STATE OF MICHIGAN

COURT OF APPEALS

In re DEAN, Minors.

UNPUBLISHED
October 15, 2019

No. 347946
Leelanau Circuit Court
Family Division
LC No. 15-009603-NA

Before: STEPHENS, P.J., and SERVITTO and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent, the children's maternal grandmother, who adopted the children after their mother's parental rights were terminated, appeals as of right the order terminating her parental rights to AD and GD under MCL 712A.19b(3).[1] We affirm.

I. FACTS

The parental rights of the children's mother, SL, were terminated in January 2015, whereupon respondent adopted the children. Petitioner, the Department of Health and Human Services (DHHS), filed a petition against respondent for abuse and neglect in October 2015, alleging, among other matters, (1) that respondent was physically abusing the children, (2) that SL was living with respondent, (3) that respondent and SL were abusing drugs, (4) that respondent was allowing other people with substance abuse problems to live in the home, and (5) that respondent was leaving the children in the care of inappropriate caregivers. The children were removed, but eventually they were returned. After the children showed improved behavior, respondent provided negative drug screens, and respondent completed various classes and programs, the trial court terminated its jurisdiction on May 10, 2016.

[1] The trial court did not specifically identify the subsections under which it found statutory grounds for termination; the court simply referred to "MCL 712A.19(B)(3) [sic]" after making its findings of fact.

Petitioner filed another petition on September 14, 2016, largely based on allegations, to which respondent admitted, that respondent was being neglectful by drinking and being intoxicated while the children were in her care. The children remained in the home while respondent engaged in services. The trial court terminated its jurisdiction on January 24, 2017.

On September 5, 2018, petitioner filed the petition at issue in this appeal. In contrast to the two previous petitions, the 2018 petition sought termination of respondent's parental rights at an initial disposition. The petition alleged, in relevant part, that SL was again living at respondent's home; along with JR, an individual with severe substance abuse problems, a significant CPS history, and criminal record. The petition also alleged that the police had been called to the home numerous times for drug and alcohol overdoses, suicide attempts, domestic violence, and arson. During an unannounced home visit by the caseworker on September 4, 2015, the police were already at the home because of a report of domestic violence between SL and JR. Respondent refused the case worker's request for a drug test at that time.

Respondent admitted at the plea hearing that SL was not an appropriate caregiver because of the termination of her parental rights due to substance abuse and her ongoing mental health concerns. The court accepted the plea and took jurisdiction of the children. At the disposition/termination hearing, petitioner presented testimony from the foster care worker, the caseworker, and JR regarding the allegations in the petition. The foster care worker also testified that the children had significant behavioral issues and that, after the children were taken into care, three foster families had asked that the children be removed. At the time of the hearing, AD had recently been removed from one foster home and separately placed into a former foster home because the behavior of the children when together was volatile. Petitioner had not yet located an adoptive family for the children because the pressing need was "just stabilizing and placement."

In an oral ruling on the record, the trial court stated that it found clear and convincing evidence to terminate respondent's parental rights under MCL 712A.19b(3). The trial court also stated that it found by a preponderance of the evidence that termination of respondent's parental rights was in the best interests of the children.

II. VALIDITY OF PLEA

Respondent argues that her plea was defective because the trial court failed to inform her of the allegations in the petition on the record or in a writing made part of the file before accepting her plea, as required by MCR 3.971(B)(1). Because respondent failed to challenge the trial court's exercise of jurisdiction or the validity of her plea at the plea proceeding, in a motion to withdraw her plea, or otherwise in the trial court, this issue is unpreserved. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). Respondent's unpreserved claim is reviewed for plain error affecting substantial rights. *Id*. An error generally will not affect substantial rights if it did not affect the outcome of the proceedings. *Id*. at 9.

Failure to comply with the provisions in MCR 3.971(B) may violate a respondent's due-process rights. *In re Wangler*, 498 Mich 911, 911; 870 NW2d 923 (2015).[2] When respondent's counsel indicated that respondent wanted to admit to the allegation in the amended paragraph 8 of the petition, counsel read that allegation out loud on the record. Even if counsel's reading of the allegation did not strictly comply with MCR 3.971(B)(1), respondent was clearly advised of the allegation to which she admitted. Thus, any error did not affect respondent's substantial rights, so reversal is not warranted.

