

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JOHNSON/JUREK, Minors.

UNPUBLISHED
December 17, 2013

No. 316811
Genesee Circuit Court
Family Division
LC No. 12-128654-NA

Before: K. F. KELLY, P.J., and MURRAY and RIORDAN, JJ.

PER CURIAM.

Respondent mother appeals by leave granted the trial court order terminating her parental rights to the minor children, K.J., N.J., S.J., and T.J., pursuant to MCL 712A.19b(3)(a)(ii), (c)(i), (c)(ii), and (g). We affirm.

First, respondent mother argues that the Department of Human Services' (DHS) failure to make reasonable efforts to reunify respondent with the children undermined the sufficiency of the evidence supporting the trial court's statutory grounds determinations.

This Court reviews for clear error the trial court's "decision that a ground for termination has been proven by clear and convincing evidence" *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012) (quotation marks and citation omitted). This Court may only set aside the trial court's findings if it "is left with the definite and firm conviction that a mistake has been made." *Id.* at 41 (quotation marks and citation omitted). "When reviewing the trial court's findings of fact, this Court accords deference to the special opportunity of the trial court to judge the credibility of the witnesses." *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005).

"The petitioner bears the burden of establishing the existence of at least one [statutory] ground[] by clear and convincing evidence." *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003). "Generally, reasonable efforts must be made to reunite the parent and children unless certain aggravating circumstances exist. See MCL 712A.19a(2)." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). "The adequacy of the petitioner's efforts to provide services may bear on whether there is sufficient evidence to terminate a parent's rights." *In re Rood*, 483 Mich 73, 89; 763 NW2d 587 (2009) (opinion by CORRIGAN, J.). However, "[t]he fact that respondent sought treatment independently in no way compels the conclusion that petitioner's efforts toward reunification were not reasonable, and, more to the point, does not suggest that respondent would have fared better if the worker had offered those additional services to him." *Fried*, 266 Mich App at 543.

The DHS made reasonable efforts to reunite respondent mother with the children by offering her appropriate services to overcome her drug addiction. The DHS only needs to make reasonable efforts to reunite the family. *Moss*, 301 Mich App at 90-91. The DHS offered respondent mother various services, including referring her to the Family First and Catholic Charities programs. The trial court referred respondents to drug treatment court. Furthermore, the trial court specifically found that additional reasonable efforts were made to prevent the removal of the children from the home, including: bi-weekly or more drug court hearings, random drug screens, intensive case management, substance abuse treatment, Narcotic Anonymous and Alcoholic Anonymous meetings, Child Protective Services (CPS) intervention, and permanency planning conferences. Therefore, the DHS made reasonable efforts to reunite respondent mother with the children by providing various services.

The DHS also provided respondent mother with adequate time to be reunited with the children. The termination hearing was over a year after the trial court took jurisdiction over the children. In the months following the initial petition, respondent mother was noncompliant and then disappeared. She made no progress toward reunification, and she had not seen her children in almost a year. Therefore, the DHS provided sufficient time to reunite the family.

Second, respondent mother argues that the trial court erred when it determined that it was in the children's best interests to terminate her parental rights. This Court reviews the trial court's best interest determination for clear error. *Olive/Metts*, 297 Mich App at 40. This Court may only set aside the trial court's findings if it "is left with the definite and firm conviction that a mistake has been made." *Id.* at 41 (quotation marks and citation omitted). "When reviewing the trial court's findings of fact, this Court accords deference to the special opportunity of the trial court to judge the credibility of the witnesses." *Fried*, 266 Mich App at 541.

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child[ren]'s best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child[ren] with the parent not be made." *Olive/Metts*, 297 Mich App at 42, quoting MCL 712A.19b(5). The petitioner must prove by a preponderance of the evidence that termination of parental rights is in the best interests of the children. *Moss*, 301 Mich App at 90. "[A]t the best-interest stage, the child[ren]'s interest in a normal family home is superior to any interest the parent has." *Id.* at 89.

