STATE OF MICHIGAN

COURT OF APPEALS

In re INGRAM, Minors.

UNPUBLISHED
October 15, 2019

Nos. 347800; 347801
Wayne Circuit Court
Family Division
LC No. 17-001387-NA

Before: FORT HOOD, P.J., and SAWYER and SHAPIRO, JJ.

PER CURIAM.

Respondents[1] appeal the order terminating their parental rights to the minor children LJI and LMI (together "the children") under MCL 712A.19b(3)(c)(*i*) (182 or more days have elapsed since the issuance of the initial disposition order, "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[]"), MCL 712A.19b(3)(g) (failure to provide proper care and custody), and MCL 712A.19b(3)(j) (reasonable likelihood of harm if returned to custody of the parent). We affirm.

LMI was born with amphetamines, methadone, and THC in her system. After LMI's birth, the children were removed from respondents' care and custody on August 11, 2017, and placed with their paternal grandmother. A service plan was implemented for respondents to address their substance abuse problems on October 3, 2017. Respondents failed to comply with their service plan until after the supplemental petition for permanent custody was authorized on August 3, 2018. Respondents began to participate in their service plans in September 2018, but the trial court terminated their parental rights on November 30, 2018, because of respondents' failure to comply with their service plans or to properly address their substance abuse issues. This appeal followed.

[1] Respondent mother and respondent father (together "respondents") are the respondents in Docket Nos. 347800 and 347801. Respondent mother is the appellant in Docket No. 347800 and respondent father is the appellant in Docket No. 347801.

I. STATUTORY GROUNDS

Respondents argue that the trial court erred by finding statutory grounds to terminate their parental rights under MCL 712A.19b(3)(c)(*i*), (g), and (j). We disagree.

This Court "reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination." *In re White*, 303 Mich App 701, 709-710; 846 NW2d 61 (2014). To be clearly erroneous, a trial court's determination must be more than possibly or probably incorrect. *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011). "A 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." *Id*. In reviewing the trial court's determination, this Court must give due regard to the unique "opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *Id*., citing MCR 2.613(C).

"Only one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights, even if the court erroneously found sufficient evidence under other statutory grounds." *In re Ellis*, 294 Mich App at 33. The trial court found three statutory grounds to terminate respondents' parental rights, MCL 712A.19b(3)(c)(*i*), (g), and (j), by clear and convincing evidence. In relevant part, MCL 712A.19b(3) currently authorizes a trial court to terminate parental rights if it finds by clear and convincing evidence that any of the following exists:

> (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.
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> * * *
>
> (g) The parent, although, in the court's discretion, financially able to do so, 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.
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> * * *
>
> (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 statutory basis to terminate parental rights under MCL 712A.19b(3)(c)(*i*) exists "when the conditions that brought the children into foster care continue to exist despite time to make changes and the opportunity to take advantage of a variety of services . . . ." *In re White*, 303 Mich App at 710 (alteration in original; citation and quotation marks omitted). The children were brought into foster care because of respondents' drug use. When the trial court terminated

respondents' parental rights, it stated in its written order that respondents had not taken the necessary steps to properly address their substance abuse issues and that neither respondent had demonstrated a sustained period of sobriety. Respondents' parental rights were terminated more than 182 days after the trial court's initial October 3, 2017 dispositional order. The record shows that respondents failed to participate in the services offered to them to combat their substance abuse for the first 11 months the children were in foster care. Respondents testified that they had not used any illegal substances for the six months before the termination of their parental rights, but they failed to consistently participate in drug screens until September 26, 2018. Respondents were aware that missed drug screens were considered positive for drugs and had only participated in services to combat their substance abuse for the two months before the termination of their parental rights. Respondents were taking steps to address their substance abuse issues when their parental rights were terminated, but we are not definitely and firmly convinced that the trial court erred by finding that the condition that brought the children into foster care, respondents' substance abuse, continued to exist at the time of termination. Finally, respondents had more than one year to show that they no longer had substance abuse issues. They failed to do so. Thus, the trial court did not err by terminating respondents' parental rights under MCL 712A.19b(3)(c)(*i*).

