STATE OF MICHIGAN

COURT OF APPEALS

In re M. A. PETERS, Minor.

UNPUBLISHED
December 10, 2020

No. 352453
Wayne Circuit Court
Family Division
LC No. 18-001237-NA

Before: REDFORD, P.J., and RIORDAN and TUKEL, JJ.

PER CURIAM.

In this termination of parental rights case, respondent[1] appeals as of right the trial court's order terminating her parental rights to the minor child MP, pursuant to MCL 712A.19b(3)(c)(*i*) (more than 182 days have passed since original disposition, the conditions that led to the adjudication continue to exist, and parent unable to rectify conditions); (g) (although financially able to do so, parent failed to provide proper care and custody and there is no reasonable expectation parent will be able to provide proper care and custody within a reasonable time); and (j) (reasonable likelihood child will be harmed if returned to parent). We affirm.

I. UNDERLYING FACTS

In August 2018, the Department of Health and Human Services (DHHS) filed a petition seeking jurisdiction over MP and her removal from respondent's care and custody. In relevant part, the petition alleged that respondent lacked suitable housing and had mental health issues.[2] During the first year of the proceedings, respondent could not be located, failed to attend hearings, and did not participate in any of the services offered to her. Respondent participated in some services beginning in November 2019, but her participation was minimal and she failed to show that she benefitted from her court ordered treatment plan. Consequently, petitioner eventually moved to terminate respondent's parental rights. The trial court found statutory grounds to

[1] The father's rights were also terminated, but he has not appealed.

[2] MP was placed in the care of her paternal aunt when the proceedings began and remained placed there throughout the entirety of this case.

terminate respondent's parental rights under MCL 712A.19b(3)(c)(*i*), (g), and (j) and that termination was in the best interests of MP. This appeal followed.

II. STATUTORY BASES

Respondent argues that the trial court erred by finding statutory grounds to terminate her parental rights under MCL 712A.19b(3)(c)(*i*), (g), and (j). We disagree.

A. STANDARD OF REVIEW

This Court "reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination." *In re White*, 303 Mich App 701, 709-710; 846 NW2d 61 (2014). To be clearly erroneous, a trial court's determination must be more than possibly or probably incorrect. *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011). "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." *Id.* Finally, this Court must consider "the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *Id.*

B. ANALYSIS

"Only one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights, even if the court erroneously found sufficient evidence under other statutory grounds." *In re Ellis*, 294 Mich App at 32. In relevant part, MCL 712A.19b(3) authorizes a trial court to terminate parental rights if it finds by clear and convincing evidence that any of the following exist:

> (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 trial court found, by clear and convincing evidence, three statutory grounds for terminating respondents' parental rights, MCL 712A.19b(3)(c)(*i*), (g), and (j). This Court has held, under MCL 712A.19b(3)(g), that "[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 at 710. Similarly, under MCL 712A.19b(3)(j), this Court has held that "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. Furthermore, "the court 'shall view the failure of the parent to substantially comply with the terms and conditions of the case service plan . . . as evidence that return of the child to his or her parent would cause a substantial risk of harm . . . .' " *In re Rood*, 483 Mich 73, 100; 763 NW2d 587 (2009), quoting MCL 712A.19a(5) as amended by 2008 PA 200 (alterations in original); see also MCR 3.976(E)(2) (same).

Respondent failed to comply with the terms of her service plan. As part of respondent's service plan, respondent was required to: complete parenting classes; undergo a substance abuse assessment; submit to drug screens; have a psychological or psychiatric evaluation; maintain suitable housing and income; maintain contact with DHHS; attend all court hearings; and have regular visits with MP. A DHHS foster care worker testified that respondent did not begin attending parenting classes until November 2019, nearly one year after MP was taken into care and six months after the initial dispositional order. To date, respondent has failed to undergo any drug screens. The last psychiatric evaluation respondent completed was in 2018, and she failed to attend any of the court hearings prior to August 2019. Furthermore, despite claiming to have income in the form of disability benefits, respondent failed to provide DHHS with any verification of that assertion. Finally, respondent's visits with MP were sporadic, totaling just six in 17 months. Consequently, because respondent failed to substantially comply with her service plan and also failed to adequately address her mental health issues, the trial court did not err by finding statutory grounds to terminate respondent's parental rights under MCL 712A.19b(3)(g) and (j); and because the trial court found adequate statutory grounds under subsections (g) and (j), we need not consider whether the other statutory ground relied on by the trial court, MCL 712A.19b(3)(c)(*i*), also has been proven by clear and convincing evidence. See *In re Ellis*, 294 Mich App at 33.

III. REASONABLE EFFORTS

Respondent argues that the trial court failed to make reasonable efforts to reunify her with MP. We disagree.

