

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
September 27, 2011

In the Matter of A. A. SMITH, Minor.

No. 301889
Wayne Circuit Court
Family Division
LC No. 08-482358

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Before: **SERVITTO, P.J.**, and **MARKEY** and **K. F. KELLY, JJ.**

PER CURIAM.

In these consolidated appeals, respondents K. Smith (Docket No. 301889) and D. Townsend (Docket No. 301892) appeal by right the trial court's order terminating their parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (g), (j), and (k)(i).¹ We affirm.

Respondent Smith was 13 years old when she gave birth to the minor child in 2006. At that time, respondent Smith was also a delinquent ward of the court. Respondent Smith ran away from her court-ordered placement with her mother, leaving the child in her mother's care despite her mother's history with Protective Services. The child was adjudicated a temporary court ward in December 2008 based on respondent Smith's admissions that she failed to comply with the court's placement order and was absent from the child's life for more than a year.

The child's father, respondent Townsend, who was 19 years old when the child was born, failed to provide support or involve himself in the child's life. Respondent Townsend was only a putative father when the proceedings were initiated, but his paternity was later established and he was provided with a treatment plan requiring individual counseling, parenting classes, a psychological evaluation, and supervised visitation.

¹ Only respondent Townsend's parental rights were terminated under § 19b(3)(k)(i).

Both parents' involvement in the treatment plan was sporadic. Respondent Smith frequently ran away for periods of several weeks or months, without making an effort to visit or care for the child. During the early stages of the proceeding, respondent Smith and the child were placed in a foster home for teenage mothers and their children, but respondent Smith's refusal to cooperate with the home's rules led to their removal, and the child was placed with a relative. Although respondent Smith had periods of regularly visiting the child and attending the child's play therapy sessions, she also frequently had lengthy periods of absenteeism. Respondent Townsend visited the child only three times, and never made efforts to participate in parenting classes or individual counseling.

I. STANDARD OF REVIEW

In an action to terminate parental rights, the petitioner must prove a statutory ground for termination by clear and convincing evidence. MCL 712A.19b(3); MCR 3.977(A)(3) and (H)(3)(a). Once a statutory ground for termination is established, the trial court shall order termination of parental rights if it finds that termination is in the child's best interests. MCL 712A.19b(5). We review the trial court's findings for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A finding is clearly erroneous when although there is evidence to support it the reviewing court on the basis of the entire record is left with the firm and definite conviction that a mistake was made. *In re Rood*, 483 Mich 73, 91; 763 NW2d 587 (2009).

II. DOCKET NO. 301889

Respondent Smith argues that the trial court erred in finding that the statutory grounds for termination were established by clear and convincing evidence. We disagree.

The trial court found that § 19b(3)(c)(i) was established because respondent Smith had run away from her delinquency case placement, effectively abandoning the child to her mother's care for more than a year. After two years of wardship, respondent Smith remained unable to provide proper care for the child. She only sporadically availed herself of services offered over a two-year period and had no contact with her caseworkers and service providers for lengthy periods. Respondent Smith's failure to provide consistent care, or to make consistent efforts to enable herself to provide proper care, was never resolved, provided clear and convincing evidence warranting termination under § 19b(3)(c)(i).

With respect to § 19b(3)(g), clear and convincing evidence established respondent Smith never provided proper care and custody for the child throughout the case. When respondent Smith had the opportunity to share a placement with the child in a foster home for teenage mothers and their children, she failed to utilize the opportunity to take on the responsibility of caring for a child. When she interacted with the child, she was impatient and physically aggressive. She frequently left the child with other persons for long periods without accounting for her whereabouts. During visits, respondent Smith acted more as a playmate than an authority figure to the child. Respondent Smith's failure to demonstrate a consistent commitment to enabling herself to provide proper care and custody warranted termination under § 19b(3)(g).

The evidence supporting termination under §§ 19b(3)(c)(i) and (g) also supports termination under § 19b(3)(j). The child's therapist, whose testimony was partly favorable to

respondent Smith, acknowledged that respondent Smith's failure to maintain a stable and consistent presence would be harmful to the child's mental stability, and acknowledged that the child's aggressive behavior was probably attributable to parental neglect. Respondent Smith's failure to establish a stable life, and her persistence in pursuing a transient lifestyle with lengthy periods of no contact with the child, is evidence that the child will be at risk of harm if returned to respondent Smith's care. The trial court did not clearly err in finding clear and convincing evidence to support termination under § 19b(3)(j).