When determining the children's best interests, a trial court may consider the respondent's history, psychological evaluation, parenting techniques during parenting time, family bonding, participation in the treatment program, the foster environment and possibility for adoption, and the parent's continued involvement in situations involving domestic violence. *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009); *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004). A court may also consider "the child[ren]'s need for permanency, stability, and finality . . ." *Olive/Metts*, 297 Mich App at 42.

There was a preponderance of evidence supporting the trial court's conclusion that it was in the children's best interests to terminate respondent mother's parental rights. K.J. and N.J. asked the court to terminate respondent mother's parental rights, indicating that they needed permanency and stability. The children's foster families are interested in adopting the children. Additionally, respondent mother has a long history of substance abuse. At the time of the

termination hearing, she had only been sober for, at most, three months while living in a highly supervised inpatient drug rehabilitation center. Prior to that time she had refused services, missed many visitations, and either missed drug screens or dropped dirty ones. Although K.J. and N.J. may benefit from counseling to help them cope with the past, there is no indication that respondent mother's presence at counseling would be helpful. Furthermore, although returning the children to respondents was the only option for keeping the children together, the children are able to visit and communicate with each other even though they are in separate foster homes. The trial court's best interest findings were not clearly erroneous.

Finally, respondent mother argues that her due process rights were violated because she did not receive proper notice that the DHS was changing its goal from reunification to termination. "We review unpreserved claims of constitutional error under a plain-error analysis." *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 citation omitted).

Procedural due process limits actions by the government and requires it to institute safeguards in proceedings that affect those rights protected by due process, such as life, liberty, or property. A procedural due process analysis requires a court to consider (1) whether a liberty or property interest exists which the state has interfered with, and (2) whether the procedures attendant upon the deprivation were constitutionally sufficient. [*Id.* at 132 (quotation marks and citation omitted).]

"A natural parent has a fundamental liberty interest 'in the care, custody, and management' of his child. . . ." *Rood*, 483 Mich at 91 (opinion by CORRIGAN, J.). "The fundamental requisite of due process of law is the opportunity to be heard." *Id.* at 92 (quotation marks and citation omitted). "The 'opportunity to be heard' includes the right to notice of that opportunity." *Id.* (quotation marks and citation omitted). The notice must be "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." *Id.* (quotation marks and citation omitted).

The state violates a respondent's right to procedural due process when it fails to provide the respondent with "sufficient information to meaningfully participate—or to decline to participate—in the pretermination proceedings." *Rood*, 483 Mich at 119 (opinion by CORRIGAN, J.). MCR 3.920(D)(3)(a) provides that "[n]otice of a permanency planning hearing must be given in writing at least 14 days before the hearing."

The notice must include a brief statement of the purpose of the hearing, and must include a notice that the hearing may result in further proceedings to terminate parental rights. The notice must inform the parties of their opportunity to participate in the hearing and that any information they wish to provide should be submitted in advance to the court, the agency, the lawyer-guardian ad litem for the child, or an attorney for one of the parties. [MCR 3.976(C).]

The court rules require the court to give a respondent seven days' notice before a dispositional review hearing. MCR 3.920(B)(5)(ii). The court also must give notice that:

inform[s] the parties of their opportunity to participate in the hearing and that any information they wish to provide should be submitted in advance to the court, the agency, the lawyer-guardian ad litem for the child, or an attorney for one of the parties. [MCR 3.975(B).]

The record indicates that the trial court held a permanency planning hearing. It also indicates that the parties had been given notice of the dispositional review and permanency planning hearing as required by law. Respondent mother did not present an affidavit or any other evidence in the trial court, or on appeal, to refute the record evidence that she had proper notice.

Even if the trial court incorrectly indicated on its order that respondent mother received proper notice of the permanency planning hearing, the error did not affect respondent mother's substantial rights. This notice provided respondent mother with "sufficient information to meaningfully participate" in the hearing, even if it did not state specifically that the trial court would be addressing permanency planning. *Rood*, 483 Mich at 119 (opinion by CORRIGAN, J.).

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Christopher M. Murray
/s/ Michael J. Riordan