STATE OF MICHIGAN

COURT OF APPEALS

In re BAILEY-PASLEY, Minors.

UNPUBLISHED
March 19, 2020

No. 349150
Wayne Circuit Court
Family Division
LC No. 18-000770-NA

Before: TUKEL, P.J., and MARKEY and SWARTZLE, JJ.

PER CURIAM.

Respondent-father appeals by right the trial court's order terminating his parental rights to his two minor children pursuant to MCL 712A.19b(3)(a)(*ii*) (parent has deserted children for 91 or more days), (b)(*iii*) (nonparent adult's act caused physical injury to children), (g) (failure to provide proper care or custody), (j) (reasonable likelihood of harm to children if placed with parent), and (k)(*i*) (parent abused children by abandonment). We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

Respondent's daughter, PB, was born in 2010. Respondent's son, MB, was born in 2012. PB and MB have the same mother. Respondent's relationship with the children's mother ended years before the instant proceedings were initiated in 2018. There was testimony that although respondent occasionally saw his children when they were infants, he was not part of their lives. He did not have custody rights, he did not pay child support, and he did not have parenting time. Indeed, at the start of these protective proceedings, respondent had yet to be legally recognized as the father of PB and MB.

The children's mother had a subsequent relationship that produced one child, TP, and she had a later relationship with Uriah Israel, which union resulted in the birth of one more child. Mother had an additional child, and while Israel was initially treated as the putative father of that child, the court was ultimately unable to identify the father. In January 2018, mother and Israel were living together with mother's five children, including PB and MB. Children's Protective Services (CPS) received a referral in January 2018 regarding the alleged physical abuse of MB. An investigation revealed that MB had scrapes, scars, open wounds, and other injuries that were

indicative of physical abuse and that were caused by whippings with extension cords and belts.[1] It was eventually determined that Israel was the physical abuser. Mother and Israel fled with the children, and CPS lost touch with them.

In April 2018, CPS received a new referral regarding the family. There were claims that MB and TP had been physically abused and that mother had been jailed on outstanding warrants. The resulting investigation revealed that Israel was hitting the boys with extension cords and belts and otherwise beating and abusing them. MB and TP were seen, assessed, and treated at a local hospital. PB disclosed that Israel was also physically abusing her. Respondent's two children, MB and PB, along with TP, each underwent a Kids-TALK forensic interview, during which the children discussed and described the physical abuse.[2]

In May 2018, the Department of Health and Human Services (DHHS) submitted a petition in regard to the five children. The DHHS sought to terminate the parental rights of mother, respondent, Israel, and TP's father. With respect to respondent, the DHHS alleged that he had effectively abandoned or deserted his children. See MCL 712A.2(b)(1) (giving the court jurisdiction over a child "who is abandoned by his or her parents"). On May 22, 2018, a preliminary hearing was held. See MCR 3.965. The court noted that respondent was only deemed the putative father of MB and PB as his legal status as father of the children had not been established. Both mother and respondent agreed that respondent was MB's and PB's father, and respondent asserted that he wanted to establish his paternity. After the hearing was completed mother and respondent executed an affidavit or acknowledgment of parentage in regard to MB and PB. See MCL 722.1003.

At the preliminary hearing, respondent informed the court, "Yes, . . . I want to get [PB] and [MB]." Respondent claimed that mother had prevented him from having a relationship with the children. At one point in the hearing, respondent voiced a request to have the children placed, not with him, but with his mother—the children's grandmother. The court observed that the request was premature. Respondent was represented by appointed counsel at the preliminary hearing. The preliminary hearing was the last time that respondent personally appeared in the case, although his attorney was present for all subsequent hearings. It appears that the preliminary hearing may have been the last time his attorney heard from respondent, considering that nearly a year later at a best-interests hearing where the court terminated respondent's parental rights, counsel stated:

> He has never . . . been in support of this Petition . . . from the conversation that I had back . . . at the Preliminary Hearing with him. I can't explain to the Court why he's not here today. I know he has a challenging work schedule.

[1] There was evidence that some of the injuries were shaped like a horseshoe, reflecting that MB was struck by a belt buckle. MB also had a large scrape on his head that someone attempted to conceal with Vaseline.

[2] To be absolutely clear, CPS never accused respondent of physically abusing his children.

At the conclusion of the preliminary hearing, the trial court authorized the petition to terminate everyone's parental rights to the five children.

