

STATE OF MICHIGAN
COURT OF APPEALS

In re EJ and AM, Minors.

UNPUBLISHED
October 22, 2020

No. 352166
Wayne Circuit Court
Family Division
LC No. 18-001559-NA

Before: METER, P.J., and SHAPIRO and RIORDAN, JJ.

PER CURIAM.

Respondent appeals as of right the trial court’s order dismissing the supplemental petition filed by petitioner to continue temporary wardship over one of respondent’s children, EJ, without returning EJ to respondent’s care. Respondent also challenges the trial court’s order denying respondent’s motion to modify the conditions of respondent’s visitation with EJ and respondent’s other child, AM. We affirm.

I. FACTS & PROCEDURAL HISTORY

These proceedings began in September 2018 when petitioner filed a permanent custody petition requesting that the trial court terminate respondent’s parental rights to EJ and AM. Petitioner alleged that respondent abandoned EJ and AM and respondent suffered from alcohol addiction. Respondent made admissions regarding the allegations in the petition, and the trial court declined to terminate respondent’s parental rights. Instead, the trial court made the children temporary court wards and ordered respondent to participate in treatment services. EJ was placed with her maternal grandparents and AM was placed with her biological father.

By May 2019, respondent completed a sufficient portion of her treatment plan such that the trial court entered an order returning EJ to respondent’s home. However, AM remained placed with her biological father. The trial court continued to exercise jurisdiction over EJ and AM, and the trial court ordered respondent to participate in in-home services. In August 2019, EJ was removed from respondent’s care because respondent was intoxicated while caring for EJ and respondent was not participating in mental health treatment.

On October 25, 2019, the trial court held a dispositional review and permanency planning hearing. Petitioner filed a motion to dismiss the supplemental petition, and the trial court granted

the motion without returning EJ to respondent's care. On November 4, 2019, respondent filed a motion to modify her visitation with EJ and AM. The trial court denied the motion. This appeal followed.

II. ANALYSIS

On appeal, respondent argues that (1) the trial court erred when it determined that there was sufficient evidence to justify removing EJ from respondent's care and placing EJ in foster care under MCR 3.965(C), (2) the trial court erred when it determined that reasonable efforts were made to finalize the permanency plan under MCL 712A.19a before the October 25, 2019 dispositional review and permanency planning hearing, (3) respondent was deprived of her right to procedural due process when the trial court dismissed the August 8, 2019 supplemental petition without returning EJ to respondent's care, and (4) the trial court abused its discretion when it denied respondent's November 4, 2019 motion to modify visitation with EJ and AM. We disagree with each of respondent's assertions.

A. MCR 3.965(C) AND MCL 712A.19a

The trial court did not err when it determined that there was sufficient evidence to justify removing EJ from respondent's care and placing EJ in foster care under MCR 3.965(C). Additionally, the trial court did not err when it determined that petitioner made reasonable efforts to finalize the permanency plan before the October 25, 2019 dispositional review and permanency planning hearing.

We review de novo the interpretation and application of court rules. *In re Sanders*, 495 Mich 394, 404; 852 NW2d 524 (2014). We review the trial court's findings of fact underlying the legal issues for clear error. *In re McCarrick/Lamoreaux (On Remand)*, 307 Mich App 436, 463; 861 NW2d 303 (2014). A finding is clearly erroneous if, after reviewing the entire record, we are definitely and firmly convinced that the trial court made a mistake. *Id.*

Before considering the merits of respondent's argument, we note that respondent appears to conflate the August 9, 2019 preliminary hearing with the October 25, 2019 dispositional review and permanency planning hearing. In doing so, respondent asserts that the evidence presented at the October 25, 2019 dispositional review and permanency planning hearing was insufficient to justify removing EJ from respondent's care under MCR 3.965(C). Respondent's assertion is incorrect because MCR 3.965 governs the preliminary hearing in which the trial court must determine whether there is probable cause to authorize the petition and may order temporary placement of a minor child. MCR 3.965(B)(12). For this reason, we will evaluate whether petitioner presented sufficient evidence at the August 9, 2019 preliminary hearing to support the trial court's determination that there was probable cause to remove EJ from respondent's care and place EJ in foster care.

