STATE OF MICHIGAN

COURT OF APPEALS

In re M. L-B KRAMER, Minor.

UNPUBLISHED
November 21, 2019

No. 348366
Wayne Circuit Court
Family Division
LC No. 16-522336-NA

Before: METER, P.J., and JANSEN and GLEICHER, JJ.

PER CURIAM.

Respondent-father, appeals as of right the trial court's order terminating his parental rights to his daughter under MCL 712A.19b(3)(g) and (j). We affirm.

I. BACKGROUND

Respondent-father and respondent-mother have two daughters together. NC, the elder child, was born in August 2014 and placed in a guardianship with respondent-father's aunt in 2015. NC is not the subject of these proceedings. Rather, these proceedings concern the younger daughter, MC, born in December 2015. At the time of MC's birth, respondent-father was subject to an order preventing him from contact with respondent-mother after respondent-father was convicted of committing domestic violence against respondent-mother during her pregnancy with MC.

MC was removed from respondent-mother's care approximately three months after her birth, after the child was diagnosed with failure to thrive. In the interim, respondent-mother had placed the child in the care of a family friend because she lacked stable housing. After respondent-father established paternity over the child, he was ordered to participate in a parent-agency treatment plan, which required him to attend parenting time, parenting classes, individual therapy, a psychological evaluation, and domestic-violence treatment. Respondent-father consistently failed to participate in these services and, two years after the child came within the trial court's jurisdiction, petitioner moved to terminate respondent-father's parental rights under MCL 712A.19b(3)(g) and (j).

Respondent-father entered a plea of admission to the allegations in the supplemental petition, acknowledging that he had failed to consistently participate in services or consistently

visit with MC for the preceding two years. Approximately five months separated the plea from the best-interest hearing. During this time, respondent-father engaged with his service-plan and made some progress towards reunification. Nonetheless, the trial court concluded that this recent progress was not sufficient to overcome the two years respondent-father failed to engage with services. Accordingly, the trial court concluded that termination of respondent-father's parental rights was in MC's best interests. This appeal followed. Following the termination of respondent-father's parental rights, respondent-mother voluntarily relinquished her parental rights to MC. Accordingly, respondent-mother is not a party to this appeal.

II. ANALYSIS

A. RIGHT TO COUNSEL

Respondent-father first argues that he was denied his constitutional right to counsel when the trial court allegedly dismissed his appointed attorney because of respondent-father's failure to attend hearings and participate in his treatment plan. Respondent-father is correct that the constitutional guarantees of due process and equal protection extend the right to counsel to respondents in child protection proceedings. *In re Powers*, 244 Mich App 111, 121; 624 NW2d 472 (2000). However, the record does not support respondent-father's claim that the trial court dismissed appointed counsel, let alone that it did so as a consequence of respondent-father's lack of participation.

The record discloses that the trial court appointed counsel for respondent-father at the April 11, 2016 pretrial and plea hearing and respondent-father's first appointed counsel appeared at the first dispositional-review hearing. Respondent-father did not appear at the next dispositional-review hearing in August 2016, but his counsel was present. At this hearing, the trial court admonished respondent-father for not participating in the service plan or visiting MC and warned that, if respondent-father did not start attending hearings or complying with the treatment plan, that appointed counsel would be removed. As it turns out, neither defendant nor his counsel attended the next hearing; however, the trial court did not remove appointed counsel. In any event, this hearing largely focused on respondent-mother's participation in her service plan and resulted in a continuation of both service plans. Respondent-father's counsel did not appear for the next hearing date and the trial court continued the placements and service plans without addressing the absence on the record. Respondent-father subsequently requested and was appointed new counsel who represented respondent-father throughout the conclusion of the lower-court proceedings—including hearings at which respondent-father did not attend. The order appointing new counsel indicates that respondent-father's "prior appointed counsel was a no call no show. Father did not know who his counsel was."

There is no indication in the record that the trial court ever removed respondent-father's appointed counsel during the foregoing proceedings. Absent a discharge by the court, the attorney of record continued to represent respondent. See MCR 3.915(B)(2). Accordingly, the existing record does not support respondent-father's position that the trial court removed his appointed counsel or that he was ever deprived of the right to counsel.

Moreover, to the extent that appointed counsel was negligently absent from two early review hearings, an "erroneous deprivation of appointed counsel for child protective proceedings

can be subject to a harmless error analysis." *In re Williams,* 286 Mich App 253, 278; 779 NW2d 286 (2009). Respondent-father does not address how the outcome of the two unattended hearings, or indeed the entire child-protection matter, would have been different had counsel been present for the two hearings. It appears that appointed counsel missed two review hearings, one on December 6, 2016 and another on February 6, 2017. These review hearings were unremarkable. The court did not take any affirmative or negative action against respondent. More importantly, at neither hearing were respondent-father's parental rights at jeopardy of being terminated. Indeed, during both hearings, respondent, despite his absence and noncompliance with the treatment plan, was granted additional time to work toward reunification. Under these circumstances, any error related to respondent-father's first appointed counsel's apparently negligent absence at the two dispositional-review hearings was harmless.[1]

B. STATUTORY GROUNDS AND PLEA

Next, respondent-father raises several challenges to the statutory grounds supporting the termination of his parental rights.[2] Consistent with the petition, the trial court terminated respondent-father's parental rights under MCL 712A.19b(3)(g) and (j), which authorize the termination of parental rights under the following circumstances:

> (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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> * * *
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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.

