

STATE OF MICHIGAN
COURT OF APPEALS

In re WILLIAMS, Minors.

UNPUBLISHED
December 17, 2019

No. 349279; 349280
Jackson Circuit Court
Family Division
LC No. 16-003018-NA

Before: SWARTZLE, P.J., and MARKEY and REDFORD, JJ.

PER CURIAM.

In these consolidated appeals, respondent-mother (Docket No. 349279) and respondent-father (Docket No. 349280) appeal by right the order terminating their parental rights to their minor children, DW, CW, and KW, under MCL 712A.19b(3)(c)(i) (adjudication conditions continue to exist), (g) (failure to provide proper care and custody), and (j) (risk of harm if returned). We affirm.

I. UNDERLYING FACTS AND PROCEDURAL HISTORY

Respondent-parents have criminal histories and have had involvement with the Department of Health and Human Services (DHHS) dating back to 2009. Previously, respondent-father’s parental rights to another child were terminated. On October 28, 2016, in this case, the children were removed because of respondent-mother’s substance abuse and additional concerns of failure to provide a safe environment, physical abuse, medical neglect, improper supervision, and threatened harm. Respondent-father, who lived in Tennessee at the time, came back to Michigan in September 2017, pleaded no contest, and almost immediately went back to Tennessee. At some point, the children were placed with him in Tennessee but after two or three months they were removed from that home by Tennessee Children’s Protective Services and sent back to Michigan. The children were eventually returned to respondent-mother in December 2017, and the case was closed on May 22, 2018.

On June 16, 2018, just 25 days later, while respondent-mother was driving to Tennessee with the children, she started hallucinating and believed she saw bugs crawling on the children. She pulled her vehicle over and called 911. When the police arrived, the smell of bug spray was

so potent that responding officers believed that she set off a bug bomb inside the vehicle. In the emergency room she admitted to using multiple drugs while driving including heroin, cocaine, and methadone, and admitted that she injected heroin while at a stop light. DW, who suffers from type 1 diabetes, had a blood glucose level of 432 causing her diabetic ketoacidosis which could have been fatal. Respondent-mother was incarcerated and respondent-father, who lived in Tennessee, could not be immediately located. Consequently, the children were again removed, placed in foster care, and DHHS filed a petition for termination.

Respondent-mother admitted to the allegations in the petition and received a parent agency treatment plan (PATP) which required her to participate in parenting classes, undergo a psychological evaluation and follow up, have a substance abuse assessment and follow up, drug screens, and releases. Respondent-mother tested positive for THC on October 15, 2018. Respondent-mother complied with her PATP and, other than an alcohol screen, all of her drug screens were negative. However, during her supervised visitations, respondent-mother brought high carbohydrate meals for DW contrary to doctor recommendations that DW consume meals containing no more than 45 to 60 carbohydrates. Respondent-mother complied with the substance abuse assessment which recommended that she participate in a substance abuse group and then dialectical behavioral therapy (DBT). She participated in the group but waited for a DBT referral. By the end of March 2019, however, respondent-mother tested positive for methamphetamine. She denied using and claimed that the test presented a false positive result and that it would be proven false by another test the same day. She also requested a hair follicle test to show that she continued working hard on recovery and was clean.

Respondent-father came back to Michigan and at a hearing on September 12, 2018, the trial court ordered and he agreed to take a drug screen. Respondent-father, however, refused to take the drug test. The court took jurisdiction over the children in respondent-father's case and entered an order of disposition on October 29, 2018. Following the dispositional hearing on October 23, 2018, the DHHS presented respondent-father a PATP which required supervised visitation, parenting classes, a psychological evaluation, substance abuse assessment and follow up on the recommendations, random drug screens, medical training for caring for a diabetic child, that he obtain suitable housing, a source of income, and sign releases. At the January 15, 2019, hearing, the foster care worker reported that respondent-father was being investigated by CPS for making methamphetamine in his girlfriend's garage, that he did not attend his psychological evaluation, and that he told her that he went back to Tennessee when he actually stayed in Michigan. During March 2019 when respondent-father appeared in court, nothing indicated that he had complied in any way with his PATP.

