STATE OF MICHIGAN

COURT OF APPEALS

In re NEWMAN, Minors.

UNPUBLISHED
July 23, 2019

No. 347178
Presque Isle Circuit Court
Family Division
LC No. 17-000018-NA

Before: O'BRIEN, P.J., and FORT HOOD and CAMERON, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating his parental rights to the minor children, AN, ZN, SN, and ARN under MCL 712A.19b(3)(a)(*ii*) (parent deserted the child for 91 days), (b)(*i*) (parent caused injury or sexual abuse to the child) and (*ii*) (parent had opportunity but failed to prevent injury or sexual abuse to the child), (c)(*i*) (conditions that led to adjudication continue to exist) and (*ii*) (other conditions that cause child to come within court's jurisdiction continue to exist), (g) (failure to provide proper care and custody), (i) (parent's right to sibling previously terminated due to serious and chronic neglect or abuse), (j) (reasonable likelihood of harm to the child if returned to parent), and (k)(*i*) (parent abused the child by abandoning the child) and (*ii*) (parent sexually abused the child).[1] We affirm.

In October 2017, three of the children—AN, ZN, and SN—came into the court's jurisdiction based on respondent's repeated acts of domestic violence against mother, some of which occurred in front of the children. ARN was born while these proceedings were ongoing. The trial court ordered ARN into the care and supervision of the Department of Health and Human Services (DHHS) because he was born showing withdrawal symptoms and respondent admitted that he could not provide proper care and custody of the child at that time. Respondent was ordered to participate in numerous services, including a psychological evaluation, therapy, counseling, parenting classes, and anger management. The DHHS attempted to schedule

[1] The mother of the children was involved for virtually the entire lower court proceedings, but relinquished her parental rights on the day of the termination trial. She is not a party to this appeal. This opinion focuses on respondent, and references mother where necessary for context.

services for respondent, but he complied only minimally. Respondent received a psychological evaluation, but did not follow any of the evaluation's recommendations. He also attended two parenting classes, but failed to complete either.

As the case progressed, AN began exhibiting troubling "sexualized behavior," and eventually disclosed that respondent sexually assaulted her. The Michigan State Police investigated, and believed that SN may have also suffered abuse. After police questioned respondent about the allegations in June 2018, he fled the state. No one could locate respondent after that time, until September 2018 when he was located in a Montana jail. The DHHS attempted to schedule services for respondent in Montana, but it was unable to do so because respondent was to be extradited to Michigan. That changed, however, after respondent attempted to escape, and in the process assaulted an officer. At the time of the termination trial, respondent was still in Montana facing two felony charges.

Respondent was nonetheless able to participate in the proceedings by phone. Respondent repeatedly interrupted the proceedings, which led the trial court to request that the officers at the Montana facility mute respondent's phone. While that worked for a time, respondent eventually became combative with the officers at the facility to the point that he had to be physically restrained, and the officers could no longer allow him to participate in the proceedings. The trial court continued the proceedings without respondent "[d]ue to his disruptive behavior."

Following the termination trial, the trial court terminated respondent's parental rights. Respondent now appeals as of right.

On appeal, respondent argues that the DHHS failed to provide reasonable efforts for reunification. We disagree. Because respondent failed to preserve this issue by objecting or indicating that the services provided to him were somehow inadequate at the time they were offered, see *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012), our review is for plain error affecting substantial rights, *In re Utrera*, 281 Mich App 1, 8-9; 761 NW2d 253 (2008).

Reasonable efforts must be made to reunify the child with the family, with some exceptions not applicable here. MCL 712A.19a(2).

The DHHS offered respondent a number of services: caseworker Kali Chappelle testified that she arranged for parenting-time visits, and made referrals for a psychological evaluation, parenting classes, counseling appointments, and anger management. Chappelle also testified that, because respondent had moved to Genesee County—away from Presque Isle County where Chappelle made the referrals—Chappelle attempted to get services for respondent in Genesee County. These efforts were largely stymied by respondent's problems with the law. Chappelle had problems scheduling services for respondent early in the case because he was constantly in and out of different county jails. Despite this, Chappelle testified that she tried rescheduling services for respondent and searching for different options depending on where respondent was. Eventually, however, respondent fled the state after he was questioned about the sexual abuse allegations against him, and no one was able to contact him—let alone provide him services—

after that time. When he was finally located, he was in a Montana jail, where he stayed until the termination hearing.[2]

But even before respondent fled the state, his participation in services was minimal. He attended two separate parenting classes, but apparently did not complete either because he never gave a certificate of completion to Chappelle, as was required by his treatment plan. And while respondent completed a psychological evaluation, he failed to follow any of the recommendations from that evaluation, such as seeing a neurologist to address, among other things, possible medication to help with his paranoia, or attend anger management classes to address his anger problems.

