STATE OF MICHIGAN

COURT OF APPEALS

In re BURNS/MYERS/WILBORN, Minors.

UNPUBLISHED
November 19, 2019

No. 348091
Wayne Circuit Court
Family Division
LC No. 17-001241-NA

Before: JANSEN, P.J., and BOONSTRA and LETICA, JJ.

PER CURIAM.

Respondent appeals by right the trial court's order terminating his parental rights to his two minor children. We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Respondent is the father of two minor children, CB and KB. In 2017, the Department of Health and Human Services ("DHHS" or "petitioner") filed a petition requesting that the trial court take jurisdiction over CB, KB, and their two half-siblings and terminate the rights of the children's fathers. The petition alleged that all four children had been living with their mother in an abandoned home in Detroit until June of 2017, when their mother was murdered by Willie Wilborn, Sr.[1] while the children were present. Wilborn was subsequently arrested and charged with murder. The petition alleged that the children were found wandering outside the home; their mother's dead body remained inside. The petition further alleged that respondent had not had contact with his children or provided support, care, or supervision for at least two years. Petitioner had been unable to contact respondent apart from one phone call on July 3, 2017. On that date, a Children's Protective Services (CPS) investigator had reached respondent after the children were found; the petition alleged that respondent "stated that he is trying to get himself together, living with a friend, and would have to check with her to see if the children could live with him."

[1] Willie Wilborn, Sr. is the father of CB and KB's half-siblings. He was also a respondent in the proceedings below and his parental rights were also terminated. He is not a party to this appeal.

Although petitioner provided an address for a home visit and scheduled a time for such a visit, respondent was not present when the CPS investigator arrived. Petitioner could not verify that respondent actually lived at that address. Petitioner was never able to contact respondent again. CB and KB were placed with their maternal grandmother, where they remained for the duration of the proceedings. The trial court granted respondent supervised visitation, if he could be located.

Over the next year, there were numerous attempts to contact and serve respondent. On several occasions, the trial court ordered substituted service by mail and publication, and appointed an attorney to represent respondent. Respondent's attorney was never able to contact respondent. At the termination trial, CB and KB's foster-care specialist testified that she had never had any contact with respondent despite attempting to reach him by phone and mail. The specialist testified that on a single occasion, in June or July 2017, shortly after their mother's death, respondent had visited the children at their maternal grandmother's home; that was respondent's last contact with the children.

The trial court found that statutory grounds to terminate respondent's parental rights to CB and KB had been proven under MCL 712a.19b(3)(a)(*ii*) and (g), finding that respondent had "basically been absent from [his children's] lives" and had "just washed his hands of his children, his responsibility." The trial court noted that respondent had never appeared for a court proceeding and had never provided any care, supervision, or support for the children during the pendency of the proceedings. The trial court determined that it was in CB's and KB's best interests that respondent's parental rights be terminated.

This appeal followed.

II. STATUTORY GROUNDS FOR TERMINATION

Respondent argues that the trial court erred by finding that statutory grounds for termination of his parental rights had been proven; specifically, he contends that the trial court erred by concluding that he had abandoned his children. We disagree. We review for clear error a trial court's determination regarding statutory grounds for termination. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). "A finding of fact 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). We review de novo issues of statutory interpretation. *Makowski v Governor*, 317 Mich App 434, 441; 894 NW2d 753 (2016).

The trial court terminated respondent's parental rights under MCL 712a.19b(3)(a)(*ii*) and (g), which provide that a trial court may terminate a respondent's parental rights if:

> (a) The child has been deserted under either of the following circumstances:
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> * * *
>
> (*ii*) The child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period.
>
> * * *

> (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.