If the trial court authorizes the filing of the petition, the court "may release the child to a parent, guardian, or legal custodian and may order such reasonable terms and conditions believed necessary to protect the physical health or mental well-being of the child[.]" MCR 3.965(B)(13)(a). If the trial court does not release the child to a parent, guardian, or legal

custodian, the trial court may place the child in foster care. MCR 3.965(C)(2). In order to place a child in foster care, the trial court must find all of the following:

- (a) Custody of the child with the parent presents a substantial risk of harm to the child's life, physical health, or mental well-being.
- (b) No provision of service or other arrangement except removal of the child is reasonably available to adequately safeguard the child from the risk as described in subrule (a).
- (c) Continuing the child's residence in the home is contrary to the child's welfare.
- (d) Consistent with the circumstances, reasonable efforts were made to prevent or eliminate the need for removal of the child.
- (e) Conditions of child custody away from the parent are adequate to safeguard the child's health and welfare. [MCR 3.965(2).]

The trial court's August 9, 2019 order reflects its findings that respondent dropped EJ while respondent was intoxicated, respondent told the case manager that she would drink when she wanted to do so, respondent was involuntarily admitted to a hospital for mental health issues on July 9, 2019, and respondent was intoxicated when she was admitted to the hospital. Accordingly, continuing EJ's residence in respondent's home was contrary to EJ's welfare because respondent repeatedly used alcohol in EJ's presence, respondent's alcohol use put EJ at risk of physical harm, and respondent suffered from ongoing mental health issues sufficient to justify hospitalization. Thus, the evidence presented at the August 9, 2019 preliminary hearing was sufficient to justify removing EJ from respondent's care and placing EJ in foster care under MCR 3.965(C).

Because respondent appears to conflate the August 9, 2019 preliminary hearing with the October 25, 2019 dispositional review and permanency planning hearing, respondent also asserts that the trial court should not have removed EJ from respondent's care because petitioner failed to make reasonable efforts to finalize the permanency plan, and the trial court abandoned reasonable efforts to reunify EJ with respondent before the October 25, 2019 dispositional review and permanency planning hearing. We disagree with respondent's assertion.

"At or before each permanency planning hearing, the court shall determine whether the agency has made reasonable efforts to finalize the permanency plan." MCL 712A.19a(4). On the date of the October 25, 2019 hearing, the permanency plan was to reunify EJ with respondent. During the October 25, 2019 hearing, a foster care specialist testified that respondent was assigned a therapist, respondent participated in counseling, and respondent's mental health medication regimens were reviewed on a monthly basis. Furthermore, a second foster care specialist testified that respondent was participating in a supportive visitation program. Respondent was offered services including therapy, counseling, and supportive visitation. Moreover, respondent was permitted to have supervised visits with EJ. Thus, petitioner made reasonable efforts to reunify respondent with EJ.

B. PROCEDURAL DUE PROCESS

Respondent was not denied her right to procedural due process. Generally, whether child protective proceedings complied with a respondent's substantive and procedural due process rights is a question of law that we review de novo. *In re TK*, 306 Mich App 698, 703; 859 NW2d 208 (2014).

“[T]he fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State.” *In re Rood*, 483 Mich 73, 76; 763 NW2d 587 (2009) (citation and quotation marks omitted). Thus, “when the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures.” *Id.* (citation, quotation marks, and brackets omitted). MCR 3.974 *et seq.* governs a trial court's review of a child's placement while under the trial court's jurisdiction.