At a review hearing on March 26, 2019, having found no progress, the trial court found that the children needed stability and changed the goal to termination. The trial court ordered the DHHS to present a termination petition but ordered services to continue. The DHHS filed the supplemental petition for termination of respondents' parental rights on April 9, 2019. At that time, the parties' respective counsel advised the trial court that respondent-father had been jailed for failure to pay child support and that he failed to show up for services or parenting time. His inconsistent involvement in parenting time upset the children, especially DW. Consequently, the trial court suspended respondent-father's visitation.

At the termination hearing, the trial court heard testimony that the psychological evaluation report recommended that respondent-mother not be a custodial parent because she made decisions based on her wants and not on the children's needs. Respondent-mother's substance abuse assessment recommended that she participate in intensive outpatient treatment, and the caseworker testified that respondent-mother completed 30 days outpatient treatment but had been asked to complete the DBT program before undergoing the remainder of the outpatient treatment. Respondent-mother started the DBT therapy in February and participated in five sessions of the year-long DBT program, but she stopped in April 2019.

Respondent-mother tested positive for methamphetamines in March and April 2019. After testing positive on April 8, 2019, she stopped attending drug screens and stopped participating in services. The caseworker testified that respondent-mother said that the upcoming trial made her participation pointless. Further, respondent-mother had relapsed and a test would come back positive. Respondent-mother tested positive for THC, alcohol, amphetamine, methamphetamine, and cocaine, but she presented negative drug screens from tests taken at another self-selected screening facility on the same dates. The caseworker indicated that the state did not use that facility anymore because tests by that facility "were easily tampered with." Respondent-mother also signed up for testing at another clinic once a week and those results were also negative.

The caseworker testified that, although respondent-mother completed parenting classes in October 2018, concerns remained regarding her ability to parent the children. She had been escorted out of one of the classes when she disagreed with the leader and other participants and told them "to shut their mouth." In addition, safety concerns arose at the visitations. The boys climbed on the changing table and KW ran around with scissors several times. KW and CW also threw chairs the last couple visits. Respondent-mother failed to notice the children's behaviors and intervene appropriately. The visitation monitor had to intervene often during every visit. The children came to the visits calm, but by the end the children were crying and upset, especially DW. At the last visit, she ran out crying before the visit ended and refused to go back into the room. DW knew about the upcoming termination hearing and she told the caseworker that she wanted her parents' parental rights terminated and feared that would not happen.

The caseworker also testified that respondent-mother often blamed her children for their removal. Respondent-mother told the boys that she could not have unsupervised visits because they were naughty at a visit. She blamed DW's blood glucose level on DW not taking her medicine. The caseworker explained that DW lacked the ability to monitor her insulin levels because she could not do the math it required. DW's glucose levels needed to be monitored several times each day. When the caseworker first became involved, she discovered that respondent-mother had not checked DW's glucose levels at all on some days, and once she tested at almost 500, a potentially fatal level. Respondent-mother had been counseled and told to maintain a range of between 45 and 60 carbohydrates per meal for DW's meals during visits, but until the last month and a half respondent-mother often brought meals for DW that exceeded that amount.

Several times during Family Team Meetings, respondent-mother either left in the middle of the meeting or had to be escorted out. Respondent-mother, however, had suitable housing and sufficient income to keep her home and provide for her children.

Respondent-mother testified that she participated in the intensive outpatient program of her own accord and completed a 30-day course and then stopped so that she could try to get into the DBT program. She learned that she had to attend the DBT classes for a month before her parenting visits would be unsupervised. That made her angry. She attended about seven weekly sessions of the DBT classes, including the intake session. Respondent-mother admitted that she left one parenting class but denied being escorted out. She said that she finished all the parenting classes within three months. She also attended numerous diabetes trainings. She claimed that counting carbohydrates started when DW went into foster care and that after she understood, she started to bring meals that were within the appropriate range. She thought the 500 blood glucose reading came from her brother's machine and protested that, "There's no way that her sugar was 500 and nobody did anything about it."

