STATE OF MICHIGAN

COURT OF APPEALS

In re J.D.R.T. PURDLE, Minor.

UNPUBLISHED
October 19, 2017

No. 338123
Kent Circuit Court
Family Division
LC No. 15-052659-NA

Before: MURRAY, P.J., and SAWYER and MARKEY, JJ.

PER CURIAM.

Respondent-father appeals by right the trial court's order terminating his parental rights to the minor child under MCL 712A.19b(3)(c)(*ii*) (failure to rectify other conditions), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood that child will be harmed if returned to the parent).[1] We affirm.

On appeal, father only argues that the agency failed to make reasonable efforts toward reunification.[2] We disagree.

Father never argued in the trial court that reasonable efforts were not made toward reunification; therefore, the issue is unpreserved. *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). Unpreserved issues are reviewed for plain error affecting substantial rights. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) the error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *In re VanDalen*, 293 Mich App 120, 135; 809 NW2d 412 (2011) (quotation marks and citation omitted). "When reviewing the trial court's findings of fact, this Court accords deference to the special opportunity of the trial court to judge the credibility of the witnesses." *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005).

[1] The trial court also terminated the parental rights of mother, but mother is not a party to this appeal.

[2] Father does not argue that the statutory grounds supporting termination were not established by clear and convincing evidence, nor does father argue that termination was not in the minor child's best interests.

"In general, petitioner must make reasonable efforts to rectify conditions, to reunify families, and to avoid termination of parental rights." *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008). "As part of these reasonable efforts, [petitioner] must create a service plan outlining the steps that both it and the parent will take to rectify the issues that led to court involvement and to achieve reunification." *In re Hicks/Brown*, ___ Mich ___, ___; 893 NW2d 637, 639 (2017). "When a child is removed from a parent's custody, the agency charged with the care of the child is required to report to the trial court the efforts made to rectify the conditions that led to the removal of the child." *In re Plump*, 294 Mich App 270, 272; 817 NW2d 119 (2011). "Before the trial court enters an order of disposition, it is required to state whether reasonable efforts have been made to prevent the child's removal from the home or to rectify the conditions that caused the child to be removed from the home." *Id*. "Further, at each review hearing, the court is required to consider, among other things, [c]ompliance with the case service plan with respect to services provided or offered to the child and the child's parent, . . . whether the parent . . . has complied with and benefited from those services, and [t]he extent to which the parent complied with each provision of the case service plan, prior court orders, and an agreement between the parent and the agency." *In re Mason*, 486 Mich 142, 156; 782 NW2d 747 (2010) (quotation marks and citations omitted; alterations in the original). "While [petitioner] 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. This includes the requirement that the respondent "sufficiently benefit[] from the services provided." *Id*.

In the present case, foster-care worker Jennifer McKinstry testified that during father's incarceration at the beginning of the case, she confirmed that father was participating in programming while incarcerated. This programming included Thinking for a Change class, substance abuse classes, job training, "AA/NA," and working toward his GED. During this period of incarceration, McKinstry spoke with father via Skype and exchanged letters with him. Father also completed and returned homework that McKinstry assigned. According to McKinstry, father did not take any responsibility for the minor child's removal. He blamed mother, and he denied committing any domestic violence even though mother had indicated that father had given her black eyes.[3] McKinstry discussed father's barriers to reunification with him via Skype, and she indicated that he needed to obtain housing and employment, abstain from substance abuse, and take domestic violence classes. McKinstry testified that father knew what he was required to do once he was released. Moreover, at the October 7, 2015 disposition hearing, for which father was present, the trial court ordered father to submit to random drug screens, take parenting classes, attend domestic violence counseling, and complete a Men Choosing Alternatives to Violence class.

McKinstry also testified that father met with her at the agency following his release, and they scheduled parenting time. At the parenting time, McKinstry discussed father's treatment plan, and McKinstry testified that father was cooperative and interested in what he needed to do for his treatment plan. McKinstry's testimony further shows that father subsequently was

[3] Father eventually admitted to committing domestic violence against mother.

working on his treatment plan with her, was attending parenting time, was participating in parent mentoring, and had been referred to the YWCA for a Men Choosing Alternatives to Violence class.

The record reflects that although father attended parenting time, he frequently left before the halfway mark of the visits without an apparent reason that required him to leave. Father was referred to an Early Childhood Attachment therapist, who would attend father's parenting time, meet with him, and assess his parenting skills. Father attended these sessions, but he refused to sign the release of information that would allow McKinstry to talk to his therapist that would allow the therapist to assess father's progress. Father did not give a reason for his refusal. Father also did not complete random drug screens because he continually failed to obtain the proper documentation to secure a state identification card.

Foster-care worker Sarah York testified that after she took over as the caseworker in June 2016, father's parenting visits were "quite chaotic" for approximately six weeks. Father would spend 30 to 45 minutes of his two-hour visit yelling, swearing, and banging on doors rather than interacting with the minor child. According to York, the minor child was "clearly frightened" by father's agitated behavior, and father's behavior prevented him from focusing on the minor child. York also testified that she and the Early Childhood Attachment therapist would typically meet with father before parenting-time visits to finish paperwork and review the treatment plan, and father would become upset about being told what to do. Father told York that she was "not God and he doesn't have to listen to [her] and that he is not in prison so [she] cannot tell him what to do."

