

STATE OF MICHIGAN
COURT OF APPEALS

In re Harren, Minors.

UNPUBLISHED
October 14, 2021

No. 356318
Ingham Circuit Court
Family Division
LC No. 2018-001060-NA;
2018-001061-NA;
2018-001499-NA

Before: SWARTZLE, P.J., and CAVANAGH and GADOLA, JJ.

PER CURIAM.

Respondent-father appeals as of right orders¹ terminating his parental rights to KAH, BH, and KIH under MCL 712A.19b(3)(c) (conditions that led to the adjudication continue to exist), MCL 712A.19b(3)(g) (parent failed to provide proper care or custody), and MCL 712A.19b(3)(j) (reasonable likelihood the children would be harmed if returned home). On appeal, respondent argues that the trial court erred in finding petitioner used reasonable efforts to reunify the family before his parental rights were terminated. We affirm.

I. FACTS AND PROCEDURAL HISTORY

Respondent and L. Harren (Harren) were married in August 2016, and are the biological parents of KAH, BH, and KIH. Before August 2018, respondent and Harren resided in the same home with KAH and BH, and with Harren’s three other children, LS, JS, and KS from Harren’s previous relationships.²

In August 2018, a petition was filed to remove the children from respondent’s care and custody, alleging respondent had a long history of domestic violence which the children were exposed to within the home. More specifically, Child Protective Services (CPS) received a

¹ The trial court also terminated respondent’s wife’s, L. Harren’s, parental rights to KAH, BH, and KIH, as well as her parental rights to two other biological children, JS and KS.

² KIH was born in November 2019.

complaint that respondent hit Harren in the face, while the children were present, after accusing her of telling people she was going to leave him. After respondent left the property, Harren called the police and, when respondent returned, he was arrested. Forensic interviews with two of the children confirmed that respondent had hit Harren on the day of the incident, and in the past.

Before this incident, CPS had received three prior complaints. Specifically, in January 2017, Harren went into early labor with KAH after reportedly slipping on ice. KAH was born positive for THC, cocaine metabolite, and morphine. In October 2017, a CPS investigation was opened regarding respondent for the improper supervision of LS, JS, KS, and KAH after respondent—who was intoxicated at the time—sent three of the children to find Harren following an argument and the children were found walking outside. In June 2018, BH was born positive for methamphetamine, cocaine, and THC. The petition included Harren’s admission that respondent “hit her a lot in the past,” and she actually went into early labor in 2017 because respondent hit her. Consequently, because of the continued domestic violence concerns, petitioner requested that the children remain in the home with Harren, respondent be removed from the home, and a no-contact order between respondent and Harren be entered.

At a preliminary hearing held the same day regarding the petition, Janette Brown, a CPS investigator, testified that respondent had a history of domestic violence and substance abuse. It was also noted that Harren obtained a personal protection order (PPO) against respondent. The trial court concluded that it was contrary to the children’s welfare to be in respondent’s care because of his substance abuse and domestic violence issues and the children’s exposure to the incidents. As a result, the trial court authorized the petition and placed the children in Harren’s care, but did not enter an order to remove respondent from the home because of the existing PPO.

In October 2018 an adjudication was held. Brown testified that respondent refused substance-abuse testing and denied the domestic violence incident; however, respondent admitted to Brown that he had hit women and used marijuana and cocaine in the past. The trial court found sufficient evidence existed to take jurisdiction of the children, and ordered their placement with Harren be continued. Subsequently, Robert Siegel, a CPS caseworker, reported that respondent had gone to Harren’s house, pounded on the front door, entered, and then threw a bottle. Respondent left before police arrived at the house. Although respondent was offered services, he had not contacted Siegel to begin any services. As a result of respondent’s violation of the PPO, the trial court suspended respondent’s parenting time.

