STATE OF MICHIGAN

COURT OF APPEALS

In re A. S. CRAWFORD, Minor.

UNPUBLISHED
March 14, 2017

No. 334166
Wayne Circuit Court
Family Division
LC No. 16-522398-NA

Before: RIORDAN, P.J., and METER and FORT HOOD, JJ.

PER CURIAM.

Respondent appeals as of right an order terminating her parental rights to her minor child pursuant to MCL 712A.19b(3)(g), (i), (j), and (l).[1] We affirm.

Respondent first argues that the trial court should have appointed a guardian ad litem before allowing her to testify and make admissions that were used in these proceedings. Specifically, respondent claims that a guardian ad litem was necessary because of her mental health issues. We disagree.

Where respondent did not advance this claim in the trial court, it was not preserved for appellate review. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). Accordingly, this Court's review "is therefore limited to plain error affecting substantial rights." *Id*. (Citation omitted.)

> [A]n error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings. When plain error has occurred, [r]eversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant *or* when an error seriously affect[ed] the fairness,

[1] We also note that respondent, aside from generalized assertions that the trial court erred in finding grounds for termination, does not present a specific legal argument, supported by facts and legal authority, challenging the trial court's conclusions with regard to the statutory grounds for termination. Respondent cannot announce in a perfunctory fashion a position and leave it up to this Court to rationalize the basis for the claims, or search for applicable authority to support her position. *Clay v Doe*, 311 Mich App 359, 365; 876 NW2d 248 (2015).

integrity or public reputation of judicial proceedings independent of the defendant's innocence. [*Id*. at 9 (citations and quotation marks omitted).]

In a child protective proceeding, a trial court may, "appoint a guardian ad litem for a party if the court finds that the welfare of the party requires it." MCR 3.916(A). When accepting a plea of admission from a party in child protective proceedings, the trial court must comply with the applicable court rule, MCR 3.971. This court rule provides, in pertinent part, as follows:

> **(A) General**. A respondent may make a plea of admission or of no contest to the original allegations in the petition. The court has discretion to allow a respondent to enter a plea of admission or a plea of no contest to an amended petition. The plea may be taken at any time after the filing of the petition, provided that the petitioner and the attorney for the child have been notified of a plea offer to an amended petition and have been given the opportunity to object before the plea is accepted.
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> **(B) Advice of Rights and Possible Disposition.** Before accepting a plea of admission or plea of no contest, the court must advise the respondent on the record or in a writing that is made a part of the file:
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> (1) of the allegations in the petition;
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> (2) of the right to an attorney, if respondent is without an attorney;
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> (3) that, if the court accepts the plea, the respondent will give up the rights to
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> (a) trial by a judge or trial by a jury,
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> (b) have the petitioner prove the allegations in the petition by a preponderance of the evidence,
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> (c) have witnesses against the respondent appear and testify under oath at the trial,
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> (d) cross-examine witnesses, and
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> (e) have the court subpoena any witnesses the respondent believes could give testimony in the respondent's favor;
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> (4) of the consequences of the plea, including that the plea can later be used as evidence in a proceeding to terminate parental rights if the respondent is a parent.
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> **(C) Voluntary, Accurate Plea.**
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> (1) *Voluntary Plea.* The court shall not accept a plea of admission or of no contest without satisfying itself that the plea is knowingly, understandingly, and voluntarily made.

On appeal, respondent's sole challenge to her plea relates to her assertion that where there were questions regarding her mental health, a guardian ad litem was necessary. However, our close review of the record confirms (1) that the trial court adhered to the requirements of MCR 3.971 and (2) that respondent, represented by counsel, clearly understood the nature of the proceedings and the consequences of her plea of admission.[2] Notably, the trial court went through the specific requirements of MCR 3.971 in turn, and respondent responded with her understanding.[3] Respondent denied being threatened or forced to make her plea of admission, and the trial court additionally ascertained that her plea was the result of her "own free will." In particular, the trial court ensured that respondent was cognizant that her plea of admission would be used to establish jurisdiction and the statutory bases for termination, and that a hearing would subsequently be conducted to determine whether termination of her parental rights was in the best interests of her child. At one point, respondent acknowledged that she was familiar with the termination of parental rights process because she just went through the same proceedings in Oakland County involving another minor child. Under these circumstances, we are satisfied that the trial court, which took great care to ensure that respondent entered her plea in a knowing, understanding and voluntary manner, more than adequately complied with MCR 3.971. We are also not persuaded that a guardian ad litem was necessary. Moreover, where the record reflects that respondent refused to undergo a mental health evaluation in the proceedings involving her other minor child in Oakland County, and where she stated that she would not agree to such an evaluation in this case, her claim that a guardian ad litem was necessary to protect her interests on the basis of her mental health issues is dubious.

Respondent next argues that the trial court erred when it failed to obtain a determination from a psychiatrist regarding her mental health before concluding that termination of her parental rights was in the best interests of the child. We disagree.

To preserve this issue on appeal, respondent ought to have raised it in the trial court. *In re Utrera*, 281 Mich App at 8. Because she did not do so, our review is for plain error affecting respondent's substantial rights. *Id*. As an initial matter, we observe that respondent does not direct our attention to legal authority standing for the proposition that the trial court must conclusively determine the mental health of a parent by a licensed psychiatrist before making a best interests ruling. Accordingly, we may deem this issue abandoned. *In re ASF*, 311 Mich App 420, 440; 876 NW2d 253 (2015). In any event, we conclude that this argument is without merit.

A review of the record confirms that throughout the lower court proceedings in this case, as well as in the Oakland County case involving the child's sibling, respondent adamantly

[2] To the extent that respondent alleges generally that she was incompetent to render her plea, the record simply does not support this assertion.