A. PRESERVATION AND STANDARD OF REVIEW

To preserve the issue of whether reasonable efforts were made to reunify a child with his or her family, a respondent must, at the time the service plan was adopted, "object or indicate that the services provided to them were somehow inadequate." *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). Respondent failed to do so. As such, the issue is unpreserved.[3]

[3] All other issues in this case are properly preserved for our review.

Preserved challenges to a trial court's findings regarding reasonable efforts are reviewed for clear error. *In re Smith*, 324 Mich App 28, 43; 919 NW2d 427 (2018). Furthermore, "issues of statutory interpretation, as well as family division procedure under the court rules, are reviewed de novo." *In re AMAC*, 269 Mich App 533, 536; 711 NW2d 426 (2006). Finally, "[t]his Court gives effect to the Legislature's intent as expressed in the statute's terms, giving the words of the statute their plain and ordinary meaning. When the language poses no ambiguity, this Court need not look beyond the statute or construe the statute, but need only enforce the statute as written." *In re LE*, 278 Mich App 1, 22-23; 747 NW2d 883 (2008), abrogated on other grounds as recognized by *In re Long*, 326 Mich App 455; 927 NW2d 724 (2018) (citations and quotation marks omitted).

Unpreserved issues are reviewed for plain error. *In re VanDalen*, 293 Mich App 120, 135; 809 NW2d 412 (2011). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) the error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *Id*. (quotation marks omitted), *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). "Generally, an error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings." *In re Utrera*, 281 Mich App 1, 8-9; 761 NW2d 253 (2008). The appellant bears the burden of persuasion with respect to prejudice. See *Carines*, 460 Mich at 763 ("It is the defendant rather than the Government who bears the burden of persuasion with respect to prejudice.") (quotation marks and citation omitted).

B. ANALYSIS

"In general, when a child is removed from the parents' custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). "As part of these reasonable efforts, the Department must create a service plan outlining the steps that both it and the parent will take to rectify the issues that led to court involvement and to achieve reunification." *In re Hicks/Brown*, 500 Mich 79, 85-86; 893 NW2d 637 (2017); see also MCL 712A.18f(3) (establishing the requirements of a case service plan). Finally, "[w]hile the DHS has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered." *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012).

Respondent emphasizes that she did not waive her claim that under the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq*., her parental rights were violated Although the ADA does not provide a defense to proceedings to terminate parental rights, *In re Terry*, 240 Mich App 14, 24-25; 610 NW2d 563 (2000), it does require petitioner to reasonably accommodate a disabled parent in the provision of services to achieve reunification and avoid termination of parental rights, *In re Hicks/Brown*, 500 Mich at 86. Petitioner's obligations under the ADA dovetail with its affirmative duty under Michigan's Probate Code "to make reasonable efforts to reunify a family before seeking termination of parental rights." *Id*. at 85-86. Failure to make reasonable efforts toward reunification may prevent petitioner from establishing statutory grounds for termination. See *In re Newman*, 189 Mich App 61, 65-68; 472 NW2d 38 (1991). But if a parent is simply unable to meet the needs of her child, then "the needs of the child must prevail over the needs of the parent." *In re Terry*, 240 Mich App at 28 (citation and quotation marks omitted). The ADA does not require petitioner to provide a parent "with full-time, live-in assistance with her children." *Id.* at 27-28. Rather, in order to prevail against a claim that

petitioner's reunification efforts were inadequate, a respondent must demonstrate that he or she would have fared better if sufficient services were offered. See *In re Fried*, 266 Mich App at 543.

Respondent argues that the DHHS failed to make reasonable efforts to reunify her with MP because no additional help or assistance was provided to her despite her mental health issues. This argument is without merit. Respondent was referred for services in March 2019, but was terminated from each of the services at various times due to not being able to be reached, having a negative disposition towards the service providers, being argumentative, and refusing service. Attempts were made to locate respondent, and all forms of service, including publication, were exhausted in trying to locate her to secure her participation in the proceedings. Respondent did not attend any hearings until August 9, 2019 and did not begin services until November 2019. Respondent argues that she had transportation issues that prevented her from complying with her treatment plan, but she refused transportation assistance when it was offered to her by DHHS. She also refused treatment services that were part of her court ordered plan. At no time did respondent make any request for special or additional services. Finally, respondent failed to complete any of the services offered to her by the DHHS. Respondent had an obligation to participate in the services offered, but she failed to do so. Thus, DHHS made reasonable efforts to reunify respondent with MP.

IV. BEST INTERESTS

Respondent argues that termination of her parental rights was not in MP's best interests. We disagree.

