STATE OF MICHIGAN

COURT OF APPEALS

In re S. SIED, Minor.

UNPUBLISHED
December 19, 2017

No. 338558
Newaygo Circuit Court
Family Division
LC No. 07-007218-NA

Before: MARKEY, P.J., and HOEKSTRA and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent-father appeals as of right from the trial court's order terminating his parental rights to the minor child under MCL 712A.19b(3)(c)(*i*) (conditions of adjudication continue to exist), (c)(*ii*) (failure to rectify other conditions), (g) (failure to provide proper care and custody), and (j) (child will be harmed if returned to parent).[1] Because the trial court did not clearly err by terminating respondent's parental rights, we affirm.

The Department of Health and Human Services (DHHS) first became involved with SS in 2007 when SS tested positive for cocaine at birth. At that time, respondent was in a relationship with SS's mother, and they both had an admitted history of substance abuse involving marijuana, cocaine, and methamphetamine. Services were provided, and the case was closed. At some point, respondent and SS's mother ended their relationship.

The current case began in March of 2016 when the DHHS filed a petition to have SS removed from her parents' care. Both respondent and mother were in jail, and SS had no suitable caretaker. There were also allegations that both parents were using drugs in SS's presence. Specifically, respondent had recently refused to return SS to her mother because SS indicated that mother was smoking crystal methamphetamine in her presence. With respect to respondent, the petition alleged that he had reportedly been using marijuana in SS's presence. In May of 2016, respondent entered a plea of no contest.

Respondent remained in jail until June 2016. During the course of the case, his treatment plan required him to find appropriate housing and employment, to attend substance-abuse

[1] The trial court also terminated respondent-mother's parental rights, but respondent-mother is not a party to this appeal.

counseling, to comply with random drug and alcohol screening, to complete a psychological evaluation, and to attend Alcoholics Anonymous (AA) meetings. Although respondent claimed that he had appropriate housing and employment, he did not offer any proof of this to the caseworker. Further, rather than comply with substance abuse treatment recommendations, respondent denied having a substance abuse problem. Yet, in August of 2016, while intoxicated, respondent engaged in an altercation with his sister and kicked her in the face with his boot. In addition, respondent arrived visibly intoxicated for parenting times on October 4, October 18, and November 15, 2016. As a result, his parenting time was suspended in December 2016 until such time as respondent could demonstrate 30 days of sobriety. Although respondent later claimed to have accomplished this required term of sobriety, he failed to provide the caseworker with documentation of his AA attendance and failed to comply with the random drug and alcohol screening process. While the case was pending, SS, who was nine years old, was aware of respondent's drinking. According to testimony from the caseworker and SS's therapist, SS assumed a "caretaker" role with respect to respondent, she felt it was her responsibility to make sure he did not drink, and she felt like a failure because she was unable to "fix" him. Eventually, respondent was again jailed in May 2017. Later that month, the trial court terminated respondent's parental rights to the minor child. Respondent now appeals as of right.

Respondent now argues that the trial court erred when it found that clear and convincing evidence supported terminating his parental rights under MCL 712A.19b(3)(c)(*i*), (c)(*ii*), (g), and (j). In particular, respondent contends that his only barrier to reunification was alcohol, and he maintains that he has taken the necessary steps to address his alcoholism as evinced by three months of recent sobriety. According to respondent, SS was never at risk of harm in his care, and he is able to provide proper care and custody for SS.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). We review the trial court findings for clear error. *In re White*, 303 Mich App 701, 709; 846 NW2d 61 (2014). A finding is "clearly erroneous where the reviewing court is left with a definite and firm conviction that a mistake has been made." *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000).

Respondent's parental rights were terminated under MCL 712A.19b(3)(c)(*i*), (c)(*ii*), (g), and (j), which provide:

> (3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
>
> * * *
>
> (c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:
>
> (*i*) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

(*ii*) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The 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.

* * *

(j) There 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.

