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# STATE OF MICHIGAN

# COURT OF APPEALS

*In re* WILLIAMS-ROSEBURGH, Minors.

UNPUBLISHED
November 18, 2021

No. 356774
Berrien Circuit Court
Family Division
LC No. 2019-000013-NA

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

PER CURIAM.

Respondent-mother[1] appeals as of right the order terminating her parental rights to AWR and DWR (collectively, "the twins") under MCL 712A.19b(3)(c)(*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) and (j) (reasonable likelihood child will be harmed if returned to parent's home). We affirm.

## I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

In February 2019, child protective services (CPS) was dispatched to Lakeland Medical Center in Saint Joseph, Michigan, after the birth of the twins. After interviewing respondent-mother, CPS workers learned respondent-mother had an intellectual disability and a history of mental health problems and domestic violence. CPS workers also discovered respondent-mother did not have any baby supplies or furniture at her apartment, did not have medication for her mental health condition, and was living with a man with an extensive criminal history, including a child abuse conviction. As a result of these circumstances, CPS filed a petition seeking temporary custody of the twins, which the trial court authorized.

The trial court ordered petitioner, Department of Health and Human Services (DHHS), to make reasonable efforts to reunify respondent-mother with the twins. It also ordered respondent-mother to participate in a case service plan. The case service plan stated DHHS would offer

[1] Though the twins' father was also a respondent in the lower court proceedings, he is not a party to this appeal.

respondent-mother services such as: supervised parenting times, transportation assistance, supportive visitation, and mental health therapy, among other services. DHHS workers stated the services were designed in consideration of respondent-mother's intellectual disability. Respondent-mother did not successfully complete any of the services. In December 2020, the trial court terminated respondent-mother's parental rights after finding statutory bases for termination and that termination was in the twins' best interests.

## II. REASONABLE EFFORTS

Respondent-mother argues DHHS failed to make reasonable efforts to reunite her with the twins, which resulted in a fundamentally unfair procedure because she was not provided adequate services to overcome her barriers to reunification.

### A. PRESERVATION AND STANDARD OF REVIEW

To preserve an argument regarding the adequacy of services provided to a respondent-parent, the parent must "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-mother contends she preserved this issue, citing a statement by her attorney during a dispositional review and permanency planning hearing.[2] However, respondent-mother incorrectly characterizes her objection. Indeed, the statement cited by respondent-mother notes her desire to have more time to complete services, not the inadequate nature of the services.[3] Respondent-mother never challenged the adequacy of services and at times actually *agreed* that the services provided were appropriate. Thus, this issue is unpreserved because respondent-mother never objected on the basis that the services provided were inadequate. *Id*.

Respondent-mother also appears to assert a violation of her constitutional right to a fundamentally fair procedure because she was not provided appropriate services. Respondent-mother never objected to the propriety of the services offered on the basis of a constitutional violation, so this issue is also unpreserved. *Id*.

Generally, whether DHHS made reasonable efforts at reunification is reviewed for clear error. *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005). However, unpreserved

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[2] Specifically, respondent-mother's attorney stated:

> We object to the recommendation[] [for termination]. My client has some . . . difficulties that are not her fault . . . and she needs extra time this is not a standard case . . . . And she's voicing a desire to truly get on track and to work to make sure that she gets her children back. So we oppose a move toward termination. Let's just set it for another review hearing.

[3] We note because of the difficulties associated with the pandemic, respondent-mother *was* given more time to "get on track." Indeed, at the next hearing on May 19, 2020, the trial court struck the termination language from the petition and ordered another review hearing. In essence, respondent-mother's objection was granted because she was offered more time to participate in services.

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 and citations 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). The same standard applies to unpreserved constitutional issues. *In re TK*, 306 Mich App 698, 703; 859 NW2d 208 (2014).

B. LAW AND ANALYSIS

Absent aggravating circumstances, "[b]efore a court may enter an order terminating parental rights, Michigan's Probate Code, MCL 710.21 *et seq.*, requires a finding that [DHHS] has made reasonable efforts at family reunification." *In re Hicks/Brown*, 500 Mich 79, 83; 893 NW2d 637 (2017). 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." *Id*. at 85-86. Reasonable efforts include services "to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to his own safe home or the permanent placement of the child." *In re Rood*, 483 Mich 73, 104; 763 NW2d 587 (2009) (quotation marks and citations omitted). In cases of a respondent-parent's cognitive impairment, "efforts at reunification cannot be reasonable under the Probate Code unless [DHHS] modifies its services as reasonably necessary to accommodate a parent's disability." *Hicks/Brown*, 500 Mich at 90. While DHHS has an obligation to offer services, the respondent-parent has a commensurate duty to participate in the services and to benefit from them. *TK*, 306 Mich App at 711. Moreover, a respondent-parent who challenges the services provided by DHHS must demonstrate he or she would have fared better if different services were offered. See *Fried*, 266 Mich App at 543.

DHHS's reports to the trial court indicated it offered a number of services to respondent-mother, including: a psychological assessment, supportive visitation, individual therapy, transportation to work, and parenting classes. Not only were these services offered, DHHS workers stated these services were intended to accommodate respondent-mother's intellectual disability,[4] fulfilling DHHS's obligation to offer services that facilitate the child's return and accommodate a respondent-parent's cognitive impairment. *Rood*, 483 Mich at 104; *Hicks/Brown*, 500 Mich at 90. This record shows DHHS fulfilled its obligation to offer respondent-mother services addressing her specific needs—for example, her need for parenting skills training, transportation to employment, and mental health therapy. The record also shows respondent-

[4] For example, in stating the reason for supportive visitation, DHHS said "it will give [respondent-mother] the proper attention she needs." And, when DHHS learned respondent-mother was not completing her assignments for supportive visitation, DHHS agreed to "switch [the assignments] up for her." After respondent-mother was discharged from supportive visitation, DHHS stated "there is gonna be a real need to maybe think outside the box as it relates to the mother in providing . . . services." Further, when seeking a therapist for respondent-mother, DHHS found a therapist who is "very individual based" and was willing to work with respondent-mother despite her "limitations." The trial court also received evidence that DHHS had provided respondent-mother bus tokens to travel to work, but that respondent-mother worked one day before quitting the job.

mother either declined to participate or failed to complete the services offered by DHHS. Thus, there is no plain error where DHHS offered respondent-mother services to overcome her barriers to reunification and respondent-mother failed to participate in these services. Likewise, there is no plain constitutional error because respondent-mother was offered services tailored to her specific needs.

To that end, respondent-mother makes several meritless arguments, which she apparently believes show the services provided were inadequate to reunite her with her children. First, she points to the pandemic and respondent-father's incarceration as reasons DHHS declined to provide services. However, this case began in February 2019, well before the March 2020 declaration of a state of emergency resulting from the pandemic. Executive Order No. 2020-4. Yet, even after this time, the trial court received evidence showing DHHS continued its attempt to engage respondent-mother in services, but respondent-mother refused to participate. To respondent-mother's second argument, though respondent-father was incarcerated through the entire pendency of this case, there is nothing to suggest DHHS withheld services on that basis.[5]

Affirmed.

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

[5] Respondent-mother also apparently believes DHHS would not have removed the twins if DHHS provided respondent-mother baby supplies and furniture at the beginning of this case. However, this argument ignores the other reasons the twins were removed from her care. Indeed, DHHS sought removal of the twins not only because respondent-mother lacked baby supplies, but also because of respondent-mother's history of domestic violence, her live-in boyfriend's criminal history, and respondent-mother's lack of psychotropic medication, among other significant concerns. Therefore, this argument is also meritless.