Respondent-mother admitted that she struggled with substance abuse and missed some drug screens right after her children were taken away, but claimed that by the end of July she was clean. She affirmed that she participated in a number of programs. She testified that she received methadone from Victory Clinic weekly, that it worked, and that she had not tested positive at Victory Clinic since July of 2018. She said she started to test at ADAM¹ during the 2016/2017 case after a drug test came back as a false positive for THC. She asserted that she tested clean at ADAM and got her children back. She noted that for the previous five months she had paid for screens at ADAM to prove that she was clean. She did not understand why she failed the other drug tests and claimed that she had not used drugs. She stated that she paid for a hair follicle test in April which came back negative. She admitted that she had relapsed and used illegal drugs shortly after the last case was closed, but denied any later relapse. Respondent-mother testified that termination of her parental rights would not be in her children's best interests because her children wanted to be with her, she was a good mother, she had the income and housing, and she could maintain a drug-free life and remain sober.

Regarding respondent-father, the caseworker testified that he had been referred for a psychological evaluation and had an appointment set but he failed to show up. He also failed to participate in parenting classes or undergo the substance abuse evaluation. He had been offered 70 drug screens, participated in three, and tested positive for methamphetamines twice. He did not have housing or income. He attended visitation sporadically. Although he had been offered 70 parenting time visits, he attended only 37 and frequently failed to show up without calling ahead of time. That upset the children.

Respondent-father stated that in the previous case, he was not a respondent and had placement of the children for about nine months. He thought he would get full custody and maintained that the children were wrongly taken from his care. He asserted that he had nothing to do with the incident leading to the children's removal this time and claimed that he did not know why he did not have his children. Upon questioning by the court, respondent-father admitted that he could not pass a drug test.

¹ ADAM is the acronym for Alcohol Drug Administrative Monitoring, Inc., a company that performs alcohol and drug testing at several locations in Michigan.

The trial court considered all of the evidence of record and found in each respondent parent's case that clear and convincing evidence established statutory grounds for termination of their respective parental rights. The trial court also determined that termination of respondent-parents' respective parental rights served the children's best interests.

II. STATUTORY GROUNDS

Both respondent-parents argue that the trial court erred by finding that clear and convincing evidence established statutory grounds for termination of their respective parental rights. We disagree.

A person's parental rights may be terminated by the trial court if it finds by clear and convincing evidence at least one of the statutory grounds for termination set forth in MCL 712A.19b(3). *In re Miller*, 433 Mich 331, 344-345; 445 NW2d 161 (1989). We review the trial court's findings for clear error. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). "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 Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). We defer to the trial court's "special opportunity to judge the credibility of witnesses." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

The trial court terminated respondents' parental rights under MCL 712A.19b(3)(c)(i), (g), and (j), which provide:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(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.

* * *

(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.

* * *

(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 petitioner must prove at least one ground for termination. *In re Moss*, 301 Mich App 76, 88; 836 NW2d 182 (2013). If this Court concludes that the trial court did not clearly err by finding one statutory ground for termination, this Court does not need to address the additional grounds. *In re HRC*, 286 Mich App at 461.

Regarding MCL 712A.19b(3)(c)(i), the record reflects that respondent-mother relapsed within 25 days of the closing of the previous case. She used heroin, cocaine, and methadone while driving with her children and started hallucinating. Responding officers found DW suffering from diabetic ketoacidosis. The DHHS originally petitioned for termination based on concerns of physical neglect and abuse, medical neglect, improper supervision, threatened harm, substance abuse, and the lack of ability to care for and provide a safe environment for the children. Shortly after the goal changed to reunification and respondent-mother pleaded to the allegations in the petition and agreed to a PATP, she tested positive for THC. By January 2019, her screens were negative but that lasted only two months. At the dispositional review hearing on March 26, 2019, she tested positive for methamphetamine. Although she denied using and claimed the test provided a false positive result, she later had positive screens which she again claimed were erroneous. We accord due deference to the trial court's assessment of the credibility of the witnesses before it in light of its special opportunity to observe the witnesses. MCR 2.613(C); *In re Miller*, 433 Mich at 337. In this case, the trial court heard the testimony and reflected upon the evidence and declined to believe respondent-mother's claim that the positive tests were mistaken. The record reflects that the caseworker testified that in April 2019 respondent-mother said that she had relapsed and admitted that her drug tests would be positive. The trial court did not clearly err by concluding that respondent-mother had not rectified the condition of her drug abuse.