In January 2019, at a review hearing, Siegel reported that he was unable to contact respondent since their December meeting, when respondent was in jail. Later that month, a supplemental petition was filed to remove the children from Harren’s care and custody, alleging Harren failed to protect the children from respondent. Specifically, petitioner alleged, respondent and Harren had started arguing and Harren grabbed a butcher knife and screwdriver when respondent approached her. Harren and the children attempted to leave the home, but respondent followed, elbowed Harren, and grabbed KAH from Harren’s arms. Harren then pushed respondent while KAH was in respondent’s arms. Harren reported the incident to the police the next day, which resulted in respondent’s arrest after the police found him hiding in the home. While Harren initially told the police that respondent was not residing at the house, Harren later admitted that respondent had been living at the house since December 29, 2019. Because of the continued domestic violence and substance-abuse concerns, petitioner requested the children be removed

from the home. At the preliminary hearing held the same day regarding the supplemental petition, Jennifer Sucher, a CPS investigator, testified regarding the above facts and noted that respondent was in jail for violating his bond after the incident. The court concluded that Harren's decision to allow respondent back into the home with the children went against the trial court's order and the PPO; thus, the children were removed from Harren's care and custody.

In March 2019, the trial court imposed a parent-agency treatment plan (PATP) as a path for respondent's reunification with his children, requiring respondent to maintain contact with the CPS caseworker, engage in services, obtain appropriate housing and employment, abstain from drug and alcohol use, submit to drug screens, and complete a substance-abuse assessment as well as psychological evaluation.

At a review hearing held in May 2019, Sara VanMaele, a CPS caseworker, testified that the barriers to respondent's reunification with his children included emotional instability, deficient parenting skills, substance abuse, and domestic violence. VanMaele reported that respondent was in jail for possession of methamphetamines and also had pending charges for child abuse. Respondent was scheduled to go to rehabilitation for 90 days for substance abuse treatment after his release from jail. The trial court found that reasonable efforts were being made to reunify respondent with his children. At a review hearing held in November 2019, VanMaele reported that respondent was released from the rehabilitation center and referred for a psychological evaluation, prevention and training services (PATS), and random drug screens; however, respondent did not schedule the PATS intake because he did not think he needed the service. The trial court found that reasonable efforts were being made to reunify respondent with his children and criticized respondent's choice to turn down the PATS services when there were clear domestic violence and substance abuse issues.

In November 2019, KIH was born and in December a petition was filed to remove KIH from respondent's and Harren's care and custody because of these child protective proceedings where five other children remained in foster care because of a lack of progress or benefit from services. The petition also alleged that respondent had pending charges of three counts of third-degree child abuse and one count of fourth-degree child abuse. At a preliminary hearing held the same day, Chantelle Henry, a CPS investigator, testified as to the above information and noted that respondent was participating in some PATS services. The court found reasonable efforts were being made to prevent removal and authorized the petition.

In January 2020, at a permanency planning and dispositional review hearing, Emma Bignall, a CPS caseworker, reported that respondent was participating in the prevention and recovery program through the rehabilitation center, completing drug screens, participating in PATS, and attending parenting time. Respondent had also obtained employment and completed a psychological evaluation. However, respondent tested positive for methamphetamines in December 2019 and struggled with controlling the temper tantrums of one of the children during visitation.

Later in January 2020, the court held an adjudication regarding KIH and both respondent and Harren admitted to the allegations in the petition. Respondent admitted he did not have stable housing to care for the children and had pending criminal charges for child abuse. The trial court

found reasonable efforts were made to reunify respondent with his children, and accepted respondent's admissions. The court also took jurisdiction over KIH.

In July 2020, at a review and permanency planning hearing, Alesha Hendrix, the primary CPS caseworker, reported that respondent's barriers to reunification with his children continued to be employment, housing, substance abuse, parenting skills, domestic relations, and emotional stability. Hendrix testified that respondent was admitted to the rehabilitation center a second time after violating his probation and his anticipated release date was in October 2020. While respondent participated in a parenting-skills course, PATS, some drug screens, and a psychological evaluation, Hendrix reported that respondent had irregularly attended parenting time, failed to complete drug screens throughout June 2020, and failed to complete services during the time he was in jail. As a result, petitioner requested a goal change from reunification to adoption, which the referee accepted.