On June 13, 2018, a pretrial conference was conducted; respondent was not in attendance. A tender-years hearing was scheduled for August 6, 2018, to consider the admissibility of the children's hearsay statements regarding claimed child abuse that were made to the forensic interviewer and others. See MCR 3.972(C) (authorizing under certain circumstances the admission and use of a child's statements to others concerning abuse). At the hearing, the equipment that was used to play tapes of the forensic interviews malfunctioned, so the hearing was adjourned. Respondent was not in attendance. On September 12, 2018, the tender-years hearing was held. The court played tapes of the forensic interviews of MB and PB.[3] Respondent did not attend. On September 20, 2018, as part of the continuing tender-years hearing, the court heard the testimony of the forensic interviewer, MB's teacher, and a CPS investigator. At the end of the hearing, the court ruled that statements MB and PB made regarding physical abuse by Israel were admissible. Respondent was not in attendance.

On October 31, 2018, the trial court conducted a combined adjudication trial and termination hearing. The termination hearing solely concerned the statutory grounds for termination, not the children's best interests. Respondent did not attend. Mother entered a plea of admission to the allegations in the petition, and she pleaded to the grounds for termination, deciding to solely litigate at a later date the issue whether termination of her parental rights was in the children's best interests.[4] Accordingly, the adjudication trial and termination hearing centered on the fathers. Much of the evidence focused on Israel's physical abuse of the children. A DHHS caseworker was the sole witness. Pertinent here, the caseworker testified that she spoke briefly with respondent a couple of times before the day of the preliminary hearing, that she attempted to set up an interview with respondent, that he texted her indicating that he would call later to schedule an interview, that respondent never called her back, and that no formal interview with respondent ever took place. The caseworker also testified that respondent was supposed to come to her office on the day after the preliminary hearing, but he never showed up. She further stated that respondent never attended any of the hearings after the preliminary hearing.

The caseworker explained that the allegations regarding respondent concerned abandonment and failure to provide support.[5] She claimed that respondent never stepped forward to assist and plan for the children. More specifically, the caseworker testified:

> *Q.* Did you ever tell [respondent] . . . that you had an expectation that he would . . . plan for his children?

[3] The court and the parties agreed that it was unnecessary to review the forensic interview of TP.

[4] The focus of the allegations with respect to mother concerned a failure to protect.

[5] The caseworker asserted that mother informed her that respondent only saw the children when they were infants and that those visits were sporadic. The caseworker did testify that respondent saw PB on May 26, 2018, for her birthday, but this was the only recent contact of which she was aware.

A. I did. I told him that . . . .

Q. What did you tell him exactly?

A. I stated that the children . . . would be removed if the Petition was granted, and we were looking into him planning for his children, if he was able to do so, with the [DHHS] going out; verifying his home; and making sure that it would be suitable and appropriate.

Q. So did you tell that . . . you expected him to plan for his children?

A. That's correct; yes.

The caseworker claimed that she told respondent that there would be consequences if he did not participate in planning for his children.

On cross-examination, the caseworker testified that respondent never stated that he did not want to plan for the children. The caseworker also acknowledged that she was not aware of the nature of the relationship between respondent and mother, respondent's work schedule, whether respondent was unable to visit the children, or any transportation issues that might be burdening respondent. We note, however, that respondent did not present any evidence whatsoever on these matters.

At the close of the testimony, respondent's attorney argued that there was not a preponderance of evidence supporting the exercise of jurisdiction and that the DHHS also failed to establish a statutory ground for termination by clear and convincing evidence. With respect to adjudication and jurisdiction, the court found that respondent had only limited, sporadic contact with his children, that he had not been providing support for the children, that he had been unwilling to meet with the caseworker to engage in planning, and that he only attended the preliminary hearing, missing all subsequent hearings. The court then concluded that all of the alleged statutory grounds for termination had been proven by clear and convincing evidence. At the heart of the court's ruling was the determination that respondent had abandoned and deserted the children.

On December 10, 2018, the trial court conducted a best-interests hearing. Respondent was not in attendance. The caseworker who testified at the adjudication-termination proceeding again took the stand, as did a DHHS foster care specialist and mother's aunt. The foster care specialist testified that she oversaw supervised visitations and that respondent never visited his children. She also indicated that on or about November 30, 2018, she had a phone conversation with respondent and made an appointment to meet with him; however, respondent was a no-show for the appointment. The foster care specialist stated that the phone contact was the first time that she had

actually spoken to him.[6] She asserted that she had sent letters to respondent and had "repeatedly" called him and left messages since the beginning of the case, but he had never responded.