The record also reflects that respondent-mother failed to learn how to appropriately parent the children. Parenting time visits ended in chaos and demonstrated that respondent-mother had not benefited from her parenting classes. Further, she failed to take responsibility and instead blamed the children for their removal. The record also indicates that at Family Team Meetings and in the parenting class respondent-mother displayed combative behavior. She also argued that the conclusions stated in her psychological evaluation were wrong. Further, contrary to the record evidence, respondent-mother testified that DW had never been sick and that her blood sugar never ran high until after being placed in foster care. She offered many unsupported excuses concerning DW's high blood glucose levels.

The trial court did not clearly err in finding that clear and convincing evidence established that the conditions that led to the adjudication continued to exist and would not be rectified within a reasonable time considering the children's ages. Because the trial court correctly determined that clear and convincing evidence established statutory grounds for termination of respondent-mother's parental rights under MCL 712A.19b(3)(c)(i), we need not consider respondent-mother's arguments regarding the other statutory grounds. See *In re HRC*, 286 Mich App at 461.

Regarding respondent-father, the conditions that led to his adjudication were substance abuse and parenting problems. During the pendency of this case, respondent-father left Michigan and returned to Tennessee. He failed to pay child support. He failed to maintain a relationship with the children. In the previous case, he had a history of substance abuse, not participating in services, and attending visitations sporadically. That case ended when the children were returned to respondent-mother.

In this case, respondent-father exhibited the same behavioral patterns. He refused to comply with and participate in the ordered services. He attended parenting time visitation only sporadically. When he did not show up, the children did not handle it well. The record reflects that he told a caseworker that he went back to Tennessee to avoid participating in services and parenting time visits. He failed to complete his psychological evaluation, did not attend parenting classes, and did not participate in a substance abuse evaluation. He continued to use illegal substances. At the termination hearing, he admitted that, if drug tested that day, he would test positive. The record also reflects that he lacked housing and lacked a legal source of income. Therefore, the trial court did not err by finding that clear and convincing evidence established that the conditions that led to the adjudication continued to exist and no reasonable likelihood existed that they would be rectified within a reasonable time considering the children's ages. Because the trial court correctly determined that clear and convincing evidence established statutory grounds for termination of respondent-father's parental rights under MCL 712A.19b(3)(c)(i), we need not consider respondent-father's arguments respecting other statutory grounds. See *In re HRC*, 286 Mich App at 461.

III. BEST INTERESTS

Both respondent-parents contend that the trial court clearly erred in finding that termination of their respective parental rights served the children's best interests. We disagree.

Whether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence. *In re Moss*, 301 Mich App at 88-90. We review a trial court's decision regarding a child's best interests for clear error. *In re Laster*, 303 Mich App 485, 496; 845 NW2d 540 (2013). We give deference to the "trial court's factual findings at termination proceedings if those findings do not constitute clear error." *In re Rood*, 483 Mich 73, 90; 763 NW2d 587 (2009).

MCL 712A.19b(5), provides:

If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.

When considering best interests, the trial court must focus on the children rather than the parents. *In re Moss*, 301 Mich App at 87. The trial court must weigh the evidence available on the whole record in determining the children's best interests. *In re Trejo*, 462 Mich at 356. It 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 35, 41-42; 823 NW2d 144 (2012) (citations omitted). Other considerations include the length of time the child has been in foster care or placed with relatives, the likelihood that "the child could be returned to her parents' home within the foreseeable future, if at all," and compliance with the case service plan. *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012). In *In re White*, 303 Mich App 701, 713-714; 846 NW2d 61 (2014), this Court summarized:

The trial court should weigh all the evidence available to determine the children's best interests. To determine whether termination of parental rights is in a child's best interests, the court should consider a wide variety of factors that may include 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. 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. [Quotation marks and citation omitted.]

Further, the children's safety and well-being, including the risk of harm they might face if returned to the parent's care, constitute factors relevant to a best-interest determination. *In re VanDalen*, 293 Mich App at 142.