When examining MCL 712A.19b(3)(g), this Court has found that "[a] parent's failure to participate in and benefit from a service plan is evidence that the parent will not be able to provide a child proper care and custody." *White*, 303 Mich App at 710. Similarly, when examining MCL 712A.19b(3)(j), this Court has determined that "a parent's failure to comply with the terms and conditions of his or her service plan is evidence that the child will be harmed if returned to the parent's home." *Id*. at 711. Furthermore, "the court 'shall view the failure of the parent to substantially comply with the terms and conditions of the case service plan . . . as evidence that return of the child to his or her parent would cause a substantial risk of harm . . . .' " *In re Rood*, 483 Mich 73, 100; 763 NW2d 587 (2009), quoting MCL 712A.19a(5) as amended by 2008 PA 200 (alterations in original); see also MCR 3.976(E)(2) (same). Respondents failed to comply with their service plans for the first 11 months the children were in foster care and they were referred for services five times. After the petition for permanent custody was filed, respondents began to comply with and participate in their service plans for the two months preceding the termination of their parental rights. Of the 15 months the children were in foster care, respondents only complied with their service plans for the final two months. Thus, respondents failed to substantially comply with their service plans and the trial court did not err by terminating respondents' parental rights under MCL 712A.19b(3)(g) and (j).

II. BEST INTERESTS

Respondents argue that termination of their parental rights was not in the children's best interests. We disagree.

"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 Minors*, 297 Mich App 35, 40-41; 823 NW2d 144 (2012). "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The trial court's ruling regarding best interests are reviewed for clear error. *In re Schadler*, 315 Mich App 406, 408;

890 NW2d 676 (2016). "A 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 Ellis*, 294 Mich App at 33. Furthermore, "[t]his Court gives effect to the Legislature's intent as expressed in the statute's terms, giving the words of the statute their plain and ordinary meaning. When the language poses no ambiguity, this Court need not look beyond the statute or construe the statute, but need only enforce the statute as written." *In re LE*, 278 Mich App 1, 22; 747 NW2d 883 (2008) (citations and quotation marks omitted). Finally, constitutional questions are reviewed de novo. *In re AMAC*, 269 Mich App 533, 536; 711 NW2d 426 (2006).

As an initial matter, respondent mother failed to support her best-interests argument with any authority. Respondent mother provided authority for her standard of review, but she failed to cite any cases or statutes to support her substantive best-interests argument. Thus, respondent mother's best interests-argument is deemed abandoned. See *MOSES, Inc*, 270 Mich App at 417 ("If a party fails to adequately brief a position, or support a claim with authority, it is abandoned."). Even when addressed on the merits, however, both arguments must fail.

Respondent father argues that this case should be remanded to the trial court and combined with the lower court case determining whether respondents' parental rights to LNI should be terminated.[2] Respondent father, however, failed to support this argument with any authority. Thus, respondent father's argument that this case should be remanded to the trial court and combined with the case determining whether respondents' parental rights to LNI should be terminated is abandoned. See *MOSES, Inc*, 270 Mich App at 417. Furthermore, we are unaware of any authority establishing that this Court must remand a case in which a parent's parental rights were already terminated so the appellate case could be combined with a pending trial court case determining whether the parent's parental rights to a different child should be terminated. While the termination of a parent's parental rights to one child can influence a later case, we are unaware of any authority *requiring* all of a parent's children to be included in the same termination of parental rights case. Thus, respondent father's argument must fail.

"The trial court should weigh all the evidence available to determine the children's best interests." *In re White*, 303 Mich App at 713. In considering the child's best interests, the trial court's focus must be on the child and not the parent. *In re Moss*, 301 Mich App at 87. "In deciding whether termination is in the child's best interests, the court may consider 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 Minors*, 297 Mich App at 41-42 (citations omitted). "The trial court may also consider a parent's history of domestic violence, 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." *In re White*, 303 Mich App at 714. When the trial court makes its best interests-determination, it may rely upon evidence in the entire record, including the evidence establishing

[2] Respondent mother was pregnant with LNI during the lower court proceedings. LNI was not included in the proceedings to terminate respondents' parental rights to the children that are the subject of this appeal.

the statutory grounds for termination. *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000), superseded by statute on other grounds as recognized in *In re Moss*, 301 Mich App at 83.