[3] The trial court noted that a written copy of the petition was provided to respondent at a hearing held on March 28, 2016.

refused to undergo any kind of psychiatric evaluation.[4] During the May 17, 2016 hearing, when questioned by counsel for the minor child if she would submit to a court-ordered psychiatric evaluation, respondent defiantly answered in the negative.[5] While respondent now claims that she should have been evaluated by a psychiatrist rather than a "limited licensed psychologist[,]" respondent is not in a position to assert that the trial court erred in not requiring that she be evaluated by a psychiatrist when she made it abundantly clear during her testimony that she would not comply with such an order.[6] Also, Robert Geiger, a limited licensed psychologist from the Clinic for Child Study evaluated respondent, and a copy of the report was admitted into evidence at the June 16, 2016 hearing. According to the evaluation, respondent's behavior was consistent with schizophrenia and delusional disorder. The evaluation also indicated that respondent's "operational judgment was poor and impulsive as related to her refusal to comply with the requirements of the [c]ourt on more than one occasion, and only marginal as verbally expressed." Accordingly, we discern no error.

Respondent next argues that the trial court erred when it determined that termination was in the best interests of the minor child pursuant to MCL 712A.19b(5) without considering whether there was a possible relative placement with an adult sibling or other relative. We disagree.

This Court reviews for clear error the trial court's determination regarding whether termination is in the child's best interests. *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003). Whether termination of parental rights is in the child's best interest must be proven by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013).

Once a statutory ground has been proven, the trial court must conclude that termination is in the child's best interests before it can terminate parental rights. MCL 712A.19b(5). In considering whether termination of parental rights is in the best interests of the child, "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 White*, 303 Mich App 701, 713-714; 846 NW2d 61 (2014) (footnote, citation and quotation marks omitted). Additionally, the trial court may consider "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 (footnote and citations omitted).

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[4] During the hearing on May 17, 2016, respondent conceded that she was diagnosed by a physician in August 2012 with paranoid schizophrenia, but she stated that she disagreed with this diagnosis and was pursuing a medical malpractice claim against the physician.

[5] Respondent also stated during cross-examination by counsel for the minor child that she would not attend court-ordered parenting classes, individual therapy or sign medical releases.

[6] As we explain subsequently in this opinion, the trial court's decision to terminate respondent's parental rights was based on a multitude of other factors.

In *In re Olive/Metts*, 297 Mich App 35, 43; 823 NW2d 144 (2012), this Court addressed issues that must be considered when the minor child is placed with a relative during the termination proceedings:

> Although the trial court may terminate parental rights in lieu of placement with relatives if it finds that termination is in the child's best interests, the fact that the children are in the care of a relative at the time of the termination hearing is an explicit factor to consider in determining whether termination was in the children's best interests. A trial court's failure to explicitly address whether termination is appropriate in light of the children's placement with relatives renders the factual record inadequate to make a best-interest determination and requires reversal. [Citations and quotations marks omitted.]

At the preliminary hearing held on March 28, 2016, respondent's counsel inquired of the Child Protective Services specialist, Leflora Kirk, whether there was a possible relative placement for the minor child, but Kirk explained that respondent did not name any available relatives, and expressly stated her preference that she did not want her child placed with a relative. When the trial court questioned Kirk further, Kirk represented that she would investigate other available suitable relatives. Thus, contrary to respondent's assertions in her brief on appeal, the record does not yield any indication that an inadequate investigation was conducted regarding suitable relatives with which to place the minor child. Moreover, while respondent claims on appeal that her two adult children were viable options with whom the minor child could have been placed, there is simply no indication in the record that these individuals would have been suitable, safe placements for the minor child, an infant at the time of the lower court proceedings. Rather, a review of the record confirms that the minor child was thriving in a non-relative foster care home where she was placed with her sister,[7] all of her physical and emotional needs were being met, and adoption was a viable possibility for her. Also, while respondent contends that alternatives for relative placement ought to have been sought to allow her time to work on her court-ordered treatment plan, this argument is unavailing, given that in the trial court respondent made it abundantly clear that she would not comply with any treatment plan ordered by the trial court.

Additionally, we note that multiple other factors confirm that the trial court correctly concluded that termination of respondent's parental rights was in the minor child's best interests. For example, Kirk testified that she had serious concerns regarding how respondent interacted with the minor child, where respondent would not soothe or comfort the child while the child was crying. In fact, Kirk stated that it was personally difficult for her to observe. The evaluation conducted by Geiger, for the Clinic for Child Study, also recommended that the child not remain with respondent because respondent's untreated mental health issues would "almost certainly place her child in the way of serious harm within the foreseeable future." Additionally, during the lower court proceedings, respondent was living out of a motel and there was no evidence that

[7] This sibling was the subject of child protective proceedings in Oakland County that also resulted in the termination of respondent's parental rights.

she would be able to provide a stable living environment in the foreseeable future. Perhaps the most troubling, respondent unabashedly testified in the trial court that she would not comply with any court-ordered treatment plan. Put simply, respondent did not demonstrate any awareness of, or insight into, her mental health condition, and was not willing to take steps to improve her deficient parenting abilities. The trial court correctly determined that termination of respondent's parental rights was in the minor child's best interests.[8]

Affirmed.

/s/ Michael J. Riordan
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood

[8] Where respondent suggests very generally in her brief on appeal that her liberty interest in raising her child has been violated, it is well-settled that once petitioner has successfully presented clear and convincing evidence to support termination under at least one statutory ground, "the liberty interest of the parent no longer includes the right to custody and control of the children." *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000) (citation omitted).