Preliminarily, we find no merit in respondent-mother's contention that the trial court did not consider that the children were not in a preadoptive home. The record reflects that the trial court considered their current placement and options for and the availability of placement that would provide them the permanency they needed. Respondent-mother also argues that, in determining best interests, the trial court failed to consider the best interests of each individual child. In *In re Olive/Metts*, 297 Mich App at 42, this Court held that the trial court must consider "the best interests of each child individually." In *In re White*, 303 Mich App at 715-716, this Court clarified:

We conclude that this Court's decision in *In re Olive/Metts* stands for the proposition that, if the best interests of the individual children *significantly* differ, the trial court should address those differences when making its determination of the children's best interests. It does not stand for the proposition that the trial court errs if it fails to explicitly make individual and—in many cases—redundant factual findings concerning each child's best interests. [Emphasis in original.]

In this case, the children were placed together in a foster home. The record reflects that their interests did not significantly differ. The trial court considered their best interests collectively and did not clearly err in failing to address the best interests of each child individually.

Regarding best interests, the trial court considered the record evidence and explained that the children needed and deserved permanency. The trial court explained that the evidence established that respondent-parents each lacked the ability to provide the children permanency and stability within a reasonable time. The record reflects that DW left parenting time sessions early because they were so chaotic. Respondent-mother's contention that DW left visits crying

because of being sad to leave her mother is not supported by the record evidence. The record indicates that she left because she could not deal with the chaos. The record indicates that DW took the role of parenting her brothers because of respondent-mother's inability to do so.

Respondent-father argues that the court failed to consider his bond with the children, failed to make any specific findings about best interests or consider appropriate factors. We disagree.

Respondent-father attended visitation only sporadically, and when he did not attend, he did not let the workers or the children know in advance. That upset them. Evidence also established that he left Michigan so that he could avoid participating in services and visitations. His conduct demonstrated that his children were not a priority for him. Evidence also established that DW wanted respondent-father's parental rights terminated. Respondent-father failed to fill his parental role and his absence from their lives detrimentally affected the children's ability to establish a meaningful and appropriate bond with him.

The record reflects that neither respondent-parent sufficiently benefited from services so that they could provide a suitable and stable environment for the children. Both respondent-parents continued to use illegal substances. Respondent-father failed to address his substance abuse problems. At the termination hearing, he admitted that he could not pass a drug test that day. He failed to participate in services, had no income, and lacked suitable housing. The very things the children needed, respondent-father could not provide.

The record indicates that the children thrived in their foster home. A preponderance of the evidence supported the trial court's findings that the children needed permanency and stability and that neither respondent-parent could provide for them within a reasonable time. Therefore, the trial court did not clearly err in finding that termination of respondent-mother's and respondent-father's parental rights served the children's best interests.

IV. SERVICES

Respondent-father contends that the DHHS failed to fulfill its statutory duty to make reasonable efforts to provide him services for reunification. He contends that it failed to present him with a PATP, failed to involve or evaluate him, failed to provide services, and gave him no opportunity to work toward reunification. Respondent-father failed to raise this issue in the trial court. Therefore, our review of this unpreserved claim of error is limited to plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). To avoid forfeiture under the plain error rule, respondent-father must establish that (1) an error occurred, (2) the error was plain (clear or obvious), and (3) the plain error affected his substantial rights. *Id.* at 763. A plain error affects substantial rights if it affected the outcome of the lower court proceedings. *Id.*

Reasonable reunification efforts must be made to reunite the parent and child unless certain aggravating circumstances exist. MCL 712A.19a(2); *In re Mason*, 486 Mich at 152; *In re Frey*, 297 Mich App at 247. However, while the DHHS must make such efforts, the parent has a commensurate responsibility to participate in the services offered. *Frey*, 297 Mich App at 247.

The record in this case belies respondent-father's claim that the DHHS disregarded his statutory right to be provided services and failed to involve him. In the October 29, 2018 order of disposition, the trial court ordered supervised parenting time and further ordered respondent-father to:

participate in parenting classes through an approved agency, complete a psychological evaluation and a substance abuse assessment and follow the recommendations, participate in drug screens through Forensic Fluids, obtain and maintain appropriate housing, sign all releases of information for the agency to receive service updates for all court ordered services.

