that were offered was not the fault of the caseworkers, agencies, or trial court. As stated *supra*, parents have a responsibility to participate in services offered, and a failure to participate does not render the services inadequate. *Id*.

Respondent-father argues that he was never provided an *additional* opportunity to participate in a parent-agency agreement or case service plan, even though he was "ready, willing, and able to comply with whatever court-ordered services were paid by [DHHS]." Despite respondent-father's claims, the record clearly indicates that respondent-father failed to participate in services ordered by the court in this case and failed to maintain contact with his

[4] Additionally, contrary to respondent-mother's claim on appeal, the trial court expressly found that DHHS made reasonable efforts to address the issues that led to adjudication and reunify both respondents with their children. For the reasons stated in this opinion, the trial court's finding was not clearly erroneous.

caseworkers during the pendency of the proceedings. Likewise, at the very end of the proceedings, respondent-father failed to provide documentation of programs that he was completing for his probation and Opiate Court program, as requested by his caseworker to demonstrate compliance with the court-ordered services. On this record, given respondent-father's consistent noncompliance with court-ordered services offered by DHHS, especially in conjunction with his utter failure to maintain contact with his caseworker, we cannot conclude that DHHS's failure to provide an *additional* parent-agency agreement or additional services constituted a plain error affecting his substantial rights. See *In re Frey*, 297 Mich App at 248. When a respondent fails to sufficiently participate in services that were, in fact, provided by DHHS, he is not entitled to claim that DHHS was required to provide additional services. See *id*.; see also *In re Utrera*, 281 Mich App at 8.

Respondent-father also argues that DHHS never provided a reasonable opportunity for him to participate in services because he was residing in Oakland County, while all of the services provided by the agency were in Wayne County, and he was unable to obtain transportation to those services. Notably, a caseworker testified at a June 23, 2014 hearing, which occurred after respondent-father had moved to Oakland County, that respondent was scheduled to receive in-home substance abuse therapy, but he repeatedly canceled the appointments or was absent when the therapist visited his home. Further, as discussed *supra*, the record—including respondent-father's own testimony—clearly indicates that he failed to maintain contact with his caseworkers throughout the course of the proceedings. When he did make contact with a caseworker in January 2014 after moving to Oakland County in December 2013, he did not follow up with her, as she instructed, in order to begin services.

As such, there is no indication that the location of the services or that additional transportation assistance would have increased respondent-father's participation in the services provided by DHHS in this case. Further, given respondent father's consistent failure to maintain contact with his caseworkers, and his testimony that he consistently complied with the services and expectations associated with his Opiate Court program—which were required in order to avoid returning to jail—it is apparent that respondent-father's own lack of initiative is a significant reason for his failure to comply with this parent-agency agreement. Therefore, we cannot conclude that DHHS's alleged lack of reunification efforts affected the outcome of the proceedings, *Carines*, 460 Mich at 763, or otherwise warrants reversal, see *In re Utrera*, 281 Mich App at 9.

Finally, both respondents assert that DHHS failed to provide services or adequately maintain contact with them during their incarceration. We find no basis for concluding that DHHS's failure to provide services during respondent-father's brief period of incarceration between September 2014 to November 2014, and respondent-mother's brief period of incarceration between November 2014 and February 2015, demonstrates that DHHS failed to expend reasonable efforts for reunification in this case. Cf. *In re Mason*, 486 Mich at 156-160, 162-163. The record clearly reveals that both respondents had ample opportunity to participate

in DHHS-offered services before and after their incarceration.[5] Likewise, the trial court's termination of respondents' parental rights was not based on circumstances related to their incarceration or lack of access to services during their incarceration. As the trial court noted, they consistently failed to participate in court-ordered services, largely failed to participate in visitation with their children, and failed to remain in contact with their caseworkers throughout the pendency of the case.

Therefore, given the numerous services offered by DHHS during the pendency of this case, we reject respondents' claim that DHHS failed to provide adequate services before their parental rights were terminated.

IV. BEST INTERESTS DETERMINATION

Lastly, in Docket Nos. 327051 and 327052, both respondents argue that the trial court clearly erred in concluding that termination of their parental rights was in the children's best interests. We disagree.

A. STANDARD OF REVIEW AND APPLICABLE LAW

Pursuant to MCL 712A.19b(5), "[t]he trial court must order the parent's rights terminated if the [petitioner] has established a statutory ground for termination by clear and convincing evidence and it finds from a preponderance of the evidence on the whole record that termination is in the children's best interests." *In re White*, 303 Mich App at 713 (footnotes omitted). We review for clear error a trial court's best interests determination. *Id*., citing MCR 3.977(K).