In September 2020, a supplemental petition was filed to terminate respondent's parental rights to KAH, BH, and KIH because of continued concerns regarding his illegal substance use, criminal activity, pending criminal charges for child abuse, lack of housing, domestic violence history, and failure to comply with the PATP.³ The petition referenced respondent's psychological evaluation, which reported respondent's prognosis as "poor." Because of the significant risk of harm to the children if returned to respondent's care, petitioner requested respondent's parental rights to KAH, BH, and KIH be terminated.

In October 2020, the trial court held a review hearing. Gabrielle Meijer, a CPS caseworker, reported that respondent was released from the rehabilitation center the day before and that a referral for services would be made that day of the hearing. Meijer further stated that respondent was attending parenting time and requested family therapy and drug screens, but did not complete the PATS services because respondent did not feel it was beneficial. Respondent disagreed with petitioner's request for a goal change, stating his drug addiction was the reason he was noncompliant at the beginning of the child protective proceedings. It was also reported that respondent's domestic violence charge, from the August 2018 incident, was dismissed, respondent's child abuse charges were still pending, and respondent was currently on probation for his possession of methamphetamines conviction. The trial court found reasonable efforts were made to reunify respondent with his children and respondent made some progress to alleviate the conditions that caused the removal. The trial court criticized petitioner's failure to have services set up the day before—when respondent was released from the rehabilitation center, but the trial court indicated that setting up services for respondent within the same week was reasonable.

In December 2020, the trial court held a statutory basis and best-interests hearing. Respondent testified that he had been sober for the last five months; however, he missed drug screens in October 2020 and November 2020, failed multiple drug screens between January 2020 and November 2020, and stopped calling in to determine whether he had to do drug screens in February 2020 because he was "on the run" for violating probation. Respondent testified that he was referred to recovery services after he was released the second time from the rehabilitation center, but did not attend the services after the intake because he thought he was doing the same

³ The petition also sought termination of Harren's parental rights to JS, KS, KAH, BH, and KIH.

service through the rehabilitation center. Respondent further testified that he filed for divorce from Harren, maintained a close bond with his children, and provided clothing, diapers, and toys for his children. Additionally, respondent admitted to physically abusing Harren in the past, but maintained that his addiction was the source of his problems.

VanMaele testified that respondent was offered and participated in parenting classes and PATS services. Before her reassignment in November 2019, VanMaele testified, respondent was starting to benefit from the services offered. Meijer testified that she became the CPS caseworker in August 2020, but no services were offered until respondent was released from the rehabilitation center in October 2020. Thereafter, respondent was referred to outpatient services with Community Mental Health (CMH), parenting classes, PATS, and in-person parenting time. Meijer further testified that respondent requested to be retested after the positive drug tests—claiming that they were false positives—in October 2020 and November 2020, but respondent did not request retesting with the drug-screening agency as recommended. Instead, respondent requested the trial court change testing from use of mouth swabs to urine tests, which the trial court approved. Three other witnesses testified, including (1) a foster care supportive visitation coach who supervised respondent's visitations with the children between January 2020 and March 2020 and noted that respondent acted appropriately with the children, (2) a parenting-time supervisor who supervised respondent's visitations for a few months between January 2019 and November 2019 and noted that respondent had a bond with the children, and (3) an assistant prosecutor who testified regarding the dismissal of the domestic violence charge against respondent. Thereafter, the trial court took the matter under advisement.

On January 6, 2021, the trial court held a dispositional hearing. The trial court terminated respondent's parental rights to KAH, BH, and KIH, finding statutory grounds, under MCL 712A.19b(3)(c), (g), and (j), for termination were established by clear and convincing evidence and termination was in the children's best interests. Specific to subsection (c), the trial court concluded that respondent continued to struggle with sobriety even after being provided substance-abuse services and noted respondent's failed drug screens despite his claim that he was sober for five months and the psychological evaluation. Additionally, for subsection (g), the trial court found that respondent only recently started complying with the PATP, after running from a probation violation and going through the rehabilitation center program twice. Respondent also failed to establish stable employment and housing, demonstrate basic parenting skills, or address the domestic violence issues. Further, regarding subsection (j), the trial court determined that although it was unlikely either parent would directly assault their children, there was a significant history of the children being placed in the middle of serious domestic altercations which placed the children at a substantial risk of harm. As a result, the trial court concluded there was clear and convincing evidence for termination on each of the statutory grounds.