A trial court “shall periodically review the progress of a child not in foster care over whom it has taken jurisdiction.” MCR 3.974(A)(1). Unless otherwise provided by a court rule, the trial court may not order a change in placement of a child without a hearing. MCR 3.974(A)(3). “If a child is under the jurisdiction of the court and a supplemental petition has been filed to remove the child from the home, the court shall conduct a hearing on the petition.” MCR 3.974(B)(2). The trial court shall ensure that the parties are given notice of the hearing, and the trial court shall comply with the placement provisions in MCR 3.965(C). MCR 3.974(B)(2). In doing so, the trial court “must make a written determination that the criteria for placement listed in MCR 3.965(C)(2) are satisfied.” MCR 3.974(B)(2).

Here, EJ was under the trial court's jurisdiction when petitioner filed a supplemental petition to remove EJ from respondent's home on August 8, 2019. Thus, the trial court was required to conduct a hearing on the petition, provide respondent with notice of the hearing, and comply with the placement requirements in MCR 3.965(C). MCR 3.974(B). Respondent does not assert that MCR 3.974 was insufficient to provide a fundamentally fair procedure. Rather, respondent argues that the trial court failed to comply with the applicable procedures when the trial court dismissed the August 8, 2019 supplemental petition without returning EJ to respondent's care. We disagree.

Under MCR 3.974(B)(2), “[i]f a child is under the jurisdiction of the court and a supplemental petition has been filed to remove the child from the home, the court shall conduct a hearing on the petition.” MCR 3.974(B)(2). On August 9, 2019, the trial court held a preliminary hearing and determined that it would be contrary to EJ's welfare to remain in respondent's home. The trial court ensured that respondent received notice of the hearing under MCR 3.974(B)(2) in the form of a summons dated August 9, 2019. Furthermore, the trial court complied with the placement provisions in MCR 3.965(C). Thus, respondent's due process rights were not violated.

C. PARENTING TIME

The trial court did not abuse its discretion when it denied respondent's motion to modify parenting time.

We review a trial court's decision regarding the suspension or modification of parenting time for an abuse of discretion. “A trial court abuses its discretion when it selects an outcome that

is outside the range of reasonable and principled outcomes.” *Teran v Rittley*, 313 Mich App 197, 213; 882 NW2d 181 (2015).

Respondent relies upon MCL 712A.13a(13) in support of the assertion that the trial court erred when it denied respondent’s November 4, 2019 motion to modify visitation. Under MCL 712A.13a(13),

[i]f a juvenile is removed from the parent’s custody at any time, the court shall permit the juvenile’s parent to have regular and frequent parenting time with the juvenile. Parenting time between the juvenile and his or her parent shall not be less than 1 time every 7 days unless the court determines either that exigent circumstances require less frequent parenting time or that parenting time, even if supervised, may be harmful to the juvenile’s life, physical health, or mental well-being. If the court determines that parenting time, even if supervised, may be harmful to the juvenile’s life, physical health, or mental well-being, the court may suspend parenting time until the risk of harm no longer exists. The court may order the juvenile to have a psychological evaluation or counseling, or both, to determine the appropriateness and the conditions of parenting time.

Here, the trial court did not suspend respondent’s parenting time or order that parenting time occur less frequently. Rather, the trial court denied respondent’s motion to change visitation from supervised visits at a DHHS facility to either supervised visits in the presence of a designated supervisor or unsupervised visits. MCL 712A.13a(13) does not require a trial court to make any specific findings before determining the extent and manner in which visits are to be supervised. Nevertheless, the trial court justified its order denying respondent’s motion to modify visitation by stating that it was unclear whether respondent missed substance abuse screenings, respondent failed to release her mental health services records, and petitioner did not intend to exercise its discretion to allow either supervised visits in the presence of a designated supervisor or unsupervised visits. In denying respondent’s motion, the trial court did not implicate any of the provisions in MCL 712A.13a(13). Accordingly, the trial court did not abuse its discretion when it denied respondent’s motion to modify parenting time.

III. CONCLUSION

Respondent has not demonstrated that she is entitled to relief. Accordingly, we affirm the trial court’s orders.

/s/ Patrick M. Meter
/s/ Douglas B. Shapiro
/s/ Michael J. Riordan