Respondent Smith also challenges the trial court's finding regarding the child's best interests. The evidence showed that respondent Smith never provided the stability and structure that the child required. When the child was first placed in foster care, she exhibited aggressive behaviors, as well as sexually provocative behaviors and habits of approaching strange men. These behaviors were resolved with therapy and her foster parent's guidance. Respondent Smith never achieved stability in her own life and could not be expected to provide the stability and structure that the child required. The child looked to respondent Smith as a playmate, not a parent. Under these circumstances, the trial court did not clearly err in finding that termination of respondent Smith's parental rights was in the child's best interests.

We reject respondent Smith's argument that termination was improper because petitioner failed to make reasonable efforts to reunify her with the child. In general, when a child is removed from the custody of a parent, the agency is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan. MCL 712A.18f(1)-(5); *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). At a minimum, to assert a successful defense to termination based on lack of reasonable efforts, a respondent must establish that she would have fared better if she had been offered other services. *Id.* at 543.

The record indicates that there were deficiencies in carrying out the trial court's orders in early 2009. However, the trial court addressed those deficiencies and ensured that petitioner complied with its reunification responsibilities. Viewed as a whole, the record establishes that petitioner made reasonable efforts to reunify respondent Smith with her child. Respondent Smith was afforded an opportunity to assume a parental role through her placement in a foster home for teenage mothers and their children, but she failed to comply with the rules of that placement. She was also offered therapy and parenting classes, but failed to avail herself of those services until the time of the termination hearing. In addition, she regularly disappeared for lengthy periods without disclosing her whereabouts. Respondent Smith's sporadic attempts to work on her treatment plan preclude a finding that she would have succeeded if the agency offered other services. *In re Fried*, 266 Mich App at 543. Although respondent Smith criticizes petitioner and the trial court for failing to make her the subject of a child protective proceeding instead of or in addition to asserting jurisdiction over her as a delinquency ward, whether she was a delinquency ward, a neglect ward, or both, she failed to avail herself of the opportunities for parenting classes, counseling, and a joint mother-child placement. There is no basis for concluding that a different approach would have led to successful reunification when respondent Smith herself failed to make reasonable efforts to comply with her treatment plan.

III. DOCKET NO. 301892

Respondent Townsend argues that reversal is required because of several procedural errors that affected the validity of the proceedings. Whether the trial court complied with proper procedures is a question of law, which this Court reviews de novo. *In re Rood*, 483 Mich at 91. Because respondent Townsend did not raise any of his procedural claims below, our review is for plain error affecting substantial rights. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

Most of respondent Townsend's procedural claims relate to the preliminary and adjudicative proceedings, pursuant to which the court acquired jurisdiction over the child. It is well established that a respondent cannot collaterally attack a trial court's exercise of jurisdiction in an appeal from the termination decision. *In re Hatcher*, 443 Mich 426, 444; 505 NW2d 834 (1993). The court's exercise of jurisdiction can only be challenged by direct appeal from the initial order of disposition. MCR 3.993(A)(1); *In re Bechard*, 211 Mich App 155, 159; 535 NW2d 220 (1995). Because the trial court exercised jurisdiction over the child in 2008, and did not terminate respondent Townsend's parental rights at the initial dispositional hearing, respondent Townsend cannot now challenge the trial court's exercise of jurisdiction in this appeal from the order terminating his parental rights. *In re SLH, AJH, & VAH*, 277 Mich App 662, 668-669; 747 NW2d 547 (2008); *In re Gazella*, 264 Mich App 668, 679-680; 692 NW2d 708 (2005).

In any event, respondent Townsend has failed to establish any procedural error. The trial court properly exercised jurisdiction over the child solely on the basis of respondent Smith's plea to the initial petition for temporary custody, and once the court acquired jurisdiction over the child, it properly could enter orders affecting respondent Townsend after his paternity was established. *In re CR*, 250 Mich App 185, 202-203; 646 NW2d 506 (2001).