On January 15, 2019, the best-interests hearing was continued, and there was no testimony regarding respondent. Once again, respondent did not attend the hearing. On March 1, 2019, the best-interests hearing was concluded. Respondent was not in attendance. The court concluded that there was a preponderance of evidence showing that the termination of respondent's parental rights was in the best interests of the children. In reaching this conclusion, the court noted that respondent did not attend any of the proceedings except for the preliminary hearing nearly a year earlier, that he did not show up for interviews, that he failed to plan for the children, that he did not participate in visitations,[7] and that he did not provide any support. The parental rights of the other fathers were also terminated. The court found, however, that mother had taken steps that reflected that she was benefitting from services and a parent-agency treatment plan. Thus, the court did not terminate mother's parental rights and continued the proceedings to give her an opportunity to regain custody.

II. EFFORTS AT REUNIFICATION

Respondent first argues that the trial court clearly erred by finding that the DHHS had made reasonable efforts at reunification. Respondent contends that the DHHS failed to take steps to engage respondent in the case. Generally, this Court reviews for clear error a family court's finding that the DHHS made reasonable efforts to reunify a child with his or her parent. *In re Smith*, 324 Mich App 28, 43; 919 NW2d 427 (2018). But respondent failed to raise any objection regarding the adequacy of services; therefore, the issue is unpreserved, *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012), and thus our review is for plain error affecting substantial rights, *In re Utrera*, 281 Mich App 1, 8-9; 761 NW2d 253 (2008).

Absent aggravating circumstances, "[b]efore a court may enter an order terminating parental rights, Michigan's Probate Code, MCL 710.21 *et seq*., requires a finding that the Department . . . has made reasonable efforts at family reunification." *In re Hicks/Brown*, 500 Mich 79, 83; 893 NW2d 637 (2017). "As part of these reasonable efforts, the Department must create a service plan outlining the steps that both it and the parent will take to rectify the issues that led to court involvement and to achieve reunification." *Id*. at 85-86. At each review hearing, the court is required to consider compliance with the case service plan and whether the parent has benefited from those services. *In re Mason*, 486 Mich 142, 156; 782 NW2d 747 (2010). Not only must a respondent cooperate and participate in the services, the respondent must benefit from them. *In re TK*, 306 Mich App 698, 711; 859 NW2d 208 (2014). A respondent must establish that he or she would have fared better if other services had been offered. See *In re Fried*, 266 Mich App 535, 543; 702 NW2d 192 (2005). "The adequacy of the petitioner's efforts to provide services may

[6] The foster care specialist opined that respondent sounded as if he was "caught . . . off guard" when he answered her phone call.

[7] The court did acknowledge that respondent saw his daughter once in 2018.

bear on whether there is sufficient evidence to terminate a parent's rights." *In re Rood*, 483 Mich 73, 89; 763 NW2d 587 (2009).

The DHHS "is not required to provide reunification services when termination of parental rights is the agency's goal." *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009), citing *In re Terry*, 240 Mich App 14, 25 n 4; 610 NW2d 563 (2000). Although the DHHS sought to terminate the rights of all of the parents in the initial petition, the orders in the record directed the DHHS to make reasonable efforts to preserve and reunify the family.[8] The only pre-termination service or parent-agency treatment plan in the lower court record is one signed by mother on October 10, 2018. It does not appear that any treatment or service plan was prepared in relation to respondent. But respondent cannot blame the DHHS for the lack of planning and reunification services. Although the DHHS has an obligation to expend reasonable efforts to provide reunification services, "there exists a commensurate responsibility on the part of respondents to participate in the services . . . ." *In re Frey*, 297 Mich App at 248. A respondent must "cooperate" with respect to planning and services. *In re TK*, 306 Mich App at 711. As clearly evidenced by the record discussed earlier, the DHHS repeatedly attempted to engage respondent in planning and services, but he failed to cooperate and participate. Respondent essentially disappeared after the preliminary hearing, so it was not even possible to sit down with respondent to prepare a plan. He cannot now argue that the DHHS was at fault for his shortcomings. Reversal is unwarranted.

III. STATUTORY GROUNDS FOR TERMINATION AND CHILDREN'S BEST INTERESTS

Respondent next maintains that the court clearly erred by finding that the statutory grounds for termination were proven by clear and convincing evidence. Respondent also contends that the court clearly erred by finding that termination of his parental rights was in the children's best interests.

