# STATE OF MICHIGAN

# COURT OF APPEALS

*In re* WATTS, Minor.

UNPUBLISHED
May 9, 2017

No. 335535
Wayne Circuit Court
Family Division
LC No. 16-522706-NA

Before: M. J. KELLY, P.J., and BECKERING and SHAPIRO, JJ.

PER CURIAM.

Respondent appeals as of right an order terminating her parental rights to her minor child, JW, pursuant to MCL 712A.19b(3)(a)(*ii*), (g), (i), (j). For the reasons stated in this opinion, we affirm.

## I. BASIC FACTS

In January 2016, respondent was arrested for driving her vehicle with a blood alcohol content (BAC) level of .14. JW, who was two years old at the time, was in the backseat of the vehicle and was restrained with only a seatbelt. Respondent was convicted of driving under the influence (DUI) and operating a motor vehicle while under the influence of alcohol with an occupant less than 16 years old. The Department of Health and Human Services (DHHS) initiated child protective proceedings on March 22, 2016, and a petition seeking permanent custody of JW and termination of respondent mother's parental rights was filed on April 4, 2016. After trial, the court took jurisdiction over JW and terminated respondent's parental rights.

## II. REUNIFICATION EFFORTS

### A. STANDARD OF REVIEW

Respondent argues that the trial court erred when it terminated her parental rights without first ensuring that DHHS made reasonable efforts to reunify the family. Because respondent did not object to DHHS's failure to provide her services, this issue is unpreserved. See *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012); *In re Terry*, 240 Mich App 14, 27; 610 NW2d 563 (2000). Unpreserved issues are reviewed for "plain error affecting substantial rights." *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). "[A]n error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings." *Id*. at 9.

## B. ANALYSIS

Generally, "[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 535, 542; 702 NW2d 192 (2005), citing MCL 712A.18f(1), (2) and (4). However, the petitioner is not required to provide reunification services when permanent custody is requested at the initial disposition or when aggravated circumstances exist. *In re Moss*, 301 Mich App 76, 91-92; 836 NW2d 182 (2013); MCL 712A.19a(2). Specifically, a petitioner "is not required to provide reunification services when termination of parental rights is the agency's goal." *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009). Further, reasonable reunification efforts are not required in cases where "[t]he parent has had rights to the child's siblings involuntarily terminated." MCL 712A.19a(2)(c). Here, DHHS requested termination of respondent's parental rights at the initial disposition, and the record reflects that respondent's parental rights to seven of JW's siblings had been terminated. Accordingly, DHHS was not required to provide reunification services.

# III. STATUTORY GROUNDS

## A. STANDARD OF REVIEW

Respondent next argues that the trial court clearly erred when it terminated her parental rights pursuant to MCL 712A.19b(3)(a)(*ii*), (g), (i), and (j). This Court will "review for clear error a trial court's factual findings as well as its ultimate determination that a statutory ground for termination of parental rights has been proved by clear and convincing evidence." *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). The trial court's finding is clearly erroneous "if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011).

## B. ANALYSIS

Before terminating a respondent's parental rights, the trial court must find by clear and convincing evidence that at least one statutory ground for termination exists. *In re HRC*, 286 Mich App at 459. The trial court found four statutory grounds for termination. "Only one statutory ground for termination need be established." *In re Olive/Metts*, 297 Mich App 35, 41; 823 NW2d 144 (2012).

MCL 712A.19b(3)(g) provides that the court may terminate a respondent's parental 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." Respondent failed to provide proper care and custody for JW when she decided to drive drunk while her two-year-old daughter was seatbelted in the backseat.[1] Respondent was convicted of driving under the influence and

[1] The trial court suggested that respondent had failed to provide proper care and custody for JW before the January 2015 drunk-driving incident. We disagree. The record reflects that JW was

operating a motor vehicle under the influence with a person under 16 in the vehicle. She was sentenced to 360 days in jail, along with a number of additional requirements. She testified that she would have housing when she was released, that she would participate in an intensive outpatient treatment program, and that she had a job opportunity at Tim Horton's. However, the record reflects that respondent has a long history of substance abuse, given that her parental rights to seven other children were terminated because of substance abuse in 2007 (six children) and 2012 (one child). Respondent stated that during the earlier termination proceedings she had submitted to drug screens and participated in an intensive outpatient program. She believed that the earlier proceedings "went on for a year" before her rights were terminated. Although she asserted that the earlier proceedings involved substance abuse—specifically cocaine—she stated that alcohol was a new issue. Nevertheless, considering that, by her own admission, this was respondent's second DUI offense, respondent had an ongoing alcohol issue that she had yet to successfully address. Moreover, upon release from jail, respondent was going to be on a four-month alcohol tether and would be required to complete an intensive outpatient program. Respondent also did not have certain housing lined up for after her anticipated release from jail. Instead she believed that she would be able to obtain housing within two months of being released from prison. Therefore, based on the record in this case, the trial court did not err in terminating respondent's parental rights under MCL 712A.19b(3)(g).

Termination was also proper under MCL 712A.19b(3)(j), which provides that a trial court may terminate a respondent's 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." Respondent endangered her child's life by driving with a BAC of .14 while her young daughter was seatbelted in the backseat. Respondent had already been through an intensive outpatient program in conjunction with the earlier termination proceedings. She had already had a DUI conviction on her record. Respondent was required to participate in a treatment program for her alcohol abuse. Given her inability to successfully complete reunification services in the earlier termination cases, her ability to succeed with a new intensive outpatient services plan was uncertain. On this record, the trial court did not clearly err in finding that there was a reasonable likelihood that JW would be harmed if returned to respondent's care.

Although the court did not clearly err in terminating under MCL 712A.19b(3)(g) and (j), the trial court clearly erred in finding grounds to terminate respondent's parental rights under MCL 712A.19b(3)(a)(*ii*) and (i). Termination is proper under (a)(*ii*) if "[t]he child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period." MCL 712A.19b(3)(a)(*ii*). Here, despite evidence that respondent was incarcerated and unable to visit with the child, it appears that she was actively involved in the child protective proceedings and, as indicated by her testimony at the termination hearing, was actively seeking

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in a limited guardianship because respondent was concerned that she would become homeless and she did not want JW to live on the street. However, a parent need not personally care for his or her child in order to provide proper care and custody. See *In re Mason*, 486 Mich at 160. Therefore, the mere fact that respondent made arrangements for her daughter to be in a limited guardianship as opposed to personally caring for her is not evidence that respondent failed to provide proper care and custody.

to maintain her parental rights. Accordingly, to the extent that the trial court terminated under MCL 712A.19b(3)(a)(*ii*), it clearly erred. Further, MCL 712A.19b(3)(i) provides statutory grounds for termination of parental rights if "[p]arental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful." Here, DHHS submitted evidence showing that respondent had her parental rights to seven children terminated. However, the record only reflects that her rights were terminated due to "substance abuse." No record evidence suggests that there was physical or sexual abuse or that respondent's substance abuse led to chronic neglect. In the absence of such evidence, the trial court clearly erred in finding that termination was proper under MCL 712A.19(b)(i).

Nevertheless, termination was proper under MCL 712A.19b(3)(g) and (j). And, because only one ground for termination need be established, the trial court's error with regard to subsections (a)(*ii*) and (i) does not mandate reversal of the termination order. See *In re Olive/Metts*, 297 Mich App at 41.

Affirmed.

/s/ Michael J. Kelly
/s/ Jane M. Beckering
/s/ Douglas B. Shapiro