The trial court did not clearly err in finding that these grounds were established by clear and convincing evidence. The trial court entered an initial dispositional order on August 3, 2016. The termination hearing concluded on May 12, 2017. Thus, "182 or more days" had "elapsed since the issuance of an initial dispositional order." See MCL 712A.19b(3)(c). The conditions leading to the adjudication included substance abuse and respondent's inability to provide proper care because he was in jail. Although the initial petition alleged marijuana use, it soon became clear that respondent struggled with alcoholism. While the case was pending, respondent also struggled to obtain and maintain stable housing. He was provided notice and an opportunity to rectify these conditions, but he failed to accomplish any meaningful changes. See *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009).

In particular, at the time of the termination hearing, respondent had failed to obtain appropriate housing. Indeed, respondent was again in jail and SS remained in foster care because neither respondent nor SS's mother named an appropriate caregiver.[2] Additionally, contrary to respondent's arguments on appeal, he had not addressed his substance abuse problem. During this case, respondent arrived at parenting time intoxicated at least three times, and, as a result, the trial court suspended his parenting time. Although his parenting-time suspension was to be lifted if he demonstrated sobriety, respondent failed to do so. While

[2] In his brief on appeal, respondent briefly states that his present inability to care for the minor child as a result of incarceration does not constitute grounds for termination of his parental rights. However, the trial court did not terminate respondent's rights *solely* due to his incarceration, and the trial court did not err in considering his incarceration along with other evidence supporting termination. See *In re Hudson*, 294 Mich App 261, 267; 817 NW2d 115 (2011).

intoxicated, he was also in a physical altercation with his sister. Although he claims to have more recently achieved three months of sobriety, he did not provide any documentation that he had attended AA meetings, he failed to participate in substance-abuse counseling, and he did not comply with random drug and alcohol screening. In sum, despite the opportunity to participate in services and time to make changes, at the time of the termination hearing, respondent's alcoholism remained unaddressed, his housing situation was uncertain, and he was once again in jail. See *In re White*, 303 Mich App at 710. Considering respondent's failure to make progress during the 14 months of proceedings, the trial court also properly found that there was not a reasonable likelihood that respondent could rectify the conditions in a reasonable amount of time considering the minor child's age. Accordingly, the trial court did not clearly err in finding that grounds for termination under MCL 712A.19b(3)(c)(*i*) and (c)(*ii*) were established by clear and convincing evidence.

These same facts also support the trial court's termination decision under MCL 712A.19b(3)(g) and (j). Specifically, contrary to respondent's claim that SS has not been harmed by his alcoholism and that he is able to provide proper care and custody, the evidence showed that respondent's alcoholism had a profound impact on the child's mental and emotional well-being insofar as the 9-year-old felt responsible for respondent and she felt like a failure because she was unable to fix him. See *In re Hudson*, 294 Mich App at 268 (recognizing that risk of "emotional harm" can constitute grounds for termination). Additionally, as noted, respondent lacked stable housing while this case was pending and, at the time of termination, he was again in jail without a plan to provide for SS. Given respondent's failure to make progress while the case was pending and his failure to comply with his case service plan, the trial court did not clearly err by finding grounds for termination under MCL 712A.19b(g) and (j). See *In re White*, 303 Mich App at 710.

Finally, respondent argues that the trial court violated his due process rights because respondent "did not receive appropriate notice for at least two hearings and the court's decision to proceed without him deprived [respondent] of procedural due process of law." Initially, we note that, in making his argument, respondent does not specify which two or more hearings are in question, nor does he explain how he was deprived of "appropriate notice" for these unspecified hearings. Given respondent's failure to adequately brief the issue, we could consider it abandoned. See *In re ASF*, 311 Mich App 420, 440; 876 NW2d 253 (2015). However, even if we considered the issue, respondent would not be entitled to relief.