The trial court also concluded that termination was in the best interests of the children. Specifically, the trial court determined that there was a weak, nonmutual bond between respondent and the children; and, despite being present now, respondent was largely unavailable for his children throughout the proceedings which began in August 2018. The trial court found that respondent continued to struggle to provide for himself, including staying out of jail and staying sober. The trial court also noted that respondent's parenting ability was suspect because he seemed more focused on his relationship with Harren than with his children. As a result, the trial court

found that termination of respondent's parental rights was in KAH's, BH's, and KIH's best interests. This appeal followed.

II. ANALYSIS

Respondent argues that the trial court erred in finding petitioner made reasonable efforts to reunify respondent with his children before terminating his parental rights. We disagree.

To preserve an issue regarding whether reasonable efforts for reunification were made, a respondent must raise the issue when the services are offered by, for example, objecting to the service plan or arguing that the services provided were inadequate. *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). While the trial court addressed petitioner's failure to set up services for respondent on the exact day he was released from the inpatient rehabilitation center, respondent did not challenge the adequacy of the services that were then offered by petitioner. As a result, this issue is unreserved for appellate review. However, because respondent did challenge the adequacy of the drug screens by requesting the trial court change the drug screens from mouth swabs to urine analyses, this issue is preserved for appellate review.

Generally, this Court reviews a trial court's finding that "reasonable efforts were made to preserve and reunify the family" for clear error. *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005). "A finding is clearly erroneous if the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Gonzales/Martinez*, 310 Mich App 426, 430-431; 871 NW2d 868 (2015) (quotation marks and citation omitted). However, unreserved issues are reviewed for plain error affecting substantial rights, i.e., an obvious error that affected the outcome. See *In re Baham*, 331 Mich App 737, 745; 954 NW2d 529 (2020); *In re TK*, 306 Mich App 698, 703; 859 NW2d 208 (2014). After reviewing the record, we conclude that respondent has failed to demonstrate any error, plain or otherwise.

Before a court may contemplate termination of a parent's parental rights, the petitioner must make reasonable efforts to reunite the family. *In re Hicks/Brown*, 500 Mich 79, 85; 893 NW2d 637 (2017), citing MCL 712A.18f(3)(b) and (c); MCL 712A.19a(2). "The adequacy of the petitioner's efforts to provide services may bear on whether there is sufficient evidence to terminate a parent's rights." *In re Rood*, 483 Mich 73, 89; 763 NW2d 587 (2009). While petitioner has a responsibility to expend reasonable efforts to provide services to secure reunification, respondent also has "a commensurate responsibility . . . to participate in the services that are offered." *In re Frey*, 297 Mich App at 248. A respondent has the responsibility to not only cooperate and participate in the services, he must also benefit from them. *In re TK*, 306 Mich App at 711. And to prevail on a claim that petitioner's reunification efforts were inadequate, a respondent must demonstrate that he would have fared better if sufficient services were offered. *In re Fried*, 266 Mich App at 543.

Here, the evidence shows that petitioner filed its supplemental petition to terminate respondent's parental rights two years after filing its initial petition seeking KAH's and BH's removal from respondent's care and nine months after seeking KIH's removal from respondent's care. The petitions specifically sought termination because of "continued concerns regarding substance abuse, criminal activity, pending criminal charges for physical child abuse, lack of housing, domestic violence history, and failure to comply with the [PATP]." Because the goal

remained reunification until at least the October 2020 review hearing, petitioner had an obligation to provide reasonable efforts for reunification to respondent until that time. See *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009).