Respondent-father entered a plea of admission that statutory grounds supported termination of his parental rights. Specifically, respondent-father admitted that he is the subject child's biological father and that the child had been in care for more than two years. Respondent-father's case service plan required him to attend parenting time, parenting classes,

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[1] Our conclusion should not minimize the seriousness of first appointed counsel's no-show. As presented to us, this issue requires us to address whether respondent-father was deprived of counsel, not whether his counsel acted unreasonably. That being said, had respondent-father presented this issue as one of ineffective assistance, we would have concluded that his first counsel's performance was professionally unreasonable, but that the unreasonable performance did not affect respondent-father's substantial rights in light of the assistance rendered by respondent-father's second appointed counsel. See *In re Martin*, 316 Mich App 73, 85; 896 NW2d 452 (2016).

[2] Respondent-father does not challenge the trial court's best-interests findings.

individual therapy, a psychological evaluation, and domestic-violence treatment. Respondent-father admitted that he did not complete his treatment plan and that he had not consistently visited the child, including several months when he did not see the child at all. Moreover, respondent-father testified that he was currently on a tether as a result of a domestic-violence conviction involving the child's mother. At the end of respondent-father's testimony, the trial court took judicial notice of the entire court file which documented respondent-father's consistent noncompliance with the case-service plan.

Respondent-father now raises several challenges to his plea and the statutory grounds supporting the termination of his parental rights. First, respondent-father argues that, notwithstanding his plea, the trial court erred by finding statutory grounds to terminate his parental rights because there was insufficient evidence to conclude that, despite respondent-father's past failures to care for the child, he would be unable to provide proper care and custody for the child in the future. We disagree.

Initially, we note that the vast majority of the evidence respondent-father cites in support of his challenge to the trial court's statutory-grounds findings actually relates to the five months between respondent-father's plea and the best-interest hearing. During this time, respondent-father reengaged with his service plan and started to make progress toward reunification. It would be illogical, however, for this Court to conclude that the trial court erred in its statutory-grounds findings on the basis of evidence that had not come into existence at the time of the trial court's decision.

Rather, we must limit our review to the evidence available to the trial court at the time it made its decision and the evidence before the trial court at the time plainly supports its statutory-grounds findings. Respondent-father received two years of services before his pleas and admitted that he did not complete the service plan or consistently visit his child. "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." *In re White*, 303 Mich App 701, 710; 846 NW2d 61 (2014). "Similarly, 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. Accordingly, we find no deficiency in the trial court's finding that statutory grounds existed to terminate respondent-father's parental rights under MCL 712A.19b(3)(g) and (j).

Relatedly, respondent-father argues that he was denied the effective assistance of counsel by his counsel's recommendation that respondent-father enter a plea of admissions rather than mounting a defense to the statutory grounds for termination. "The principles applicable to claims of ineffective assistance of counsel in the arena of criminal law also apply by analogy in child protective proceedings." *In re Martin*, 316 Mich App 73, 85; 896 NW2d 452 (2016). Accordingly, to be entitled to relief, respondent-father must show that "(1) counsel's performance was deficient, falling below an objective standard of reasonableness, and that (2) the deficient performance prejudiced the respondent." *Id*. "To demonstrate prejudice, [respondent] must show the probability that, but for counsel's errors, the result of the proceedings would have been different." *People v Nix*, 301 Mich App 195, 207; 836 NW2d 224 (2013).

Respondent-father argues that had he been given the opportunity, he could have effectively challenged the existence of the statutory grounds with evidence that he had the ability to provide proper care and custody for his daughter and that the child would not be at a risk of harm in his care. Again, however, for the two years preceding respondent-father's pleas, he had consistently failed to engage in his service plan. This salient fact establishes statutory grounds to terminate respondent-father's parental rights under MCL 712A.19b(3)(g) and (j). Given the overwhelming evidence establishing the statutory grounds, we cannot conclude that respondent-father's counsel made an unreasonable strategic decision by advising respondent-father to enter a plea to the statutory grounds—thereby owning up to his prior shortcomings *and* limiting any further development of these shortcomings in the record—and to focus on committing to the service plan in the interim before the best-interests hearing. In any event, given the extensive record supporting the pleas, there is not a reasonable probability that respondent-father's challenge to the statutory grounds would have been successful. Accordingly, respondent-father's claim of ineffective assistance of counsel is without merit.

Finally, respondent-father asserts that the advice of rights given to him at the plea proceedings "did not comport with MCR 3.971(B)(1); (3)(a); and (5). Respondent, however, does not elaborate upon this argument, outside of inserting a block quotation from our Supreme Court's recent opinion in *In re Ferranti*, ___ Mich ___, ___; ___ NW2d ___ (2019) (Docket No 157907); slip op at 10, regarding a respondent's due-process rights in plea proceedings. Respondent-father does not provide any explanation as to how the plea was deficient under the cited subsections or, importantly, whether these alleged deficiencies affected respondent-father's substantial rights such that the alleged error would require reversal of the termination of his parental rights.[3]

"An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority." *People v Payne*, 285 Mich App 181, 195; 774 NW2d 714 (2009) (internal citation and quotation marks omitted). "An appellant's failure to properly address the merits of his assertion of error constitutes abandonment of the issue." *People v Miller*, 326 Mich App 719, 739; 929 NW2d 821 (2019) (internal citation and quotation marks omitted). Because respondent-father has failed to adequately brief his position, he has abandoned the issue and we decline to address it.

Affirmed.

/s/ Patrick M. Meter
/s/ Kathleen Jansen
/s/ Elizabeth L. Gleicher

[3] Because respondent-father did not move to withdraw his plea in the trial court, the issue whether his plea was knowingly made is not preserved for appellate review, *In re Zelzack*, 180 Mich App 117, 126; 446 NW2d 588 (1989), and is reviewed for plain error affecting respondent-father's substantial rights, *People v Carines,* 460 Mich 750, 763; 597 NW2d 130 (1999).