Because defendant failed to raise his due process arguments in the trial court, our review is for plain error affecting his substantial rights. *In re VanDalen*, 293 Mich App 120, 135; 809 NW2d 412 (2011). Parents have a fundamental liberty interest in the care, custody, and control of their children, and when the state interferes with parental rights it must provide due process. *In re Rood*, 483 Mich 73, 91-92; 763 NW2d 587 (2009) (opinion by CORRIGAN, J.). "Due process in civil cases generally requires notice of the nature of the proceedings, an opportunity to be heard in a meaningful time and manner, and an impartial decisionmaker." *In re Juvenile Commitment Costs*, 240 Mich App 420, 440; 613 NW2d 348 (2000). "Aside from the constitutional right to notice inherent in due process, respondents in child protective proceedings have a statutory right to notice." *In re AMB*, 248 Mich App 144, 173; 640 NW2d 262 (2001). For instance, Michigan law provides that a child's parents must receive written notice of

dispositional review hearings, MCL 712A.19(5)(c), and permanency planning hearings, MCL 712A.19a(6)(c). See also MCR 3.920(D); MCR 3.921(B)(2).

In this case, respondent was not present for proceedings on April 20, 2016, October 19, 2016, and March 1, 2017. With regard to the pretrial hearing on April 20, 2016, respondent was not present, but the trial court adjourned the hearing because of respondent's absence. Consequently, even assuming respondent did not have notice, we fail to see how his substantial rights were affected. As to the permanency planning hearing on March 1, 2017, the lower court file contains a notice of hearing and proof of service for the March 1, 2017 hearing. Thus, it appears that respondent received notice for this hearing. Respondent's counsel appeared at the hearing and provided no explanation or complaint regarding respondent's absence from the hearing. Under these circumstances, respondent has not shown plain error.

Regarding the review hearing on October 19, 2016, although the lower court record contains a notice of hearing and a proof of service, these documents list October 26, 2016 as the upcoming hearing date. Accordingly, it does not appear that respondent received written notice of this review hearing. See MCR 3.920(D); MCR 3.921(B)(2). However, we are not persuaded that respondent has shown plain error affecting his substantial rights. Even though respondent did not receive written notice, the DHHS caseworker testified that she informed respondent of the October 19, 2016 hearing in person on the day before the hearing took place, and while respondent did not attend the hearing, his attorney appeared on his behalf. As a result of the hearing, because respondent had been intoxicated during past parenting time visits, the trial court entered an order allowing the DHHS the discretion to cancel a scheduled parenting time if respondent had a blood alcohol content of or over 0.08%. But, in making this ruling, the trial court acknowledged that respondent was not present at the hearing and the trial court specified that respondent could file an objection or request reconsideration. Respondent's attorney made no objection at the hearing, and respondent never sought reconsideration or voiced any objection during later proceedings. Indeed, even on appeal, respondent does not challenge the trial court's decision. Moreover, it was not until the December 7, 2016 hearing that respondent's parenting time was suspended. Although respondent was absent from the October 2016 hearing, he participated in all other proceedings over the 14-month period, including the preliminary hearing, adjudication, the initial disposition hearing, multiple review hearings, and the termination hearing. Throughout the proceedings, the DHHS apprised respondent of his duties under the case service plan and consistently attempted to engage him in services. On these facts, respondent was not deprived of a meaningful opportunity to participate, and respondent has not shown plain error.[3] See generally *In re DMK*, 289 Mich App 246, 254-255; 796 NW2d 129 (2010).

[3] On appeal, respondent also contends that he should have been afforded an opportunity to participate in proceedings via teleconferencing technology under MCR 2.004. However, respondent was not incarcerated during the October 19, 2016 hearing or the March 1, 2017 hearing. While he was in jail in April of 2016, as noted, the hearing on April 20, 2016 was adjourned due to his absence. Respondent fails to identify a time when he was denied an

Affirmed.

/s/ Jane E. Markey
/s/ Joel P. Hoekstra
/s/ Amy Ronayne Krause

opportunity to participate in proceedings because he was incarcerated and thus his reliance on MCR 2.004 is misplaced.