STATE OF MICHIGAN

COURT OF APPEALS

In re K. TAYLOR, Minor.

UNPUBLISHED
November 23, 2021

No. 356427
Kent Circuit Court
Family Division
LC No. 18-052105-NA

Before: MURRAY, C.J., and MARKEY and RIORDAN, JJ.

PER CURIAM.

Respondent-father appeals by right the trial court's order terminating his parental rights to the minor child under MCL 712A.19b(3)(a)(*ii*) (parent deserted child for 91 or more days without seeking custody), (c)(*i*) (conditions of adjudication continue to exist), and (g) (failure to provide proper care or custody). We affirm.

Respondent was incarcerated when child protective proceedings began, and he had previously served a lengthy prison term for criminal sexual conduct. When it was determined that he was the child's father, services and a treatment plan were offered to respondent, but he largely failed to participate in or benefit from services, indicating that he was struggling to get his own life in order and could not yet parent the child. He missed numerous parenting-time sessions and attended only 5 of 75 medical appointments for the child, who had significant medical issues. Respondent eventually ran off to Las Vegas, where he wound up being jailed for offenses committed in Nevada.

I. DUE PROCESS

Respondent first argues that the trial court clearly erred and violated his right to testify when it did not allow him to testify on his own behalf at the termination hearing. We conclude that this argument lacks merit.

Generally, this Court reviews de novo issues of statutory interpretation, family-division procedure under the court rules, and constitutional law. *In re AMAC*, 269 Mich App 533, 536; 711 NW2d 426 (2006). We review unpreserved issues for plain error affecting substantial rights in child protective proceedings. *In re Utrera*, 281 Mich App 1, 8-9; 761 NW2d 253 (2008).

"Due process requires fundamental fairness, which is determined in a particular situation first by considering any relevant precedents and then by assessing the several interests that are at stake." *In re Rood*, 483 Mich 73, 92; 763 NW2d 587 (2009) (quotation marks and citation omitted). In termination proceedings, respondent parents have a fundamental due-process right to be heard. *Id*. at 91-92. The *Rood* Court adopted a three-factor test set forth in *Mathews v Eldridge*, 424 US 319, 335; 96 S Ct 893; 47 L Ed 2d 18 (1976), which courts use in determining what procedures due process requires in a particular case. *In re Rood*, 483 Mich at 92. The *Mathews* factors to be taken into consideration are as follows:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. [*Mathews*, 424 US at 335.]

In this case, respondent was not actually deprived of his right to be heard. Respondent is correct that the trial court did not allow him to be sworn-in as a witness. But this occurred because, as the trial court explained, no one called respondent as a witness, and respondent only expressed an interest in addressing the court after the close of proofs and after closing arguments had commenced. Thus, there was no error by the trial court, plain or otherwise, in refusing to allow respondent to testify as a sworn witness. Moreover, the trial court still allowed respondent to address the allegations against him. Respondent discussed his substance abuse history, his incarcerations, how the child came into the care of the Department of Health and Human Services (DHHS), and his attendance at the child's medical appointments. Presumably, respondent would have formally testified about these matters. Respondent, however, presents no argument that had he done so, the outcome would have been any different, nor can we reach such a conclusion. See *Utrera*, 281 Mich App at 8-9. Reversal is unwarranted.

II. REASONABLE EFFORTS

Next, respondent appears to argue that the trial court plainly erred when it found that DHHS made reasonable efforts toward reunification, contending that he was not given one year to alleviate or mitigate his barriers. According to respondent, "Once he was found to be the legal [father], he was given a parent agency treatment plan but was only allowed 8 months before the Court ordered the next hearing to be a Termination of Parental Rights." First, respondent cites no authority standing for the proposition that DHHS was required to allow him to work on the treatment plan for one year before termination could be sought. In *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998), our Supreme Court explained:

> It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow. [Quotation marks and citation omitted.]

Second, respondent mischaracterizes the facts.

Because respondent did not "object or indicate that the services provided to [him] were somehow inadequate," this issue is unpreserved. *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). Therefore, we review this issue for plain error affecting substantial rights. See *Utrera*, 281 Mich App at 8-9.

Generally, DHHS "has an affirmative duty to make reasonable efforts to reunify a family before seeking termination of parental rights." *In re Hicks/Brown*, 500 Mich 79, 85; 893 NW2d 637 (2017), citing MCL 712A.18f(3)(b) and (c) and MCL 712A.19a(2). "As part of these reasonable efforts, [DHHS] 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 at 85-86. The case service plan must include, in relevant part, a "[s]chedule of services to be provided to the parent, child, and if the child is to be placed in foster care, the foster parent, to facilitate the child's return to his or her home or to facilitate the child's permanent placement." MCL 712A.18f(3)(d); see also *In re Mason*, 486 Mich 142, 156; 782 NW2d 747 (2010). The parent should be given a reasonable time to make changes and benefit from services before termination of parental rights. See *Mason*, 486 Mich at 159. The trial court should regularly update the plan to account for the parent's progress and developing needs. *Id.* at 156.