Furthermore, "[a] child's placement with relatives is a factor that the trial court is required to consider" when making its best-interests determination, *In re Gonzales/Martinez*, 310 Mich App 426, 434; 871 NW2d 868 (2015), and "a child's placement with relatives weighs against termination." *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). "Relative" is defined by MCL 712A.13a(1)(j) as

> an individual who is at least 18 years of age and related to the child by blood, marriage, or adoption, as grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, and the spouse of any of the above, even after the marriage has ended by death or divorce.

Thus, a child's biological parent is not their "relative" but a child's grandparent or cousin is his or her relative. See MCL 712A.13a(1)(j); *In re Schadler*, 315 Mich App at 413.

Referee Mona Youssef explicitly considered respondents' bond with the children at the September 26, 2018 termination hearing, but the trial court failed to do so in its written order. A trial court, however, "speaks through its written orders and judgments, not through its oral pronouncements." *In re KMN*, 309 Mich App 274, 287; 870 NW2d 75 (2015) (citation and quotation marks omitted). Furthermore, trial courts are not required to consider a child's bond with his or her parents when making a best-interest determination. See *In re Olive/Metts Minors*, 297 Mich App at 41-42 (holding that a trial court "*may* consider the child's bond to the parent" when making a best-interests determination) (emphasis added).

The trial court's best-interests findings in its written order mainly focused on respondents' history of substance abuse and their failure to participate in services for the first 11 months of this case. Specifically, the trial court found that respondents failed to demonstrate a significant period of sobriety and that they reported inconsistent information regarding their sobriety and their past engagement with substance abuse treatment. Respondents additionally failed to participate in services until the petition for permanent custody was filed and they learned that respondent mother was pregnant with LNI. Furthermore, Dr. Robert Geiger, the clinician for the Clinic for Child Study, stated that respondents' prognosis for recovery was poor. Finally, termination of respondents' parental rights was in the children's best interests despite their relative placement with their paternal grandmother. The children's paternal grandmother had a preference of adoption, LJI was thriving in her care, and LMI had been in her paternal grandmother's care since birth. The children required stability and the children's best prospect for a safe, stable, and nurturing home excluded respondents.

The record supports each of the trial court's findings. Respondents were assigned service plans within the first two months of this case. Referee Youssef repeatedly told respondents how important it was for them to participate in services, but they failed to do so until the petition for permanent custody was filed 11 months after the children were taken into foster care. Respondents claimed that they had been sober for the six months preceding the Clinic for Child Study, but they failed to participate in drug screens until September 2018. As such, the trial

court could not verify respondents' sobriety. While the children's foster care worker opined that respondents' parental rights should not be terminated, Dr. Geiger disagreed and opined that respondents had a poor likelihood of being able to care for the children within a reasonable amount of time. Furthermore, the children's placement with their relative caregiver, their paternal grandmother, weighed against termination and the trial court considered this when making its best interests findings. Respondents also had a significant substance abuse history and failed to participate in services for the majority of this case. Respondents, however, began to fully participate in their service plans in September 2018, but the trial court found that termination of respondents' parental rights was in the children's best interests. Finally, even if the trial court had explicitly considered the children's bond with respondents, termination of respondents' parental rights remained in the children's best interests because of respondents' long history of substance abuse and their failure to adequately combat it throughout this case. Thus, we are not definitely and firmly convinced that the trial court erred by finding that termination of respondents' parental rights was in the children's best interests.

III. DUE PROCESS

Respondent mother argues that her right to due process was violated by the Clinic for Child Study. We disagree.

"In general, issues that are raised, addressed, and decided by the trial court are preserved for appeal." *In re TK*, 306 Mich App 698, 703; 859 NW2d 208 (2014), citing *Hines v Volkswagen of America, Inc*, 265 Mich App 432, 443-444; 695 NW2d 84 (2005). Respondent mother argued that Dr. Geiger should have interviewed her counselors and her parents for the Clinic for Child Study, but failed to argue that this error violated her right to due process. Accordingly, the trial court failed to make any due process findings. Thus, the issue is unpreserved.