The issue here was not the efforts of the DHHS; the DHHS provided numerous services to help reunify the children with respondent. The problem was respondent's failure to participate in or benefit from the services offered. See, e.g., *In re Frey*, 297 Mich App at 248 ("In this instance, services were proffered, but [the] respondents failed to either participate or demonstrate that they sufficiently benefited from the services provided."). The trial court did not plainly err by finding that the DHHS made reasonable efforts to reunify the family.[3]

Respondent next challenges the trial court's finding that respondent did not benefit from the services offered. Because respondent does not explain how such an error would entitle him to relief, we construe respondent's argument as challenging the trial court's findings that (1) the DHHS proved a statutory ground for termination and (2) termination was in the children's best interests.

"To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground under MCL 712A.19b(3) has been established." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). This Court "review[s] for clear error a trial court's finding of whether a statutory ground for termination has been proven by clear and convincing evidence." *Id.* "A finding is clearly erroneous if the reviewing court is left with a

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[2] Respondent claims that the DHHS should have offered him services while he was incarcerated in Montana. Respondent's argument lacks basis in fact because Chappelle testified that she did, in fact, try to arrange services for respondent in Montana, but they were not available because respondent was to be extradited.

[3] Respondent argues that the DHHS did not make reasonable efforts because it provided ZN's foster home with "in-home respite care" but did not provide respondent with in-home respite care to assist with ZN. It is unclear how this makes the DHHS's efforts not reasonable; respondent never had to care for ZN during these proceedings, so it is nonsensical that he would have been offered this service. Even if the DHHS could have provided respondent this service, he still had other problems that went unaddressed that prevented reunification. Thus, no relief is warranted. See *In re Fried*, 266 Mich App 535, 543; 702 NW2d 192 (2005) (holding that the respondent was not entitled to relief because the evidence did not "suggest that [the] respondent would have fared better if the worker had offered those additional services to him").

definite and firm conviction that a mistake has been made." *In re LaFrance*, 306 Mich App 713, 723; 858 NW2d 143 (2014).

The trial court terminated respondent's parental rights under numerous grounds, including MCL 712A.19b(3)(j). That section provides that the trial court may terminate a parent's parental rights if it finds by clear and convincing evidence that "[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." MCL 712A.19b(3)(j). The "harm" referenced in MCL 712A.19b(3)(j) can refer to physical as well as emotional harm. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011).

The children were brought into the court's jurisdiction based on respondent's acts of domestic violence against mother in front of the children. As the case progressed, those acts continued. Indeed, upon respondent's return to Michigan, he was to be sentenced for felony charges in Genesee County related to his trying to run mother over with a truck, which occurred while this case was ongoing. Respondent never acknowledged—let alone addressed—this issue, so by the time of the termination trial, respondent's domestic-violence issues persisted.

Relatedly, respondent never addressed his anger-management issues, and his angry outbursts were often accompanied by threats of violence. Chappelle testified respondent was hostile towards Chappelle and the other DHHS workers throughout the case; the original office that Chappelle referred respondent to for his psychological evaluation refused to see him because of how hostile he was to the staff on the phone; he was banned from a hospital for saying he was going to blow it up if he was not given his child's medical records within 40 minutes; he made a different hospital go on lock-down because he threatened to kidnap one of the children; and he was unable to participate in the termination trial because he could not listen to the caseworker's testimony without making angry outbursts. These are only some of the many examples of respondent's anger that plagued this case. And in spite of respondent's problem with anger management, he refused to address the problem.

Respondent's issues with domestic violence and anger management went entirely unaddressed by respondent, so if the children were to be returned to him, they would be with a volatile parent prone to violent outbursts. Clearly, the children's well-being could not be assured in such a placement.

Also relevant, AN was so fearful that respondent would return to "kidnap" her and hurt her family that she could not sleep. This alone evidences the emotional harm that respondent caused these children, and he took no substantial steps to address any of the issues that caused this harm. And while this was certainly concerning, far more concerning were AN's allegations of sexual abuse. Not only did AN disclose that she was sexually abused by respondent, but the DHHS and law enforcement officials suspected that respondent also abused SN. Chappelle testified that SN "exhibits extreme terror"—"[l]ike shaking like she is legitimately terrified that something bad is going to happen"—whenever she has to take off her clothes for a bath or change her diaper. When respondent was questioned by police about AN's allegations, respondent fled to Montana. Though the trial court did not find that respondent sexually assaulted any of the children, the trial court found that the children's behavior "can only be explained by neglect or abuse." At the very least, we agree with the trial court that the children

were abused or neglected while in respondent's care. And because respondent has not taken any steps to address his behavior that led to the abuse or neglect of the children, their physical and emotional well-being are at risk if they were placed in his care.

