

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
February 16, 2012

In the Matter of WARD, Minors.

No. 305633
Osceola Circuit Court
Family Division
LC No. 09-004595-NA

Before: SAWYER, P.J., and O'CONNELL and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent father appeals as of right from an order terminating his parental rights to four minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

In an action to terminate parental rights, the petitioner must prove by clear and convincing evidence that at least one statutory ground for termination exists. MCR 3.977(A)(3) and (H)(3); *In re Trejo*, 462 Mich 341, 355-356; 612 NW2d 407 (2000). We review the trial court's decision for clear error. MCR 3.977(K); *In re Trejo*, 462 Mich at 356-357. A finding is clearly erroneous when the reviewing court is left with the firm and definite conviction that a mistake was made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

Respondent has a history of physically abusing his children. The children were removed from respondent's custody in August 2009, after respondent assaulted one of his daughters with enough force to fracture her sinus cavity. Respondent had previously assaulted an older daughter, who was pregnant at the time and who reached the age of majority before this case began. Respondent was convicted of criminal assaultive charges for both incidents, and also of attempted third-degree criminal sexual conduct with one of his daughter's teenage friends. Respondent was the subject of several personal protection orders. Services were provided to respondent, but he failed to complete an alternatives to violence program, and he persisted in justifying his abusive conduct. The evidence showed that he failed to comprehend how his abusive tendencies harmed the children, despite clear evidence that the children suffered psychological harm from his home environment and his treatment of them. During visits, he repeatedly upset the children with offensive and threatening remarks. Respondent failed to benefit from therapy and counseling, and his psychological evaluation revealed personality disorders that make his rehabilitation unlikely. The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence.

Respondent contends that the trial court erred by failing to conduct a permanency planning hearing before petitioner submitted the supplemental petition to terminate his parental

rights, and by failing to obtain the children's opinion of the permanency plan, which respondent contends prevented the court from properly considering the children's best interests. Respondent did not object to the failure to hold a permanency planning hearing in the trial court, nor did he argue below that alleged procedural defects prevented the trial court from properly evaluating the children's best interests. Accordingly, this issue is unpreserved. An unpreserved claim of error is reviewed for plain error affecting substantial rights. *In re Utrera*, 281 Mich App 1, 8-9; 761 NW2d 253 (2008).

We find no plain error. Although MCL 712A.19a(6) provides that a trial court may order petitioner to file a supplemental petition for termination at a permanency planning hearing, that rule is not the exclusive means for authorizing a supplemental petition for termination. MCL 712A.19b(1) indicates that a trial court shall hold a hearing on a petition to terminate parental rights "if a child remains in foster care in the temporary custody of the court following a review hearing under section 19(3) of this chapter *or* a permanency planning hearing under section 19a of this chapter[.]" Furthermore, respondent's substantial rights were not affected by the failure to hold a permanency planning hearing. Respondent also complains that the trial court failed to comply with MCL 712A.19a(3), which requires the court to "obtain the child's views regarding the permanency plan in a manner that is appropriate to the child's age." However, petitioner presented ample evidence of the children's views on reunification at the termination hearing. Both the children's therapist and the caseworker testified regarding each child's position on reunification. Some of the children were sometimes ambivalent, but their consensus was that they did not want to live with respondent because they were afraid of him and did not believe that he would reform. This testimony formed the basis of the trial court's findings under MCL 712A.19b(5) that termination of respondent's parental rights was in the children's best interests, and those findings are not clearly erroneous.

Affirmed.

/s/ David H. Sawyer

/s/ Peter D. O'Connell

/s/ Amy Ronayne Krause