Preserved constitutional questions are reviewed de novo. *In re AMAC*, 269 Mich App 533, 536; 711 NW2d 426 (2006). Unpreserved issues are reviewed for plain error. *In re VanDalen*, 293 Mich App 120, 135; 809 NW2d 412 (2011). "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." *Id*. (quotation marks omitted), citing *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). "Generally, an error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings." *In re Utrera*, 281 Mich App 1, 8-9; 761 NW2d 253 (2008). The appellant bears the burden of persuasion with respect to prejudice. See *Carines*, 460 Mich at 763 ("It is the defendant rather than the Government who bears the burden of persuasion with respect to prejudice.") (quotation marks and citation omitted).

Respondent mother argues that her right to due process was violated because the Clinic for Child Study was not fair. Specifically, respondent mother argues that the Clinic for Child Study was not fair because Dr. Geiger failed to interview respondent mother's counselors or her parents to determine how much progress she had made with her substance abuse issues. A parent's "interest in the companionship, care, custody, and management of their children" is protected by due process. *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003).

> There are two types of due process: procedural and substantive. The fundamental requirements of procedural due process are notice and a meaningful opportunity to be heard before an impartial decision maker. [T]he essence of a substantive due process claim is the arbitrary deprivation of liberty or property interests. A person claiming a deprivation of substantive due process must show that the action was so arbitrary (in the constitutional sense) as to shock the conscience. [*In re Beck*, 287 Mich App 400, 401-402; 788 NW2d 697, aff'd on other grounds 488 Mich 6 (2010) (citations and quotation marks omitted; alteration in original).]

The Clinic for Child Study report (the report) did not include any information from respondent mother's counselors or her parents. Rather, the clinic report included information obtained from interviews with respondents and the children's foster care worker as well as Dr. Geiger's observations of respondents' interactions with the children at the clinic. In the clinic report, Dr. Geiger stated that respondents minimized their past instances of substance abuse by viewing them as past mistakes instead of viewing them as signals of self-medication. Respondents appeared unaware of self-help programs and failed to take advantage of any such programs. Respondent mother stated that she intended to continue to participate in substance abuse therapy, but Dr. Geiger opined that respondent mother did not always demonstrate insight into her need for care. Dr. Geiger additionally noted that while respondents appeared to interact well with the children, he was unimpressed with their declarations that they would avoid future substance abuse because of their history of noninvolvement with services. Finally, because of respondents' past history of substance abuse and failure to participate in services, Dr. Geiger opined that their ability to care for the children in a reasonable amount of time "must be regarded as poor, to extremely guarded, at best." Accordingly, Dr. Geiger recommended terminating respondents' parental rights.

Respondent mother's argument that Dr. Geiger failed to interview respondent mother's parents or her counselors during the Clinic for Child Study is correct. This failure alone, however, did not necessarily violate respondent mother's right to due process. Respondent mother had notice of the proceedings to terminate her parental rights as well as an opportunity to be heard. As such, her right to procedural due process was not violated. See *In re Beck*, 287 Mich App at 401-402. Similarly, respondent mother's right to substantive due process was not violated because the trial judge was not required to follow Dr. Geiger's recommendation to terminate respondent mother's parental rights and respondent mother could have called her counselors or her parents as witnesses at any of the termination hearings. Respondent mother failed to call any of these individuals as witnesses. As such, the trial court's order terminating respondent mother's parental rights, which was partially on the basis of the Clinic for Child Study, was not so arbitrary as to shock the conscience. See *id*. at 402. Thus, respondent mother's constitutional due process argument must fail.[3]

[3] Respondent father failed to make any due process argument, but his right to due process was not violated for the same reasons that respondent mother's right to due process was not violated.

IV. REASONABLE EFFORTS

Respondents argue that petitioner failed to make reasonable efforts to reunify them with the children. We disagree.

