

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of A. U. JOHNSON, Minor.

UNPUBLISHED
August 25, 2011
No. 302286
Wayne Circuit Court
Family Division
LC No. 05-447127

Before: MARKEY, P.J., and SAAD and GLEICHER, JJ.

PER CURIAM.

Respondent appeals a trial court order that terminated his parental rights to the minor child pursuant to MCL 712A.19b(3)(n)(i). For the reasons set forth below, we affirm.

I. DUE PROCESS

Respondent contends that he was denied his due process rights to notice, legal counsel, and the opportunity to be heard. Respondent did not preserve this issue for appeal. This Court reviews an unpreserved issue for plain error affecting substantial rights, i.e., the error affected the outcome of the lower court proceedings. *People v Carines*, 460 Mich 750, 762-764; 597 NW2d 130 (1999).

“In Michigan, procedures to ensure due process to a parent facing removal of his child from the home or termination of his parental rights are set forth by statute, court rule, [Department of Human Services (DHS)] policies and procedures, and various federal laws . . .” *In re Rood*, 483 Mich 73, 93; 763 NW2d 587 (2009). Respondent was the minor child’s putative father until December 14, 2009, when he produced the required documentation to be deemed the child’s legal father. See MCR 3.903(A)(7), (17), and (18). Notice was not required to respondent as long as he was the child’s “putative father,” except as provided in MCR 3.921(D) and (E), with which the court complied. The court granted additional time and consideration in order that respondent’s legal parentage could be established. Moreover, before he established legal parentage, the court appointed an attorney for respondent who appeared at each subsequent hearing, and respondent was given proper notice and an opportunity to be heard at each subsequent hearing. Accordingly, we hold that respondent was not denied due process.

Respondent claims that DHS failed to comply with its duty to make reasonable efforts to provide him with services for reunification. This unpreserved issue is reviewed for plain error affecting respondent’s substantial rights. *Carines*, 460 Mich at 762-764. MCL 712A.18f sets forth DHS’s requirements to provide services to “the child’s parent, guardian, or custodian.” Under MCR 3.903(A)(7) and MCR 3.903(A)(1) and (18), respondent was not a “parent” until

December 14, 2009. Respondent was not entitled to services until he became a “parent.” *In re LE*, 278 Mich App 1, 18-19; 747 NW2d 883 (2008). At the hearing following respondent’s recognition as the child’s legal parent, the court authorized petitioner to file a permanent custody petition. Pursuant to MCL 722.638(3), a team decision meeting was held on March 9, 2010, and the outcome was a recommendation to file a petition requesting termination of respondent’s parental rights. The petition for termination of respondent’s parental rights was filed on April 12, 2010. Services need not be provided where reunification is not intended, *LE*, 278 Mich App at 21, and DHS was not required to provide services once a petition for permanent custody had been filed, MCL 712A.19b(4); MCR 3.977(E).

II. TERMINATION DECISION

Respondent argues that the trial court erred in finding clear and convincing evidence to support the statutory ground for termination of his parental rights. On appeal from termination of parental rights proceedings, this Court reviews the trial court’s findings under the clearly erroneous standard. MCR 3.977(K); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999).

The court terminated respondent’s parental rights under MCL 712A.19b(3)(n)(i). This statutory ground requires findings that the parent had been convicted of at least one of the enumerated criminal statutes and “that termination is in the child’s best interests because continuing the parent-child relationship with the parent would be harmful to the child.”

Respondent was convicted of first-degree criminal sexual conduct, MCL 750.520b, one of the numerated crimes under § (n)(i), and was serving a sentence of nine to 20 years in prison. Proof of this was entered into the record. Respondent was incarcerated for committing sexual abuse against the child’s mother, beginning when the child’s mother was eight years old. The mother became pregnant with the minor child when she was 14. The minor child was five years old at the time of the termination hearing. Respondent had never visited or spoken with the child, and he had no other involvement in her life. Based on respondent’s record while in prison, the court declined to assume respondent would be released from prison at his earliest out date, at which time the child would be ten years old. The court found that respondent had essentially ruined the child’s mother’s life because, as a result of his sexual abuse and her subsequent pregnancy at the age of 14, she had not completed her education, was not able to sustain herself, was unable to care for her own child, and was a very troubled person. The court correctly found that this history of sexually abusive behavior was relevant to show respondent’s potential impact upon the child if allowed to be a part of her life. Under these facts, the court found that it was clearly not in the child’s best interests to have a relationship with respondent after he was released. MCL 712A.19b(5).

We hold that the trial court did not clearly err in finding clear and convincing evidence to support termination of respondent’s parental rights under MCL 712A.19b(3)(n)(i) or in its best interests determination under MCL 712A.19b(5).

Affirmed.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Elizabeth L. Gleicher