Respondent argues that the evidence presented at the termination hearing was not sufficient to prove that respondent had "abandoned" his children, by which we presume respondent to mean that he had not "deserted" his children within the meaning of MCL 712a.19b(3)(a)(*ii*).[2] We disagree. Respondent's citation to *In re Laster*, 303 Mich App 485; 845 NW2d 540 (2013), in support of this argument is puzzling because the Court in *Laster* in fact found the evidence sufficient to conclude that the respondent-father had deserted the children.[3] The *Laster* Court noted that the respondent-father had moved to Ohio in 2010, had not provided support for his children, and had last visited them in 2011. *Laster*, 303 Mich App at 547. Further, this Court also found that such conduct by the respondent-father sufficed to prove the statutory grounds for termination under MCL 712a.19b(3)(g),[4] noting that the respondent-father "did not provide support for the children, [had] failed to make himself available for a home assessment . . . did not participate in other voluntary services, such as therapy and parenting classes, and . . . had not visited the children while this case was pending." *Id*. at 548.

Respondent in this case, like the respondent-father in *Laster*, never provided support, care, or supervision for the children while the case was pending, and visited them only once, shortly after their mother's murder and after the children came into care. The evidence at the termination trial showed that, before their mother's murder, CB and KB were living in deplorable, dangerous conditions with their mother and received no support from respondent. Despite being aware that his children's mother had been murdered and that his children were in the care of petitioner, respondent never contacted DHHS or responded to any of the numerous attempts to contact him. He never appeared for a court proceeding or responded to his attorney's attempts to reach him. *Laster* supports, rather than refutes, the trial court's determination. *Id*. at 547-548.

Respondent's additional arguments are also unpersuasive. His contention that there was no child support order compelling him to support his children is unavailing, to say the least. And respondent's arguments concerning the alleged failures of multiple DHHS workers to ensure that

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[2] Respondent makes no specific argument concerning MCL 712a.19b(3)(g).

[3] Respondent argues that the *Laster* Court found the father's non-involvement in his children's lives to be insufficient, by itself, to support termination of the father's parental rights" under MCL 712a.19b(3)(j) (reasonable likelihood of harm if child is returned to parent's home), a statutory subsection that is not at issue in this case.

[4] At the time *Laster* was decided, subsection (g) did not contain language concerning a respondent's financial ability to provide proper care and custody; the language was otherwise substantially identical. See MCL 712a.19b(3)(g), prior to amendment by 58 PA 2018 (effective June 12, 2018).

respondent contacted his children are similarly wanting. Although the CPS investigator who spoke to respondent in 2017 could not recall whether she had given respondent the contact information for the children's maternal grandmother, the record shows that respondent visited the grandmother's home around the same time for his one and only visit with the children; in other words, he obviously knew where the children were placed and how to visit them. And although the foster-care specialist may have failed to ask CB and KB directly if they had ever had any contact with their father after June or July 2017, the specialist testified that neither she nor the maternal grandmother were aware of any such contacts. Moreover, even if additional minor contact had occurred, the record was clear that respondent had never provided care, supervision, or support to the children, or made any attempt to contact petitioner or participate in the proceedings below. Under these circumstances, the trial court did not err by concluding that statutory grounds to terminate respondent's parental rights were proven by clear and convincing evidence. *In re Mason*, 486 Mich at 152.

Finally, respondent also briefly argues that petitioner failed to make reasonable efforts at reunification before seeking termination of respondent's parental rights. We disagree. We review for clear error whether petitioner made reasonable efforts to preserve and reunify the family. See *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005).

DHHS has an affirmative duty to make reasonable efforts to reunify a family before seeking termination of parental rights, except in cases involving aggravated circumstances. MCL 712A.18f(3)(b) and (c); MCL 712A.19a(2); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010), quoting MCL 712A.19a(2); see also see also *In re Moss*, 301 Mich App 76, 90-91; 836 NW2d 182 (2013), quoting *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009). Abandonment of a child is an aggravated circumstance. MCL 722.638(1)-(2), MCL 712A.19a(2). To successfully claim a lack of reasonable efforts, a respondent must establish that he or she was entitled to those efforts and would have fared better if DHHS had offered other services. *Fried*, 266 Mich App at 543.