A. STANDARD OF REVIEW

"Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts Minors*, 297 Mich App 35, 40-41; 823 NW2d 144 (2012). "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The trial court's ruling regarding best interests are reviewed for clear error. *In re Schadler*, 315 Mich App 406, 408; 890 NW2d 676 (2016).

B. ANALYSIS

In considering a child's best interests, the trial court's focus must be on the child and not the parent. *In re Moss*, 301 Mich App at 87. "In deciding whether termination is in the child's best interests, the court may consider 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 at 41-42 (citations omitted). "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." *In re White*, 303 Mich App at 714. When the trial court makes its best interests-determination, it may rely upon evidence in the entire record, including the evidence establishing the statutory grounds for termination. *In re Trejo*, 462 Mich 341, 353-

354; 612 NW2d 407 (2000), superseded by statute on other grounds as recognized in *In re Moss*, 301 Mich App at 83.

Furthermore, "[a] child's placement with relatives is a factor that the trial court is required to consider" when making its best-interests determination, *In re Gonzales/Martinez*, 310 Mich App 426, 434; 871 NW2d 868 (2015), and "a child's placement with relatives weighs against termination." *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). "Relative" is defined by MCL 712A.13a(1)(j) as

> an individual who is at least 18 years of age and related to the child by blood, marriage, or adoption, as grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, and the spouse of any of the above, even after the marriage has ended by death or divorce.

Thus, a child's biological parent is not that child's "relative" for purposes of the statute, but a child's grandparent or first cousin is his or her relative. See MCL 712A.13a(1)(j); *In re Schadler*, 315 Mich App at 413.

When making a best-interests determination, trial courts may additionally consider whether a child was doing well in placement outside of the respondent's home, *In re White*, 303 Mich App at 714, and how a child's current home compares with the parent's home, *In re Olive/Metts*, 297 Mich App at 41-42. MP was placed with her paternal aunt, but the trial court nevertheless found that termination was in the best interests of the child. The record establishes that MP thrived in her placement with her paternal aunt since she began residing with her. The trial court noted that MP's relative placement with her paternal aunt provided MP with a home that was "meeting the Child's needs where apparently there is a bond, a home that wants to plan long-term for her and adopt the Child." The trial court also found that no significant bond existed between MP and respondent. Furthermore, the trial court stated that visitation with the child is "the most important factor" in demonstrating the strength of the bond between respondent and MP, and the record establishes that respondent missed more than 60 scheduled visits with MP. Thus, the trial court considered MP's placement with her paternal aunt and determined that even though her placement with her paternal aunt weighed against termination, MP needed permanency; thus, it was in MP's best interest to terminate respondent's parental rights.

Furthermore, at the time of the termination hearing, MP had spent over half of her life in foster care and had only seen respondent a total of six times over 17 months of proceedings. During the first year of this case, respondent had untreated mental health issues, her whereabouts were unknown, she failed to attend court hearings, and she made no effort to comply with her treatment plan. While respondent eventually made some attempts to adhere to portions of her service plan, the trial court noted that her failure to utilize provided resources to address her mental health issues "in any meaningful way" demonstrated that she could not provide stability, safety, and permanence to MP. The trial court addressed MP's need for permanency and noted that "it's unfair to leave a young child to hang in the balance with this uncertainty."

The record supports each of the trial court's findings. As discussed earlier, during the first year of this case, respondent had untreated mental health issues, her whereabouts were unknown, she failed to attend court hearings, she made no effort to adhere to a treatment plan, and she had only sporadic visits with MP. Throughout the pendency of this case, respondent was provided with numerous opportunities to take part in treatment programs and receive several other services in order to show that she was serious about being a parent to MP, by, but she failed to do so and, in some cases, refused assistance. There is no evidence of a bond between respondent and MP and respondent has shown no proof of being able to develop one, given that her visits with MP were sporadic at best. Furthermore, while MP does have stability in the care of her paternal aunt, her temporary situation with her paternal aunt lacks the finality and permanency that a young child deserves. At the time MP was taken into the DHHS's care, her paternal aunt had only temporary custody of her and, therefore, MP's living situation could theoretically change at any time. Terminating respondent's parental rights allows for MP to be placed in a permanent home and, therefore, affords her the finality and permanency lacking throughout her entire life. Because of respondent's history of erratic behavior, mental health issues, and failure to demonstrate any sort of parenting ability as to MP, termination of her parental rights was in MP's best interests. Thus, the trial court did not err in terminating respondent's parental rights.

V. CONCLUSION

For the reasons stated in this opinion, the trial court's order terminating respondent's parental rights is affirmed.

/s/ James Robert Redford
/s/ Michael J. Riordan
/s/ Jonathan Tukel