STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
February 19, 2013

In the Matter of BRUBAKER, Minors.

No. 310407
Gladwin Circuit Court
Family Division
LC No. 11-000078-NA

Before: JANSEN, P.J., and WHITBECK and BORRELLO, JJ.

PER CURIAM.

Respondent K. Fisher appeals by right the trial court's order terminating her parental rights to the minor children under MCL 712A.19b(3)(a)(*ii*), (g), and (j). We affirm.

Respondent first argues that she was not afforded due process because she did not receive notice of the hearing to terminate her parental rights. This unpreserved issue is reviewed for plain error affecting respondent's substantial rights. *In re Utrera*, 281 Mich App 1, 8-9; 761 NW2d 253 (2008).

Because parents have a fundamental liberty interest in the care, custody, and management of their children, they are afforded certain procedural due process safeguards when the state seeks to terminate their parental rights. *In re Rood*, 483 Mich 73, 91; 763 NW2d 587 (2009); see also *Santosky v Kramer*, 455 US 745, 753-754; 102 S Ct 1388; 71 L Ed 2d 599 (1982). A key requirement of due process is the opportunity to be heard, which includes the right to notice. *Dow v Michigan*, 396 Mich 192, 205-206; 240 NW2d 450 (1976). "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v Central Hanover Bank & Trust Co*, 339 US 306, 314; 70 S Ct 652; 94 L Ed 865 (1950).

MCL 712A.13 provides the service requirements for dispositions involving children:

> Service of summons may be made anywhere in the state personally by the delivery of true copies thereof to the persons summoned: Provided, That if the judge is satisfied that it is impracticable to serve personally such summons or the notice provided for in the preceding section, he may order service by registered mail addressed to their last known addresses, or by publication thereof, or both, as he may direct. It shall be sufficient to confer jurisdiction if (1) personal service is effected at least 72 hours before the date of hearing; (2) registered mail is mailed

> at least 5 days before the date of hearing if within the state or 14 days if outside of the state; (3) publication is made once in some newspaper printed and circulated in the county in which said court is located at least 1 week before the time fixed in the summons or notice for the hearing.

MCL 712A.19b(2) provides the notice requirements for termination-of-parental-rights proceedings:

> Not less than 14 days before a hearing to determine if the parental rights to a child should be terminated, written notice of the hearing shall be served upon all of the following:
>
> (a) The agency. The agency shall advise the child of the hearing if the child is 11 years of age or older.
>
> (b) The child's foster parent or custodian.
>
> (c) The child's parents.
>
> (d) If the child has a guardian, the child's guardian.
>
> (e) If the child has a guardian ad litem, the child's guardian ad litem.
>
> (f) If tribal affiliation has been determined, the Indian tribe's elected leader.
>
> (g) The child's attorney and each party's attorney.
>
> (h) If the child is 11 years of age or older, the child.
>
> (*i*) The prosecutor. [See also MCR 3.921(B)(2) and (3).]

Before the petition for termination was filed, documents related to the child protective proceedings were sent to respondent at her registered address, where she was known to reside. Even respondent acknowledged that she received a copy of the petition to remove the children from her home, which is evidence that she was receiving notices at that address. Approximately two months before the termination hearing was to occur, respondent was ordered to appear on April 3, 2012, at 9:00 a.m. However, respondent had failed to appear for previous hearings and could not be located after reasonable efforts. Relatives and friends did not know where she was, and she failed to appear for scheduled meetings with petitioner and had warrants out for her arrest.

The trial court issued an order for alternate service by publication. Publication of the notice of the hearing was sent to the local newspaper on March 1, 2012. The publisher of that newspaper submitted an affidavit stating that the notice was published. The publication was addressed to respondent and informed her that a termination hearing that could result in permanent termination of her parental rights would be held on April 3, 2012, at 9:00 a.m. By statute, written notice of the termination hearing must be served on respondent 14 days before

the hearing. However, if personal service is impracticable, the trial court may order service by publication as long as it is made one week before the hearing. Here, it was reasonable for the trial court to determine that it was impracticable to locate respondent, and to therefore order service by publication. Notice was published a month before the scheduled hearing, which complied with the statutory requirements.

Respondent next argues that she was denied due process because she did not participate in the creation of the initial service plan. Petitioner is required to provide an initial service plan before placing the child outside the home and before the court may enter an order of disposition. *In re Rood*, 483 Mich at 95-96; see also MCL 712A.13a(10)(a). The plan must indicate what efforts have been made to prevent removal of the child and what services were offered to facilitate reunification. *In re Rood*, 483 Mich at 96. Parents are encouraged to participate in the plan, and when there is an absent parent, foster care workers are required to make an attempt to locate the parent. *Id.* at 97. To do so, workers are referred to the Absent Parent Protocol (APP)[1] for guidance. *Id.* at 98.