In light of the evidence showing that the children suffered substantial physical and emotional harm in respondent's care, and in light of respondent's failure to address—or even take responsibility for—any of his issues that caused this harm, the trial court did not clearly err when it found by clear and convincing evidence that termination was proper under MCL 712A.19b(3)(j).[4] Because at least one ground for termination existed, this Court need not consider the additional grounds on which the trial court relied. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009).[5]

"Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "[T]he focus at the best-interest stage" is on the child, not the parent. *In re Moss*, 301 Mich App at 87. The trial court should

[4] Respondent argues that termination was improper because he benefitted from some of the other services offered by the DHHS. Even if that was true, it does not negate that he failed to address the issues that exposed the children to harm if placed in his care. Thus, there remained a reasonable likelihood, based on respondent's conduct, that the children would be harmed if returned to his care. MCL 712A.19b(3)(j).

[5] At one point, respondent asserts, without any development or citation to authority, that "removal was premature and unnecessary." Based on respondent's failure to adequately brief this issue, we deem it abandoned. See *Hodge v Parks*, 303 Mich App 552, 557 n 1; 844 NW2d 189 (2014) ("A party cannot simply announce a position and expect the court to search for authority to sustain or reject that position."); *Houghton v Keller*, 256 Mich App 336, 339-340; 662 NW2d 854 (2003) ("An appellant's failure to properly address the merits of his assertion of error constitutes abandonment of the issue."); *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002) ("Generally, where a party fails to brief the merits of an allegation of error, the issue is deemed abandoned by this Court.") (quotation marks and citation omitted).

Even addressing the issue, the children's removal was not premature or unnecessary. The children were brought into the court's jurisdiction because of respondent's repeated acts of violence towards mother, sometimes in front of the children. The trial court initially allowed the children to remain with mother, but on the condition that respondent not have contact with her. Mother violated this order, and police found respondent hiding in mother's ceiling after mother told them that she had not seen respondent. The trial court then removed the children because mother's lie about violating the no-contact order showed the trial court that she would not report if respondent violated the no-contact order again. This in turn would potentially expose the children to the concern that precipitated the court's involvement in the first place: respondent's acts of violence towards mother.

weigh all the evidence available to it in determining the child's best interests, *In re Trejo*, 462 Mich at 364, and may consider such factors as

> 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 Olive/Metts*, 297 Mich App at 41-42 (citations omitted).]

Other considerations include "the parent's compliance with his or her case service plan, . . . the possibility of adoption," *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014), and whether "the children's safety and well-being [can be] reasonably assured" in the parent's care, *In re VanDalen*, 293 Mich App 120, 142; 809 NW2d 412 (2011).

No evidence was submitted to suggest that the children had a bond with respondent. ARN had been removed from respondent's care since birth, there was no evidence that SN or ZN expressed any desire to see respondent, and while there was testimony that AN was loyal to respondent, there was also testimony that she was scared to go to sleep out of fear that respondent would take her away from her foster family.

As for respondent's parenting ability, there was testimony that he made an effort to parent well, but his visits were consistently described as "chaotic." Caseworker Chappelle also testified that during parenting visits, respondent tended to focus more on the caseworker supervising the visit than on the children, which in one instance led to ZN choking and having to be helped by a stranger. While it is certainly difficult for one person to parent four children under five years old, the evidence nonetheless suggests that respondent did not have the parenting ability to appropriately parent all four children.

Turning to the advantages of the foster home, the children were clearly able to develop better in their foster placement compared to in respondent's care. All four children were developmentally delayed when they came into care,[6] but the foster home was able to begin addressing those issues. Moreover, the three children that lived with respondent are in therapy to address emotional and developmental problems that were caused by their time in respondent's care. There had been no reported problem with the children's foster placements, and their current placement—where all four children were together—was willing to adopt the children. In contrast, respondent was facing possible prison time in Montana, and upon his return to Michigan, was to be sentenced for two felonies and face trial for another two felonies. Thus, respondent's ability to provide the children with stability in the future was largely uncertain, while if respondent's right were terminated, the children's foster placement could grant them the stability and permanence that they needed. The children's progress while in foster care compared to their problems in respondent's care, their need for permanence and stability, and the foster care's willingness to adopt the children all support that termination of respondent's parental rights was in the children's best interests.

[6] ARN experienced withdrawal symptoms at birth, which led to numerous complications that have affected his development.

As explained earlier, respondent only minimally complied with his case service plan, and the issues that led to the children's removal continue to exist. Moreover, other issues have since developed that have not been addressed, including AN's allegations that respondent sexually abused her and the concerns that respondent sexually abused SN. Respondent's failure to adhere to his case service plan, as well as evidence that the children's emotional and physical well-being cannot be reasonably assured in respondent's care, support that termination was in the children's best interests.

Based on the foregoing, the trial court did not clearly err when it found by a preponderance of the evidence that termination was in the children's best interests.

Affirmed.

/s/ Colleen A. O'Brien
/s/ Karen M. Fort Hood
/s/ Thomas C. Cameron