Respondent established himself as the legal father on February 5, 2019. He entered a plea admitting to the allegations in DHHS's petition. According to a caseworker, respondent informed staff at a November 25, 2019 family team meeting that he needed to focus on getting his life back on track and that he could not provide the child with the care and support he required. The termination hearing in this case was adjourned four times. Respondent's parental rights were terminated on January 22, 2021. At each review hearing preceding termination, the testifying foster-care workers indicated that they attempted to engage respondent in services even after the termination petition was filed. In other words, respondent was given more than one year to engage in and benefit from services. DHHS continued to extend its hand, but respondent stopped participating in the case and moved to Las Vegas. Commensurate with DHHS's duty to make reasonable efforts to reunify a family, a respondent bears a responsibility to participate in the services that are offered. *In re Frey*, 297 Mich App at 248. Respondent failed to do so. Accordingly, respondent fails to demonstrate that the trial court plainly erred when it found that DHHS made reasonable efforts toward reunification.

III. RELATIVE PLACEMENT

Respondent next argues that the trial court clearly erred when it never inquired into whether respondent had relatives who could care for the child. This argument lacks merit. We review this unpreserved issue for plain error affecting substantial rights. See *Utrera*, 281 Mich App at 8-9.

When deciding whether termination is in a child's best interests, a trial court is required to consider a child's placement with relatives. *Mason*, 486 Mich at 164. The record reflects that DHHS considered the child's maternal grandmother for placement until she indicated that the foster family provided him the best possible care. The record also reveals that caseworkers searched for respondent's relatives and that they eventually learned of his mother's address.

Caseworkers testified repeatedly that DHHS looked for relatives. There is no indication that a suitable and willing relative was prepared to care for the child. These facts demonstrated that DHHS performed its duties in terms of seeking relative placement for the child. Respondent points to no evidence that DHHS did not do so.

Moreover, the trial court did effectively consider relative placement when it evaluated whether termination was in the child's best interests. Announcing its ruling, the trial court noted that the child was placed in a nonrelative foster home and was thriving for the first time in his life. The court found that the nonrelative foster family had done a "great job." Accordingly, respondent is not entitled to appellate relief on this issue.

IV. BEST INTERESTS

Respondent does not argue that statutory grounds for termination did not exist.[1] He does, however, challenge the trial court's finding that termination of parental rights was in the child's best interests. See MCL 712A.19b(5). In *In re Mota*, __ Mich App __, __; __ NW2d __ (2020); slip op at 10-11, this Court set forth the following framework for termination cases and appeals:

> If a trial court finds that a single statutory ground for termination has been established by clear and convincing evidence and that it has been proved by a preponderance of the evidence that termination of parental rights is in the best interests of a child, the court is mandated to terminate a respondent's parental rights to that child. This Court reviews for clear error the trial court's ruling that a statutory ground for termination has been established and its ruling that termination is in the children's best interests. A finding is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed. When applying the clear error standard in parental termination cases, regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. [Quotation marks, citations, brackets, and ellipses omitted.[2]]

With respect to a child's best interests, we place our focus on the child rather than the parent. *In re Moss*, 301 Mich App 76, 87; 836 NW2d 182 (2013). In assessing a child's best interests, a trial court may consider such factors as a "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 Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). "The trial court may also consider a parent's history of

[1] Because respondent does not challenge the trial court's determination that DHHS established statutory grounds for termination, the court's determination stands. See *Denhof v Challa*, 311 Mich App 499, 521; 876 NW2d 266 (2015) ("When an appellant fails to dispute the basis of a lower court's ruling, we need not even consider granting the relief being sought by the appellant.").

[2] Although it is unnecessary to examine the statutory grounds for termination given respondent's lack of argument on the matter, we nonetheless conclude on review of the record that the court did not commit clear error by finding that the statutory grounds were established by clear and convincing evidence.

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 701, 714; 846 NW2d 61 (2014). The trial court may further consider how long the child was in foster care or placed with relatives, along with the likelihood that "the child could be returned to [the] parents' home within the foreseeable future, if at all." *In re Frey*, 297 Mich App at 248-249.

In this case, the record reflects that although respondent once had a growing bond with the child, that bond began to fade after respondent stopped attending parenting-time sessions and stopped interacting with the child. Indeed, respondent admitted to caseworkers that he was not best suited to care for the child. Respondent's criminal history, failure to attend medical appointments and parenting-time sessions, lack of engagement in services and the treatment plan, and ultimately his abandonment of the child, all favored a finding that termination was in the child's best interests. The record also reveals that the child's foster family continuously went above and beyond what was expected in caring for the child, providing a level of care that allowed the child to progress from having little hope of thriving to being a normal, happy, and healthy child. His foster family was willing to adopt him and was willing to continue visits with the child's maternal grandmother and half-sister. Accordingly, the trial court did not clearly err when it found by a preponderance of the evidence that termination of respondent's parental rights was in the child's best interests.

We affirm.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Michael J. Riordan