If a trial court finds that a single statutory ground for termination has been established by clear and convincing evidence and that it has been proved by a preponderance of the evidence that termination of parental rights is in the best interests of a child, the court is mandated to terminate a respondent's parental rights to that child. MCL 712A.19b(3) and (5); MCR 3.977(H)(3); *In re Beck*, 488 Mich 6, 10-11; 793 NW2d 562 (2010); *In re Moss,* 301 Mich App 76, 90; 836 NW2d 182 (2013); *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). "This Court reviews for clear error the trial court's ruling that a statutory ground for termination has been established and its ruling that termination is in the children's best interests." *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011); see also MCR 3.977(K). "A finding . . . is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed[.]" *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). In applying the clear error standard in parental termination cases, "regard is to be given to the special opportunity of the trial court to judge the

[8] Given the severe physical abuse perpetrated by Israel, there was a basis to find aggravating circumstances precluding Israel from receiving reunification services. See MCL 712A.19a(2)(a); MCL 722.638(1)(a)(*iii*).

credibility of the witnesses who appeared before it." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); see also MCR 2.613(C).

MCL 712A.19b(3)(a)(*ii*) provides for the termination of parental rights when "[t]he child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period." Without even taking into consideration all of the years that respondent was completely absent from his children's lives and did not support them or seek custody, we may readily conclude that desertion occurred 91 days after the preliminary hearing on May 22, 2018, or 91 days after respondent visited his daughter on May 26, 2018. We reach this conclusion because respondent chose not to further participate in the proceedings or seek custody of the children after May 2018 despite the DHHS's repeated efforts to involve respondent in the process and planning. Indeed, even at the preliminary hearing, respondent did not ask to be given the children; rather, he requested that the court place the children with his mother. Desertion under MCL 712A.19b(3)(a)(*ii*) was established by clear and convincing evidence, and the court did not commit clear error in so finding.[9]

With respect to a child's best interests, we place our focus on the child rather than the parent. *In re Moss*, 301 Mich App at 87. In assessing a child's best interests, a trial court may consider such factors as a "child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). "The trial court may also consider a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption." *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014).

Here, there was no bond between respondent and the children; he had not exercised visitation; he did not display any parenting skills; he wanted the children to be placed with his mother, not him, and he failed to cooperate with DHHS personnel and engage in planning.[10] Respondent notes that the children were placed with the maternal grandmother and that the DHHS was going to work some more with mother; therefore, there would be no harm in allowing respondent more time to prove himself.

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[9] Because only one statutory ground had to be proven to support termination, we need not examine and analyze the other statutory grounds the court cited. We do note that three of those additional grounds, § 19b(3)(b)(*iii*), (j), and (k)(*i*), require proof of a reasonable likelihood that the children would be abused or harmed in the future if placed in respondent's care. And we question, without deciding, whether the evidence supported such a finding. We do believe that the evidence of desertion and abandonment could be viewed as reflecting a failure to provide proper care and custody for purposes of MCL 712A.19b(3)(g).

[10] Appellate counsel for respondent claims that respondent "is alleged to have employment and housing." Respondent must resort to "allegations," which establish nothing, because his lack of participation in the proceedings precluded him from making a record on such matters as employment and housing.

We understand and appreciate the nature of the placement and that mother's rights were not terminated. Although we do not know the current status of mother's case, the children are entitled to some permanency and finality with respect to whether their father would be part of their lives or not. And in light of respondent's clear-cut nonparticipation in the proceedings, which reflected that he has no interest whatsoever in being a father to MB and PB, we must conclude that a further delay would be entirely inappropriate. This was not a case where efforts were made but fell short. Instead, respondent made no effort whatsoever. The court did not clearly err by finding that termination of respondent's parental rights was in the children's best interests.

It appears that respondent also argues that the court's findings were inadequate on the subject of the children's best interests. MCR 3.977(I)(3) provides that "[a]n order terminating parental rights under the Juvenile Code may not be entered unless the court makes findings of fact, states its conclusions of law, and includes the statutory basis for the order." The court must "state on the record or in writing its findings of fact and conclusions of law[,] [and] [b]rief, definite, and pertinent findings and conclusions on contested matters are sufficient." MCR 3.977(I)(1). The court's findings of desertion, abandonment, and lack of support sufficed to meet the requirements of the court rules. The circumstances did not call for a long, protracted explanation by the court. Reversal is unwarranted.

We affirm.

/s/ Jonathan Tukel
/s/ Jane E. Markey
/s/ Brock A. Swartzle