Respondent Townsend also complains that he was not properly notified of the early proceedings, and that counsel was not appointed before the adjudicative proceeding. At that stage, however, respondent Townsend was only a putative father and, therefore, did not have the same rights as a legal father. MCR 3.921(B)(1)(a) and (d) provide that in a child protective proceeding, the respondent and the child's parents other than the respondent are entitled to notice of each hearing. The term "parent" is defined as "the mother, the father as defined in MCR 3.903(A)(7), or both, of the minor." MCR 3.903(18). At the time of the adjudicative hearing, respondent Townsend was not a "father" as defined in MCR 3.903(A)(7). Rather, he was only a "[p]utative father" as defined in MCR 3.903(A)(24). The notice to which a putative father is entitled is governed by MCR 3.921(D), which provides, in pertinent part:

If, at any time during the pendency of a proceeding, the court determines that the minor has no father as defined in MCR 3.903(A)(7), the court may, in its discretion, take appropriate action as described in this subrule.

(1) The court may take initial testimony on the tentative identity and address of the natural father. If the court finds probable cause to believe that an identifiable person is the natural father of the minor, the court shall direct that notice be served on that person in any manner reasonably calculated to provide

notice to the putative father, including publication if his whereabouts remain unknown after diligent inquiry. . . .

Here, the record discloses that respondent Townsend had notice of the October 1, 2008, preliminary hearing, and the December 1, 2008, adjudication hearing, because he was present at both of those hearings. Further, counsel was appointed to represent him once he established paternity and became a legal father. Respondent Townsend's rights were sufficiently protected during the early stages of these proceedings in accordance with his status as a putative father.

Next, the trial court did not clearly err in finding that statutory grounds to terminate respondent Townsend's parental rights were properly established by clear and convincing evidence. The trial court terminated respondent Townsend's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), (j), and (k)(i). Citing *In re DMK*, 289 Mich App 246, 257-259; 796 NW2d 129 (2010), petitioner asserts that termination of respondent Townsend's parental rights was improper under § 19b(3)(c)(i) because the conditions that led to the adjudication did not pertain to respondent Townsend. Although we are not necessarily persuaded that termination under § 19b(3)(c)(i) was improper, any error was harmless because the trial court did not clearly err in finding that the remaining statutory grounds for termination were established by clear and convincing evidence.

Respondent Townsend was virtually an absentee parent when the case began. Although he appeared for the adjudicative hearing and executed an affidavit of parentage in December 2008, he failed to appear again until January 2010. When he reappeared, he had no explanation for his nonparticipation during the preceding year. Respondent Townsend's visitation with the child was minimal, and he made no effort to comply with his treatment plan, or to stay in contact with petitioner to work toward reunification. Respondent Townsend never demonstrated any initiative in planning for the child, either before or after she was placed in foster care. His scant involvement in the child's life, and his minimal involvement in the treatment plan, established the remaining statutory grounds for termination.

The record does not support respondent Townsend's argument that petitioner failed to provide him with a case service plan, or failed to involve him in the service planning process. The record indicates that respondent Townsend was personally informed by the trial court of his treatment plan requirements, which included participation in parenting classes and therapy, attendance at visitations, and a psychological evaluation. In addition, petitioner attempted to contact respondent Townsend through mail and telephone messages to involve him in services, but he did not respond to petitioner's inquiries. Although the trial court criticized the caseworker at an April 2010 hearing for failing to mail respondent Townsend a copy of the treatment plan when her efforts to arrange for a personal meeting were unsuccessful, the caseworker thereafter complied with the trial court's order and mailed copies of the treatment plan to respondent Townsend by certified mail. Nothing in the record supports respondent Townsend's suggestion that he may have had a disability that affected his ability to understand the requirements and purpose of the treatment plan. Moreover, he was represented by counsel and no claim was ever made that he was not sufficiently apprised of the treatment plan requirements. Accordingly, there is no factual or legal basis for his argument that his failure to comply with the treatment plan may be attributable to any deficiency by petitioner or the trial court.

Lastly, considering respondent Townsend's lack of participation in services and that the child had no attachment to respondent Townsend, the trial court did not clearly err in finding that termination of respondent Townsend's parental rights was in the child's best interests.

We affirm.

/s/ Deborah A. Servitto

/s/ Jane E. Markey

/s/ Kirsten Frank Kelly