Respondent also contends that the trial court failed to comply with MCR 3.971(D)(2)[3] because it failed to state on the record that one or more statutory grounds alleged in the petition were true. MCR 3.971(D)(2) requires the court to establish factual support for one or more statutory grounds for taking jurisdiction. The specific allegation was that respondent "continuously demonstrated an inability to provide proper care and a safe living environment due to allowing dangerous individuals into the home causing a significant risk of harm to the children." Respondent's counsel questioned respondent regarding her admission that SL provided unsupervised care for the children at respondent's home, and SL was an inappropriate caregiver due to her ongoing substance abuse and mental health issues and the prior termination of her rights for neglect. The parties agreed that respondent's testimony provided sufficient factual support for accepting respondent's plea. This allegation would establish statutory grounds under MCL 712A.2(b)(1) (neglect or abandonment) and MCL 712A.2(b)(2) (unfit home environment due to parent's behavior).

Later the same day, the court entered a written order of adjudication, stating, in relevant part, "After admission of plea, and by a preponderance of the evidence, there are statutory grounds to exercise jurisdiction over the children (MCL 712A.2[b]). The statutory ground is lack of proper custody or guardianship." The trial court's written order, and the record as a whole, demonstrates support for a finding that one or more of the statutory grounds alleged in the petition were true. MCL 3.971(D)(2). Respondent has failed to demonstrate plain error.

III. STATUTORY GROUNDS FOR TERMINATION

Respondent argues that the trial court did not specifically identify the statutory ground for termination under MCL 712A.19b(3). We agree, but we do not find that the trial court failed to *find* a statutory ground for termination established.

In order to terminate parental rights, the petitioner must prove by clear and convincing evidence that at least one statutory ground for termination in MCL 712A.19b(3) exists. MCR 3.977(A)(3) and (H)(3); *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000), superseded by

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[2] Orders from our Supreme Court are binding if they are "a final disposition of an application" containing "a concise statement of the applicable facts and the reason for the decision." See *DeFrain v State Farm Mut Auto Ins Co*, 491 Mich 359, 369; 817 NW2d 504 (2012).

[3] Effective June 12, 2019, former MCR 3.971(C) was relettered to current MCR 3.971(D). See June 12, 2019, order of the Michigan Supreme Court in ADM File No. 2015-21.

statute on other grounds as recognized in *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013). Under MCR 3.977(I)(3), "[a]n order terminating parental rights . . . may not be entered unless the court makes findings of fact, states its conclusions of law, and includes the statutory basis for the order." The court may state its findings of fact and conclusions of law "on the record or in writing." MCR 3.977(I)(1); see also MCL 712A.19b(1) ("[t]he court shall state on the record or in writing its findings of fact and conclusions of law with respect to whether or not parental rights should be terminated"). "Brief, definite, and pertinent findings and conclusions on contested matters are sufficient." MCR 3.977(I)(1).

In its ruling, the trial court properly observed that a statutory ground for termination under MCL 712A.19b(3) must be established by clear and convincing evidence. Unfortunately, the trial court did not actually identify any particular statutory ground under MCL 712A.19b(3) in support of its decision. Instead, the trial court stated the following regarding the statutory bases for its decision to terminate respondent's parental rights:

> But the Court finds by clear and convincing evidence that a statutory basis exists for terminating the parental rights. I am referring to paragraph four in the Amended Petition, the home or environment by reason of neglect, cruelty, drunkenness, criminality depravity on the part of the parent, guardian, non-parent adult or other custodian is an unfit place for the children to live. The Court further finds that [respondent] is unable to provide proper care and custody due to her demonstrated inability to provide a safe living environment, free from abuse and neglect as contrary to the welfare of [the children] for them to remain in her care.

The trial court proceeded to make a number of factual findings and then stated, "In addition, I would find that the facts conform with MCL 712(a).19(B)(3) [sic]."

We agree with respondent that the trial court failed to identify which specific statutory ground or grounds it found established. The omission was certainly an oversight, and seems to violate MCR 3.977(I)(3). However, a purely procedural failure to strictly comply with a court rule does not necessarily warrant reversal, particularly if the trial court's ruling as a whole provides an adequate basis for us to determine that the trial court complied with the substance of the rule. See *In re Toler*, 193 Mich App 474, 476-477; 484 NW2d 672 (1992); *In re Kirkwood*, 187 Mich App 542, 546; 468 NW2d 280 (1991). We review the trial court's findings of fact for clear error. *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). However, the application of the facts to the law may be properly reviewed de novo. See *Cain v Dep't of Corrections*, 451 Mich 470, 503 n 38; 548 NW2d 210 (1996) (discussing judicial disqualification).