The caseworker testified that the trial court ordered respondent-father to complete a psychological evaluation but he failed to attend the appointment. The DHHS also referred respondent-father for parenting classes but he failed to participate. Respondent-father had a referral for a substance abuse evaluation but he failed to participate. Further, although offered 70 random drug screens, he participated in only three, two of which tested positive for methamphetamine. The DHHS offered respondent-father 70 parenting times but he attended only 37. The record indicates that he frequently failed to show up and failed to bother to inform anyone including the children. Evidence also established that respondent-father left Michigan so that he could avoid participating in services and going to the parenting time visits. Respondent-father has failed and cannot establish the occurrence of any plain error. The record reflects that services were made available to him but he refused to participate and benefit from them.

V. JURISDICTION

Respondent-father also argues that in his case the trial court improperly assumed jurisdiction over the children. He contends that the court merely read into the record the findings of a no contest plea in the previous neglect case, stated that it took too long for respondent-father to come to Michigan, and then, based on respondent-father's refusal to take the drug screens, stated its belief that respondent-father had not remedied his substance abuse problems. Respondent-father contends that the trial court lacked grounds for taking jurisdiction over the children, and therefore, it could not proceed to terminate his parental rights. We disagree.

Adjudication errors raised after the trial court has terminated parental rights are reviewed for plain error. *In re Ferranti*, ___ Mich ___; ___ NW2d ___ (2019), slip op at 14, citing *In re Mitchell*, 485 Mich 922; 773 NW2d 663 (2009). The respondent must establish that (1) an error occurred, (2) the error was plain, and (3) the plain error affected their substantial rights. *Carines*, 460 Mich at 763.

To acquire jurisdiction, the fact-finder must determine by a preponderance of the evidence that the child comes within the statutory requirements of MCL 712A.2. *In re Brock*, 442 Mich 101, 108-109; 499 NW2d 752 (1993). In assuming jurisdiction, the trial court noted that respondent-father entered a no contest plea in the previous case and had been fully advised that it would be treated as an admission of responsibility. The petition asserted, among other things, "lack of funds to care for the kid, lack of proper housing for the children, infestation of bugs, fleas and cockroaches[,] . . .not having proper car seats for the children[,] and possession and use of methamphetamine in Tennessee. The trial court observed that respondent-father "did

nothing of any significance to remedy the issues that brought his children into care as a result of that petition. . . . He basically left the state and chose not to engage in any further services.” The trial court found that he was not available to take the children when notified of the situation with his wife, and that it was “concerned about his refusal to submit to a drug test” during a visitation with the children and his drug abuse.

The record reflects that respondent-father pleaded no contest in the previous case. MCR 3.971(B)(4) provides:

(B) Before accepting a plea of admission or plea of no contest, the court must advise the respondent on the record or in a writing that is made a part of the file:

* * *

(4) of the consequences of the plea, including that the plea can later be used as evidence in a proceeding to terminate parental rights if the respondent is a parent.

There is no record that respondent-father ever raised any issue concerning the validity of his plea. Therefore, the trial court did not commit any error in considering respondent-father’s plea with respect to jurisdiction in this case. See *In re Andino*, 163 Mich App 764, 772-773; 415 NW2d 306 (1987) (explaining that, while proof of a no contest plea alone is insufficient to terminate a parent’s rights, it is admissible when there is independent proof of misconduct).

Respondent-father mistakenly asserts that the trial court found no legal statutory grounds to take jurisdiction. In the September 26, 2018 order of adjudication regarding respondent-father, the trial court found by clear and convincing evidence that there were statutory grounds to exercise jurisdiction over the children under MCL 712A.2(b)(1) and (2). The trial court found that respondent-father failed to provide, when able to do so, support, education, medical, surgical, or other necessary care for health or morals, a substantial risk of harm to the children’s mental well-being existed, and the children lived in an unfit home environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian. The evidence before the trial court sufficed for it to take jurisdiction over the children in respondent-father’s case. The record indicates that the trial court did not base its decision solely on respondent-father’s refusal to take a drug screen or the no contest plea. The trial court could properly rely on respondent-father’s previous no contest plea for purposes of establishing the fact of a prior adjudication. The trial court also could properly consider respondent-father’s refusal to participate in services. Further, evidence established that when respondent-mother visited respondent-father in Tennessee, he was using methamphetamines. Further, evidence established that when respondent-father learned that his children had once again been removed from their mother and placed in foster care, he took a week to come to Michigan. The trial court, therefore, did not clearly err in taking jurisdiction over the children in his case.