According to York, father canceled a scheduled meeting during which they had planned to review father's treatment plan. York testified that father knew that she had a copy of the treatment plan for him and that she wanted to review it with him at the meeting. Father canceled because he was "too busy."

Additionally, McKinstry had referred father for a psychological evaluation. However, father missed the first appointment, rescheduled the appointment, and then missed the second appointment as well. Father finally attended a psychological evaluation after York personally took him to the appointment. After the evaluation, York reviewed with father the doctor's recommendations that father continue substance abuse monitoring and attend outpatient counseling. But York was unable to provide her specific referrals to father as planned because, as previously noted, father had canceled that meeting. Father also told York that he did not need substance abuse services because he could stop on his own, and father indicated that he had no intention of stopping his marijuana use.

Father eventually completed the Nurturing Families parenting class, and he completed approximately half of the Love and Logic parenting class. But several services in which father was participating ceased before father could successfully complete them because father was incarcerated for a second time during the pendency of the case, and his incarceration made father unable to participate. These services included Early Childhood Attachment Services, the YWCA Men Choosing Alternatives to Violence class, the asthma specialist, and domestic violence counseling. Once father was incarcerated, he continued to complete homework assigned by York, but he sent York a letter in which he indicated that he did not want to participate in any

programs or services during his incarceration and asked York not to make any further referrals. Nonetheless, the record reflects that father participated in a Thinking for a Change class while he was incarcerated, and father testified that he was also participating in substance abuse programming.

Based on the record evidence, it is clear that father received numerous services to address his identified barriers, including parenting time, parent mentoring, Men Choosing Alternatives to Violence class, Early Childhood Attachment therapy, a psychological evaluation, Nurturing Families parenting class, Love and Logic parenting class, and an asthma specialist. But father failed to complete most of these services, either because he simply failed to attend or because he could no longer could once he became incarcerated for a second time because of his decision to engage in criminal activity. Additionally, during father's periods of incarceration, father completed homework assigned by his caseworkers and participated in programs offered to inmates, including Thinking for a Change class, substance abuse classes, job training, AA/NA, and working toward his GED.

It is evident that father knew what was expected of him because the record reflects that his caseworkers met with him to discuss his parent-agency treatment plan, that his caseworkers gave him copies of his treatment plans, and that father participated to some extent in the services offered even if he did not complete most of them. Father was also present at court hearings when his parent-agency treatment plan and his participation in services were discussed. Moreover, at these hearings, the trial court ordered father to comply with and benefit from his service plan and to complete specific services. Father is correct that none of his parent-agency treatment plans that are in the record include his signature. However, McKinstry testified that father received the parent-agency treatment plan, and York testified that she sent father letters while he was incarcerated that included his parent-agency treatment plan. Furthermore, father admitted that the treatment plans were presented to him. Thus, the record clearly supports the conclusion that father was involved in the process of his parent-agency treatment plan and was aware of the services he was required to complete.

To the extent that father did not participate in or benefit from services, these failures were attributable to his own actions. Although he had participated in some services, father continued to demonstrate angry, violent behavior during parenting time that frightened the minor child. The record also demonstrates that father canceled a meeting that was scheduled to review his treatment plan, became angry and upset during meetings to the point that it was difficult to review his plan with him, could not complete review meetings due to his anger, refused to participate in further substance abuse services, indicated that he would not stop using marijuana, and engaged in further criminal activity that led to his incarceration and inability to continue attending classes in which he had been participating. Therefore, although there is evidence that father participated in services to some extent, the record supports the conclusion that father did not fulfill his "commensurate responsibility" to participate in and benefit from the services offered. *In re Frey*, 297 Mich App at 248.

Father relies on *Mason*, 486 Mich at 156-157, for the proposition that the lack of his signature on the parent-agency treatment plans demonstrates that there was no evidence that he participated in developing the plan or that he knew about the treatment plan. Contrary to father's argument, the existence of a signature is not dispositive on the question whether a respondent

was engaged with the service plan. Rather, what *Mason* requires is the respondent's involvement. *Id*. at 157 n 8 (noting that the family "is to be extensively involved in case planning and have a clear understanding of all the conditions which must be met prior to the child's return home, how these relate to the petition necessitating removal, and what the supervising agency will do to help the family meet these conditions") (quotation marks and citation omitted). In *Mason*, the lack of a signature was merely further evidence of the lack of communication with the respondent that permeated that case. *Id*. at 147, 150, 156-157.

As previously discussed, there was substantial evidence that father participated in services to some extent, that his parent-agency treatment plan was reviewed with him, that he received copies of his parent-agency treatment plan, and that his own actions inhibited the ability of his caseworkers to provide further explanations to him. There was substantial evidence that the caseworkers actively engaged with father while he was incarcerated by giving him homework assignments, communicating with him via Skype and letters, and confirming that he engaged in programming offered to inmates. In other words, father was clearly involved in his treatment plan, even if his signature is not on the documents. The present case is not like *Mason*, where the foster-care worker completely failed to engage with the incarcerated respondent, whose signature also happened to be absent from the treatment plan document.

For all of the above reasons, the trial court did not plainly err by finding that reasonable efforts were made in this case. *In re VanDalen*, 293 Mich App at 135.

We affirm.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Jane E. Markey