When a petition requests termination of parental rights at initial disposition, MCR 3.977(E)(3) requires the court to find that one or more facts alleged in the petition are true and establish grounds for termination of parental rights under MCL 712A.19b(3)(a), (b), (d), (e), (f),

(g), (h), (i), (j), (k), (l), or (m).[4] The petition requested termination under, among other bases, MCL 712A.19b(3)(j) (reasonable likelihood that the child will be harmed if returned to parent). Although the trial court's bench ruling was not a model of clarity, it is clear that the trial court was deeply and reasonably concerned for the safety of the children if returned to respondent's home. The trial court clearly found that the substance abuse and violence in the home, especially combined with the neglect and uncategorizable events like a car on fire in the driveway, placed the children in serious danger. The trial court also observed that respondent had displayed a pattern of relapsing into endangering the children.

Ultimately, the trial court erred by failing to identify a specific statutory ground for termination from the list enumerated under MCR 3.977(E)(3). However, we find that error harmless. It is unambiguous from its ruling as a whole that the trial court found a reasonable likelihood that the children would be harmed if returned to respondent. That finding is not clearly erroneous. Although the trial court only briefly referred to MCL 712A.19b(3), it can readily be inferred that it found MCL 712A.19b(3)(j), which is one of the enumerated provisions under MCR 3.977(E)(3), established by clear and convincing evidence. We find no error in such a conclusion. We decline to elevate formality over substance. *Wilcox v Moore*, 354 Mich 499, 504; 93 NW2d 288 (1958). Because only one statutory ground for termination must be properly established, we need not consider whether any other grounds might exist or petitioner's alternative argument. See *In re Powers Minors*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

IV. BEST INTERESTS OF THE CHILDREN

Similarly, the trial court failed to explicitly review the relevant factors to determine whether it was in the best interests of the children to terminate respondent's parental rights. Whether termination is in a child's best interests must be proven by a preponderance of the evidence. *In re Moss*, 301 Mich App at 90. This Court reviews for clear error a trial court's finding that termination of parental rights is in a child's best interests. *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009).

A best-interest determination is focused on the child rather than the parent. *In re Schadler*, 315 Mich App 406, 411; 890 NW2d 676 (2016); see also *Moss*, 301 Mich App at 87. "The trial court should weigh all the evidence available to determine the children's best interests." *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). The trial court's best-interests assessment may be based on evidence that established the statutory grounds for termination. *In re Trejo*, 462 Mich at 353-354. A child's safety and well-being, including the risk of harm should the child be returned to a parent's care, constitute factors relevant to a best-interest determination. *VanDalen*, 293 Mich App at 142.

Again, the trial court's bench ruling was lacking in specificity. However, as discussed above, the trial court engaged in an extensive discussion of how dangerous, unstable, and neglectful respondent's care and housing had been. The trial court also emphasized that

[4] Effective August 14, 2019, MCR 3.977(E)(3) was amended to strike (n) from the enumerated grounds. See August 14, 2019, order of the Michigan Supreme Court in ADM File No. 2018-15.

respondent's history showed that she almost certainly was not capable of consistently providing the children with the safe and stable home they needed. Under the circumstances, it was not clearly erroneous for the trial court to conclude that the hazardous and chaotic environment provided by respondent was sufficient by itself to prove termination to be in the children's best interests.

V. UNPRESERVED ISSUES

Respondent argues that the trial court erred by failing to find that petitioner made reasonable efforts to reunite the family. It is true in general that reasonable efforts must be made to reunite a family, but petitioner "is not required to provide reunification services when termination of parental rights is the agency's goal." *Moss*, 301 Mich App at 91, quoting *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009).

Respondent also argues that the trial court erred by relying on hearsay testimony from the caseworker about comments the children made to her about JR supervising the children while drunk, and from a police officer about the 911 calls involving respondent's home. Generally, the rules of evidence do not apply at dispositional hearings. See MCR 3.973(E)(1). However, MCR 3.977(E)(3) provides that the court may terminate parental rights at initial disposition "on the basis of clear and convincing legally admissible evidence that had been introduced at the trial or plea proceedings, or that is introduced at the dispositional hearing." Nevertheless, the record shows that respondent never objected to any of the alleged hearsay evidence, and, in any event, the alleged hearsay was essentially cumulative of evidence properly admitted or introduced by respondent. Thus, the alleged hearsay was harmless, and under the circumstances, we would not find any error in its admission or use inconsistent with substantial justice. See MCR 2.613(A); *Utrera*, 281 Mich App at 14.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Deborah A. Servitto
/s/ Amy Ronayne Krause