In deciding a child's best interests, a court may consider "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." *Id*. (quotation marks omitted), quoting *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). "The trial court may also consider a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption." *Id*. at 714.

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[5] To the extent that respondent-mother briefly argues that the trial court violated *In re Mason*, 486 Mich at 156-160, "in failing to schedule a hearing and serve her with the permanent custody petition during the time period that [she] was in jail and they knew where she was to secure her participation," we deem this argument abandoned because it was not raised in the statement of the questions presented. See *In re McEvoy*, 267 Mich App 55, 75 n 5; 704 NW2d 78 (2005). Nevertheless, this issue was not preserved in the trial court, and respondent-mother has failed to identify any resulting prejudice from the trial court's purported error. See *Carines*, 460 Mich at 763; *In re Utrera*, 281 Mich App at 8-9. Respondent-mother personally acknowledged at the termination hearing that she previously received a copy of the termination petition and that she had an opportunity to prepare for the hearing with her lawyer. Additionally, she confirmed on the record that she was personally served with the petition while she was present at the hearing.

B. APPLICATION

Although both respondents testified that they loved their children and wished to care for them, the trial court did not clearly err in concluding that termination was in the children's best interests. It is very apparent that respondents were unable to care for the children. Throughout the proceedings, respondents largely failed to comply with their case service plans and entirely failed to complete court-ordered services that would have demonstrated their ability to care for the children. Further, both respondents relapsed into drug use after the child protective proceedings were initiated. They seldom visited, and their bond with the children grew weak, as demonstrated by the fact that the children rarely asked about their parents by the time of the termination hearing. On the other hand, the record reveals that the relative caregiver,[6] who was willing to provide a permanent home, appropriately cared for the children and had bonded with them. The record also supports the trial court's conclusion that the children's need for permanency, stability, and finality weighed in favor of terminating respondents' parental rights. Thus, the trial court did not clearly err in finding, by a preponderance of the evidence in the record, that termination of respondents' parental rights was in the best in interests of the children. See *id*. at 713.

Respondent-father argues that the trial court failed to expressly consider the children's placement with a relative during its best interests determination. Generally, a child's placement with a relative weighs against termination and is "an explicit factor to consider in determining whether termination [is] in [a child's] best interests." *In re Mason*, 486 Mich at 164, citing MCL 712A.19a(6)(a); see also *In re Olive/Metts Minors*, 297 Mich App at 43. If the court fails to expressly address placement with a relative, the record is inadequate to make a best-interest determination, and reversal is required. *In re Olive/Metts*, 297 Mich App at 43. However, contrary to respondent-father's claim, the trial court explicitly considered the children's placement with a relative and stated, "*Even though the children are placed with a relative*, the [c]ourt does find that it is *still* in their best interest that the parental rights be terminated." (Emphasis added.)

Respondent-father also argues that the trial court erred because it failed to consider the best interests of each child individually. Previously, we held "that the trial court 'has a duty to decide the best interests of each child individually.' " *In re White*, 303 Mich App at 715, quoting *In re Olive/Metts*, 297 Mich App at 42. However, we later clarified this rule, explaining that

> if the best interests of the individual children *significantly* differ, the trial court should address those differences when making its determination of the children's best interests. [Our previous holding in *In re Olive/Metts*] does not stand for the proposition that the trial court errs if it fails to explicitly make individual and—in many cases—redundant factual findings concerning each child's best interests. [*Id*. at 715-716.]

[6] Respondent-father erroneously states that the children were placed with his father. The record indicates otherwise and shows the children were placed with respondent-mother's sister.

Consistent with this rule, the trial court expressly found that "[t]he children are similarly situated in this matter and placed with the same licensed relative[,] so the [c]ourt does not need to make individual findings as to the best interest of each of the children." Respondent-father has not identified any circumstances that would cause the children's needs or interests to differ, and he has not provided any argument regarding why the best interests of each child are different in this case. Our review of the record similarly confirms that the children, who were eight and almost six at the time of the termination hearing, were similarly situated. Accordingly, we reject defendant's claim that the trial court erred in failing to evaluate the children's best interests individually.

V. CONCLUSION

In Docket Nos. 327051 and 327052, respondents have failed to establish that any of the claims raised on appeal warrant reversal of the order terminating their parental rights.

Affirmed.

/s/ Michael J. Riordan
/s/ Kathleen Jansen
/s/ Karen M. Fort Hood