To preserve the issue of whether reasonable efforts were made to reunify a child with his or her family, a respondent must "object or indicate that the services provided to them were somehow inadequate" at the trial court level. *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). Respondents failed to argue that the services offered to them were insufficient for them to reunify with the children. As such, the issue is unpreserved.

Preserved challenges to a trial court's reasonable efforts findings are reviewed for clear error. *In re Smith*, 324 Mich App 28, 43; 919 NW2d 427 (2018). Furthermore, "issues of statutory interpretation, as well as family division procedure under the court rules, are reviewed de novo." *In re AMAC*, 269 Mich App at 536. Finally, "This Court gives effect to the Legislature's intent as expressed in the statute's terms, giving the words of the statute their plain and ordinary meaning. When the language poses no ambiguity, this Court need not look beyond the statute or construe the statute, but need only enforce the statute as written." *In re LE*, 278 Mich App at 22-23 (citations and quotation marks omitted). As explained earlier, however, unpreserved issues are reviewed for plain error. *In re VanDalen*, 293 Mich App at 135.

"In general, when a child is removed from the parents' custody, 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). "As part of these reasonable efforts, the Department 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*, 500 Mich 79, 85-86; 893 NW2d 637 (2017); see also MCL 712A.18f(3) (establishing the requirements of a case service plan). Finally, "[w]hile the DHS 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*, 397 Mich App at 248.

Respondent mother argues that petitioner failed to make reasonable efforts to reunify her with the children because the petition for permanent custody was filed 11 months after the children were removed from respondents' care and parents are usually provided with 15 months to reunify with their children under MCL 712A.19a(8) and MCR 3.976(E).[4] MCL 712A.19a(8) and MCR 3.976(E), however, do not establish that petitioner failed to make reasonable efforts to reunify a parent with his or her child if it filed a petition for permanent custody before a child spent 15 months in foster care. Rather, MCL 712A.19a(8) and MCR 3.976(E) establish that petitioner is *required* to file a petition for permanent custody if a child has been in foster care for

[4] The children were removed from respondents' care on August 11, 2017, and the petition for permanent custody was filed 11 months later on July 25, 2018.

15 of the last 22 months in certain circumstances not at issue in this case.[5] MCL 712A.19a(8) and MCR 3.976(E), therefore, do not support respondent mother's argument that petitioner failed to make reasonable efforts to reunify her with the children because it filed the petition for permanent custody 11 months after the children were removed from respondents' care.

Respondents were referred for services six times. Their services were terminated early five times because respondents failed to participate in services. The services offered to and required of respondents included random drug screens twice a week, substance abuse treatment, parenting classes, and psychological evaluations. These services were designed to assist respondents with their substance abuse issues. Respondents also had the opportunity to visit the children each week throughout this case. Respondents, however, failed to participate in any services until the petition for permanent custody was filed. Furthermore, respondents failed to ask for bus tickets to help them attend any portion of their services. If respondents had requested bus tickets, petitioner would have provided the necessary bus tickets so respondents could participate in their assigned services. Petitioner offered respondents services designed to help them reunify with the children and rereferred respondents for services multiple times despite respondents' failure to participate in services. Respondent father argues that petitioner failed to offer necessary services to him, but he failed to identify what these missing services were. Additionally, respondent father failed to inform any social worker on his case that his work schedule conflicted with his service plan. Respondent father similarly failed to assert which services he required that petitioner failed to provide. Respondents failed to complete any of the services offered by petitioner. Finally, respondents had an obligation to participate in the services offered by petitioner. They failed to do so. Thus, petitioner made reasonable efforts to reunify respondents with the children.

Affirmed.

/s/ Karen M. Fort Hood
/s/ David H. Sawyer
/s/ Douglas B. Shapiro

[5] MCL 712A.19a(8) and MCR 3.976(E) establish that petitioner is not required to file a petition for permanent custody even if a child spent 15 of the previous 22 months in foster care if a "child is being cared for by relatives." MCL 712A.19a(8); MCR 3.976(E). The children's paternal grandmother cared for them throughout this case. Thus, MCL 712A.19a(8) and MCR 3.976(E) would not have required petitioner to file a petition for permanent custody.