Respondent argues that petitioner failed to provide services to him after he was released from the inpatient rehabilitation center. A review of the record indicates that because the CPS caseworker, Meijer, accidentally mixed up respondent's release date, respondent was not scheduled to begin any services on the exact day he was released from the inpatient facility. While the trial court did criticize petitioner's failure to have services in place for respondent on the same day he was released, the court also determined that setting up services within a week of respondent's release was reasonable—which petitioner did. At the termination hearing, less than two months later, respondent testified that he was referred to outpatient services with CMH after his release from the rehabilitation center. Respondent was also referred to PATS, drug screens, and started in-person visitation with KAH, BH, and KIH. In fact, respondent's counsel admitted that respondent was participating in "some sort of service every single day." Despite the services offered after his release, respondent chose not to attend the outpatient service with CMH after the intake because he believed he was doing the same service through the rehabilitation facility. Additionally, despite attending PATS, respondent was not turning in homework assignments, missed a session, and was not fully participating. Further, respondent missed drug screens on three occasions and tested positive for substances on two occasions after his release from that second inpatient stay.

On this record, respondent has not established that the termination of his parental rights was premature for petitioner's failure to expend reasonable efforts for reunification. While petitioner had an obligation to make reasonable efforts to reunify respondent with his children, respondent had "a commensurable responsibility . . . to participate in the services that are offered." *In re Frey*, 297 Mich App at 248. The record established serious concerns with respondent's substance abuse, domestic violence history, pending child abuse charges, and noncompliance with the PATP as significant barriers to reunification throughout the child protective proceedings. Considering the multitude of barriers to reunification that respondent still faced at the time of the termination hearing, particularly respondent's disinterest in addressing the domestic violence concerns, we conclude that petitioner's one-week, at most, delay in providing services after respondent's release from the inpatient rehabilitation facility did not render petitioner's reunification efforts unreasonable. In fact, before October 2020, there were no issues identified regarding the adequacy of services provided by petitioner after more than two years of providing services to respondent. Moreover, respondent had inconsistently and minimally participated in the services offered to him before October 2020. Because respondent failed to establish that petitioner's efforts were unreasonable, and that a greater effort would have affected the outcome of the termination hearing, the trial court did not err in finding that petitioner demonstrated reasonable efforts before the termination of respondent's parental rights. See *In re Fried*, 266 Mich App at 543.

In addition, respondent argues that petitioner failed to ensure respondent's drug screens were correct before the trial court relied on the failed drug screens at the termination hearing. A review of the record indicates that respondent asked to be retested after testing positive for substances in October and November of 2020. However, after instructing respondent to make a request to be retested with the drug-screening agency, Meijer was not aware of any actual request

made by respondent. Rather, it appears respondent only requested that the trial court permit respondent's drug screens to be switched from mouth swabs to urine analysis. After the trial court's approval, there appeared to be no further issues.

In support of his argument, respondent specifically points to a memorandum from the State Court Administrative Office (SCAO), informing family court judges about a false-positive drug screen issue. Specifically, the memorandum indicates that SCAO was made aware of a few false-positive test results between 2019 and 2020 by the drug-screening agency and notified those affected individuals. Despite respondent's argument, we are unable to locate this memorandum in the lower court record and, therefore, have not relied on the document because it may constitute an improper expansion of the record. See MCR 7.210(A)(1); MCR 7.212(C)(6); MCR 7.212(D)(1). Even so, we note the false-positive drug screen issue appears to have only affected a handful of drug screens in 2019—when respondent does not claim a false-positive occurred—and a single test in 2020. Additionally, it appears SCAO was aware of the issue and notified the parties who were actually affected, which evidently did not include respondent.

Regardless, even if the two positive drug screens should have been disregarded for purposes of the termination hearing, it is clear the trial court's decision to terminate respondent's parental rights was grounded on several considerations. As stated, the trial court terminated respondent's parental rights because of his failure to comply with the PATP, ongoing criminal charges for child abuse, failure to obtain appropriate housing, continued substance-abuse issues (which included missed tests and two inpatient treatment programs), failure to demonstrate basic parenting skills, failure to address significant domestic violence issues, and failure to foster a mutual bond with his children. Accordingly, even if petitioner's alleged failure to ensure the drug screens were correct was unreasonable, the trial court did not err in finding petitioner demonstrated reasonable efforts were made before the termination of respondent's parental rights. See *In re Fried*, 266 Mich App at 543.

Affirmed.

/s/ Brock A. Swartzle
/s/ Mark J. Cavanagh
/s/ Michael F. Gadola