VI. DUE PROCESS

Respondent-father asserts that the trial court denied him due process and a fair trial by denying his motion for a new attorney on the day of the termination trial. We disagree.

In *People v Mack*, 190 Mich App 7, 14; 475 NW2d 830 (1991), this Court explained:

An indigent defendant is guaranteed the right to counsel; however, he is not entitled to have the attorney of his choice appointed simply by requesting that the attorney originally appointed be replaced. Appointment of a substitute counsel is warranted only upon a showing of good cause and where substitution will not unreasonably disrupt the judicial process. Good cause exists where a legitimate difference of opinion develops between a defendant and his appointed counsel with regard to a fundamental trial tactic. The decision regarding substitution of counsel is within the sound discretion of the trial court and will not be upset on appeal absent a showing of an abuse of discretion. [Citations omitted.]

In *In re Conley*, 216 Mich App 41, 46; 549 NW2d 353 (1996), this Court stated:

Appointment of substitute counsel is warranted only upon a showing of good cause and where substitution will not unreasonably disrupt the judicial proceedings. Here, respondent's counsel demonstrated dedication and commitment to her case. Moreover, granting respondent's request would have disrupted the judicial process, extensively delayed a case that had been proceeding for almost two years, and delayed the children's permanent placement in foster care. Also, in light of respondent's failure to explain the basis for her request or to establish good cause, we find no error on the basis of our review of the whole record.

In this case, just before the termination trial commenced, respondent-mother sought appointment of substitute counsel and an adjournment. Respondent-father also announced to the trial court that he fired his appointed counsel and desired the appointment of new counsel and adjournment of the proceedings. The trial court inquired why and asked respondent-father why he waited until that time to do so. The record reflects that the trial court knew that respondent-father previously fired appointed counsel more than once. Respondent-father asserted that his counsel failed to communicate with him and failed to do anything for him. The record, however, indicates that respondent-father's counsel appropriately represented him throughout the pendency of the case. The trial court inquired of respondent-father's counsel and he informed the trial court that respondent-father lied to the court and recited when he met with and conferred with respondent-father regarding the case.

The trial court considered respondent-father's reasons for seeking new counsel and found them lacking. The trial court also remarked that the case had been scheduled for trial that day and challenged respondent-father regarding not informing the court earlier or taking other action. The trial court took a brief recess to consider the matter and the applicable law.

When the proceedings resumed, the trial court explained the law and then stated:

There is no right to appointment of substitute counsel. You did have the right to appointment of counsel. I appointed good, competent counsel for both of you. I'm confident that both of them have done what is legally appropriate and necessary in order to represent your interests. I'm denying your request for substitute counsel.

We're going to proceed with the trial today. You may rely on the advice of counsel if you want. I'm going to make both of them stay here for the trial and be available to you if you have questions. But if you don't want them to represent you, you'll be representing yourself.

The trial court then instructed respondent-father's counsel to remain and serve as his advisor if respondent-father desired to call upon him for advice.

The record in this case does not indicate that respondent-father supported his request for substituted counsel by showing the existence of good cause. Appointed counsel served respondent-father well and demonstrated dedication and commitment to respondent-father's case throughout its pendency. The record reveals that appointed counsel provided competent representation for respondent-father who delayed to the last moment his request for substitute counsel. The trial court gave respondent-father the opportunity to consult with his appointed counsel who remained present during the trial proceedings. The trial court did not abuse its discretion in denying respondent-father's motion for substitution of counsel.

Affirmed.

/s/ Brock A. Swartzle

/s/ Jane E. Markey

/s/ James Robert Redford