The record shows that respondent was granted supervised parenting time, and that multiple employees of petitioner repeatedly attempted to contact respondent in order to discuss the case and the possibility of reunification. Therefore, even though petitioner is not required to offer reunification services when it sought termination at the initial disposition due to abandonment, see MCL 722.638(1)-(2), MCL 712A.19a(2); see also *Moss*, 301 Mich App at 90-91, it is clear from the record that it was respondent's own absence, not petitioner's unwillingness, that caused the lack of offered services. Moreover, in light of respondent's complete lack of participation in the proceedings below, he has failed to demonstrate that he would have fared better if he had been offered more or different services. *Fried*, 266 Mich App at 543.

III. SERVICE OF PROCESS

Respondent argues that petitioner failed to properly serve respondent with the summons and notice of the termination hearing, and that this defect in service rendered the proceedings in this case void. We disagree. We review de novo as a question of law whether a trial court has personal jurisdiction over a party. *In re SZ*, 262 Mich App 560, 564; 686 NW2d 520 (2004).

We also review de novo issues of statutory interpretation. *Makowski v Governor*, 317 Mich App 434, 441; 894 NW2d 753 (2016).

Respondent argues that petitioner failed to comply with MCL 712A.13 by failing to personally serve respondent. We disagree. MCL 712A.13 provides in pertinent part:

> Service of summons may be made anywhere in the state personally by the delivery of true copies thereof to the persons summoned: Provided, That if the judge is satisfied that it is impracticable to serve personally such summons or the notice provided for in the preceding section, he may order service by registered mail addressed to their last known addresses, or by publication thereof, or both, as he may direct. It shall be sufficient to confer jurisdiction if (1) personal service is effected at least 72 hours before the date of hearing; (2) registered mail is mailed at least 5 days before the date of hearing if within the state or 14 days if outside of the state; (3) publication is made once in some newspaper printed and circulated in the county in which said court is located at least 1 week before the time fixed in the summons or notice for the hearing.

"A parent of a child who is the subject of a child protective proceeding is entitled to personal service of a summons and notice of proceedings. However, in cases in which personal service is impracticable, substituted service is permissible. Substituted service is sufficient to confer jurisdiction on the court." *SZ*, 262 Mich App at 564-565 (citations and footnote omitted). MCL 712A.13 specifically permits a trial court to order service by registered mail or publication if it finds that personal service is impracticable. Our court rules provide for substituted service in juvenile proceedings. See MCR 3.920(B)(4). Specifically, "[i]f the court finds, on the basis of testimony or a motion and affidavit, that personal service of the summons is impracticable or cannot be achieved, the court may by ex parte order direct that it be served in any manner reasonably calculated to give notice of the proceedings and an opportunity to be heard, including publication." MCR 3.920(B)(4)(b).

Here, a CPS investigator testified at the first preliminary hearing that she had spoken to respondent on the phone on July 3, 2017, had informed respondent that the children were placed with their grandmother and that CPS would be filing a petition, and had provided respondent with her phone number. The investigator was unable to successfully contact respondent thereafter or to confirm that he lived at the address that he had provided. The foster-care specialist was similarly unable to contact respondent by phone or mail. Respondent's attorney was also unable to contact respondent. A process server was unable to serve respondent personally with a copy of the summons and notice of termination hearing; the affidavit of the process server stated that the address respondent had given to the CPS investigator appeared to be "a vacant property." The trial court, based on the testimony that respondent could not be located, repeatedly ordered substituted service of the summons and notice of proceedings in the case by both mail and publication. The attempts at service by certified mail were returned unclaimed and undeliverable.

Under these circumstances, the trial court was well within its authority to order substituted service by publication, which was completed in a timely manner well before the termination hearing began. See MCR 3.920(B)(5)(c). Although respondent notes that petitioner

did not provide a full history, on the record, of the various attempts to serve respondent, we note that respondent's counsel never raised the issue of defective service or sought a more detailed recitation of petitioner's service attempts. Substituted service in this case was permissible, timely, and sufficient to confer jurisdiction on the court. *SZ*, 262 Mich App at 564-565.

Affirmed.

/s/ Kathleen Jansen
/s/ Mark T. Boonstra
/s/ Anica Letica