

STATE OF MICHIGAN
COURT OF APPEALS

In re K. D. ATEM, Minor.

UNPUBLISHED
October 21, 2021

No. 356723
Ionia Circuit Court
Family Division
LC No. 2019-000335-NA

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

PER CURIAM.

Respondent-mother appeals as of right the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist); MCL 712A.19b(3)(c)(ii) (failure to rectify other conditions); and MCL 712A.19b(3)(j) (reasonable likelihood that the child would be harmed if returned to the parent). Mother argues that the trial court erred when it found that petitioner made reasonable efforts to rectify the conditions that led to the child’s removal because mother was not receiving reasonable services from petitioner during the COVID-19 pandemic. Additionally, mother argues that the trial court erred by terminating her parental rights while father’s parental rights were still intact. For the reasons expressed below, we affirm.

The Department of Health and Human Services (DHHS) petitioned the trial court to remove the child from mother’s care when it received a report that mother was admitted to the hospital in a manic state with the child and then needed to be admitted into a mental health facility. When mother was admitted to the hospital, she tested positive for methamphetamine. The child was removed from mother’s custody and placed with a foster family.

The DHHS provided mother with numerous services before and during the COVID-19 pandemic. Specifically, mother was offered therapy and treatment for her mental health issues and substance abuse issues, drug tests, assistance with housing, assistance with poverty and unemployment, and assistance with parenting skills, including parenting-time visits. However, mother did not consistently participate in the services that the DHHS provided her, and she only attended 25 of the 85 scheduled parenting-time visits. Additionally, mother only completed 34 of the 76 drug tests that she was provided, and she tested positive for THC in most of the tests.

At the same time as mother's case regarding her parental rights to the child was pending, father's parental rights were also being challenged by petitioner. However, during his case, father was incarcerated after assaulting mother. The trial court held a termination hearing regarding father's parental rights and did not terminate father's parental rights because he had not been able to benefit from the services offered by the DHHS since he was incarcerated. Following father's termination hearing, the trial court held mother's termination hearing and ultimately terminated mother's parental rights. This appeal followed.

Mother argues that the trial court erred by terminating her parental rights to the child because she did not receive benefits from the DHHS given the COVID-19 pandemic and because father's parental rights had not been terminated.¹

Generally, this Court reviews for clear error a trial court's finding that "reasonable efforts were made to preserve and reunify the family." *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005). "A finding is clearly erroneous if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Rood*, 483 Mich 73, 91; 763 NW2d 587 (2009) (quotation marks and citation omitted). However, mother did not preserve for appeal her argument regarding petitioner's reasonable efforts to provide her with services to rectify the barriers to reunification because she did not challenge those services at the time that they were being offered. *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). This Court reviews unpreserved challenges to the trial court's finding that reasonable efforts were made for plain error affecting substantial rights. See *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 and citation omitted). "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, 9; 761 NW2d 253 (2008).

Petitioner "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). Included in the requirement to make reasonable efforts is the creation of a service plan, which outlines the steps that the agency and the parent "will take to rectify the issues that led to court involvement and to achieve reunification." *Id.* at 85-86 (quotation marks and citation omitted). Although petitioner "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 at 248.

Mother argues that the barriers she faced were made more significant by the COVID-19 pandemic limiting the resources provided to her. However, the record reflects that mother was offered alcoholics and narcotics anonymous meetings and family team meetings that she refused

¹ Mother does not challenge the statutory grounds or best-interest findings on appeal. Therefore, any challenge to the statutory grounds is abandoned, and so we assume that the trial court did not clearly err by finding that there was clear and convincing evidence to support a statutory ground for termination. See *In re JS & SM*, 231 Mich App 92, 98-99; 585 NW2d 326 (1999), overruled in part on other grounds by *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000).

to attend. She refused to complete more than half of the 76 drug tests offered, and she canceled 54 of the 85 parenting-time visits. Additionally, mother was offered Michigan Works and unemployment resources and therapy for her mental health and substance abuse, for which she had inconsistent attendance. Mother canceled or refused to attend some of these services even before the COVID-19 pandemic. Specifically, before petitioner required virtual parenting-time visits because of the COVID-19 pandemic, mother missed multiple parenting-time visits. A respondent has the responsibility to participate in the services that are offered. See *id.*

The trial court took these services into consideration and, throughout the case, stated that it found that reasonable efforts were attempted for mother's reunification in this matter. Therefore, it is not clear or obvious that the trial court committed error by determining that petitioner made reasonable efforts to rectify mother's barriers to reunification. Additionally, any alleged error was not outcome-determinative and did not affect mother's substantial rights because mother still presented a barrier to reunification at the time of termination when she was refusing all services and stated that she believed that she did not need services related to her mental health or substance abuse.

Mother also argues that the trial court erred by terminating her parental rights to the child while father's case for reunification was still ongoing because the child was not yet available for adoption and, therefore, mother could have more time to rectify her barriers. Mother made this same argument to the trial court, and the trial court stated, and took into consideration, that the "law doesn't say if you terminate for one parent, you must terminate for the other and conversely, it doesn't state that if you do not terminate for one parent, you cannot terminate for the other." This Court, in *In re Medina*, 317 Mich App 219, 232; 894 NW2d 653 (2016), ruled that *In re Marin*, 198 Mich App 560; 499 NW2d 400 (1993), was properly decided and that "the parental rights of one parent may be terminated without the termination of the parental rights of the other parent" *Medina*, 317 Mich App at 232, quoting *Marin*, 198 Mich App at 563-564.

Therefore, the trial court did not err by terminating mother's parental rights while father's case for reunification with the child remained outstanding.

Affirmed.

/s/ Christopher M. Murray

/s/ Kathleen Jansen

/s/ Michael J. Riordan