The main argument that respondent makes is that there was no evidence that the court followed the APP or that petitioner followed its own policies contained in the Children's Foster Care Manual to search for her. The APP requires foster care workers to use diligent efforts to locate an absent parent. APP, § D(2), p 7. Some of these efforts include (1) interviewing relatives and friends, (2) asking the children, (3) checking telephone books and internet, (4) searching DHS databases, (5) inquiring into voter registration, (6) searching Department of Corrections' records, and (7) using the Federal Parent Locator Service. *Id.* at 7-8. The Children's Foster Care Manual[2] similarly states that when developing a service plan, foster care workers are to make efforts to locate absent parents, including (1) inquiring with the secretary of state, (2) a search of telephone books, (3) a United States Post Office address search, (4) a friend of the court inquiry, (5) checking with the county clerk's office for vital statistics, (6) contacting the parent's last place of employment, (7) following up with friends and relatives, (8) contacting local jails and state prisons, (9) using the Federal Parent Locator Service, and (10) making an Offender Tracking System inquiry. CFF, FOM 722-6, pp 1-5, FOM 722-8, p 6. The Manual also directs foster care workers to refer to the APP for guidance on locating absent parents. *Id*.

The foster care worker did not explicitly state that he followed the above guidelines. However, he testified that there was an initial service plan created following respondent's plea, by which she was to participate in drug counseling, work on her parenting skills, and find appropriate housing for the children. The plan itself states that attempts were made to contact respondent regarding the plan and the children, but that she could not be reached. Respondent was clearly aware of the pending case, because she initially entered a plea, but then failed to

---

[1] The current version of the APP is available at <http://courts.michigan.gov/Administration/SCAO/Resources/Documents/standards/APP.pdf> (accessed February 7, 2013).

[2] The current version of the Foster Care Manual is available at <http://www.mfia.state.mi.us/olmweb/ex/html/> (accessed February 7, 2013).

appear at subsequent court hearings. Contact was made with respondent on October 12, 2011, when a meeting was scheduled to discuss the case. Respondent failed to attend that meeting. The foster care worker could not have contacted the children regarding respondent's whereabouts because they were also missing. He stated that the children's information was entered into LEIN and the Child Locator Unit, and he contacted relatives and friends, but was unable to locate the children. He testified that there was a warrant out for respondent's arrest, so her information was already in LEIN. It was impracticable for petitioner to search for respondent using many of the guidelines because respondent had a registered address, but could not be found there and she did not answer petitioner's telephone calls. Based on the record, it does appear that petitioner followed all the protocols provided in the APP and the Children's Foster Care Manual. However, it appears that any lack of participation in the plan was respondent's own fault. We perceive no due process violation on the record before us.

Respondent also argues that the trial court erred by determining that at least one statutory ground for termination had been established by clear and convincing evidence. The trial court may terminate a respondent's parental rights to her child if it finds by clear and convincing evidence that at least one statutory ground for termination has been established. *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999).

There was clear and convincing evidence to support the trial court's finding that respondent was unable to provide proper care and custody for her children. MCL 712A.19b(3)(g). The trial court determined that respondent had drug issues, that respondent was missing, and that she would not be able to provide proper care or custody for her children within a reasonable time. Respondent argues that the trial court made conclusory statements instead of findings of fact. MCR 3.977(I)(1) provides that "[t]he court shall state on the record or in writing its findings of fact and conclusions of law. Brief, definite, and pertinent findings and conclusions on contested matters are sufficient." The trial court's findings, although brief, were not conclusory statements. There was evidence that respondent was arrested for methamphetamine production and evidence of drug production was found in her home. Further, the foster care worker testified that respondent could not be located and a warrant was out for her arrest for pending criminal charges. In addition, respondent failed to show up for court hearings. This supports the trial court's finding that respondent was missing.

Moreover, other evidence supported the trial court's finding that respondent was unable to provide proper care and custody for her children. In addition to the evidence indicating that respondent was involved with drugs and could not be located, respondent's home did not have electricity, food, or running water, and evidence of methamphetamine production was found in her home where the children had been staying. The children had also been missing and relatives and friends did not know where they were. Respondent never contacted petitioner regarding her children, and there is no evidence that she was working to create a proper environment for them. The trial court did not clearly err by determining that there was no reasonable expectation that respondent would be able to provide proper care and custody for her children within a reasonable time under § 19b(3)(g). MCR 3.977(K).

There was also clear and convincing evidence to support the trial court's finding that the children would likely be harmed if returned to respondent's home. MCL 712A.19b(3)(j). The trial court found that this statutory ground was met because of respondent's drug issues and the

fact that she has been missing for six months. The trial court noted the likelihood that respondent was on the run, given that she had two warrants out for her arrest. Respondent also showed no interest in working with DHS on a service plan, and there was no evidence that respondent had found a suitable, drug-free home for her children. We perceive no clear error in the trial court's findings under § 19b(3)(j).[3]

Respondent does not argue in her brief on appeal that termination of her parental rights was not in the children's best interests. Accordingly, we decline to address this issue. See MCR 7.212(C)(5) and (7); see also *Knoke v East Jackson Pub School Dist*, 201 Mich App 480, 485; 506 NW2d 878 (1993).

Affirmed.

/s/ Kathleen Jansen
/s/ William C. Whitbeck
/s/ Stephen L. Borrello

[3] We question whether there was sufficient evidence to support the trial court's finding that respondent deserted the children under MCL 712A.19b(3)(a)(*ii*). The children very well could have been with respondent, as all three were missing. However, because only one statutory ground must be established to terminate parental rights, any error in relying on § 19b(3)(a)(*ii*) was harmless. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).