

STATE OF MICHIGAN
COURT OF APPEALS

In re S. J. PRATT, Minor.

UNPUBLISHED
April 23, 2020

Nos. 350384; 351213
Macomb Circuit Court
Family Division
LC No. 2018-000059-NA

Before: SAWYER, P.J., and LETICA and REDFORD, JJ.

PER CURIAM.

In these consolidated appeals,¹ respondent mother and respondent father appeal as of right the trial court’s orders terminating their parental rights to their child, SP. Respondent mother appeals as of right the order terminating her parental rights to her child by way of release under the Adoption Code, MCL 710.21 *et seq.* Respondent father appeals as of right the order terminating his parental rights to his child under MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist). We affirm.

I. FACTUAL BACKGROUND

These proceedings began when petitioner filed a petition seeking temporary wardship over SP. The petition alleged that respondent mother and respondent father both suffered from ongoing drug addictions that resulted in improper supervision and physical neglect. The trial court authorized the petition, and SP was placed in nonrelative foster care.

The trial court ordered respondent mother and respondent father to refrain from drug use and unlawful behavior, address any underlying mental health issues, obtain a lawful source of income, and maintain appropriate housing. Throughout the proceedings, respondent mother and

¹ On November 7, 2019, this Court entered an order consolidating these two appeals. See *In re S J Pratt, Minor*, unpublished order of the Court of Appeals, entered November 7, 2019 (Docket Nos. 350384 and 351213).

respondent father were both sporadically incarcerated, and they failed to substantially comply with their case service plans.

Petitioner filed a permanent custody petition to terminate the parental rights of respondent mother and respondent father. Respondent mother ultimately released her parental rights under the Adoption Code, MCL 710.21 *et seq.* Respondent father stipulated that a statutory ground existed to terminate his parental rights under MCL 712A.19b(3)(c)(i). After conducting an evidentiary hearing, the trial court determined that termination of respondent father's parental rights was in SP's best interests.

II. TERMINATION OF RESPONDENT MOTHER'S PARENTAL RIGHTS

On appeal, respondent mother argues that the trial court erred by failing to properly advise her of her rights under MCL 710.29(7), MCL 700.2103(b), and MCR 3.804(C)(1) before she released her parental rights to SP. Respondent mother also asserts that she was deprived of her right to file a motion for rehearing or to set aside the order terminating her parental rights as a result of her incarceration. We disagree with all of respondent mother's assertions.

A. MCL 710.29(7) AND MCL 700.2103(B)

Issues involving the validity of a release of parental rights are ordinarily reviewed for an abuse of discretion. *In re Burns*, 236 Mich App 291, 292; 599 NW2d 783 (1999). Additionally, issues involving the question of whether proceedings complied with a party's right to due process are ordinarily reviewed de novo. *In re Rood*, 483 Mich 73, 90; 763 NW2d 587 (2009). However, unpreserved claims of error are reviewed for plain error affecting substantial rights. *In re Williams*, 286 Mich App 253, 274; 779 NW2d 286 (2009). "To avoid forfeiture under the plain-error rule, the proponent must establish that a clear or obvious error occurred and that the error affected substantial rights." *In re Beers*, 325 Mich App 653, 677; 926 NW2d 832 (2018) (citation omitted). "An error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings." *Id.* (citation and quotation marks omitted).

Before a trial court can accept a parent's release of parental rights under the Adoption Code, the trial court must "fully explain[] to the parent or guardian the legal rights of the parent or guardian and the fact that the parent or guardian by virtue of the release voluntarily relinquishes permanently his or her rights to the child." MCL 710.29(7). Under Michigan's Estates and Protected Individual's Code, a parent may inherit from their deceased child if their deceased child dies intestate. MCL 700.2103(b). Respondent mother avers that the trial court failed to advise her that she was releasing custody and control over SP, and the trial court failed to advise her that she was relinquishing the ability to inherit from SP. Respondent mother's assertions are not supported by the record, and the trial court fully explained that respondent mother was permanently relinquishing her parental rights to SP under MCL 710.29(7) and MCL 700.2103(b).

During the August 1, 2019 hearing, the trial court informed respondent mother that she was permanently relinquishing her parental rights to SP. In doing so, the trial court stated:

And your release will have an effect on your parental rights. When I use the term parental rights it means all the things that a parent would normally do for a child

you will no longer have the right to do, including but not limited to the right to be consulted or have a say about the child's education, discipline, religious practices and medical treatment, the legally enforceable right to visit, the right to inherit from or to the child and the right to find out the whereabouts of the child. You understand that?

The trial court also notified respondent mother that the release of rights was "for the rest of the child's life and they're irreversible and final[.]" The trial court went on to ask respondent mother to describe the release of rights in her own words. Respondent mother responded that she was freely and willingly giving up her parental rights, and she understood the rights that she was relinquishing. Thus, the trial court explicitly informed respondent mother that she was relinquishing custody and control over SP when it stated that respondent mother would no longer have the right to be consulted or have a say about SP's education, discipline, religious practices, medical treatment, whereabouts, and the legally enforceable right to visit SP. Furthermore, the trial court explicitly informed respondent mother that she was relinquishing the right to inherit from SP. Considering that the trial court fully explained to respondent mother that she was permanently relinquishing her parental rights to SP, and the trial court explicitly informed respondent mother that she was relinquishing the right to inherit from SP, the trial court complied with MCL 710.29(7) and MCL 700.2103(b). Respondent mother has failed to show plain error affecting her substantial rights.

B. MCR 3.804(C)(1)

Respondent mother also argues that the trial court did not comply with MCR 3.804(C)(1) because it failed to advise respondent mother that her child support obligation continued after respondent mother released her parental rights to SP. The trial court's failure to advise respondent mother that her child support obligation continued after she released her parental rights to SP did not result in plain error affecting respondent mother's substantial rights.

Respondent mother failed to provide factual support or a legal analysis for this issue. Notably, respondent mother failed to point out any evidence in the lower court record that respondent mother had a child support obligation. "An appellant may not merely announce [her] position and leave it to this Court to discover and rationalize the basis for [her] claims, nor may [s]he give only cursory treatment with little or no citation of supporting authority." *Houghton ex rel Johnson v Keller*, 256 Mich App 336, 339; 662 NW2d 854 (2003) (citations and quotation marks omitted). "An appellant's failure to properly address the merits of [her] assertion of error constitutes abandonment of the issue." *Id.* at 339-340 (citation omitted). Thus, respondent mother abandoned her claim that the trial court did not comply with MCR 3.804(C)(1) because it failed to advise respondent mother that her child support obligation continued after she released her parental rights to SP.

Assuming *arguendo* that respondent mother did not abandon her claim, and assuming that respondent mother had a child support obligation, the trial court did not commit plain error when it failed to advise respondent mother that her child support obligation continued after she released her parental rights to SP.

“To avoid forfeiture under the plain-error rule, the proponent must establish that a clear or obvious error occurred and that the error affected substantial rights.” *In re Beers*, 325 Mich App at 677 (citation omitted). “An error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings.” *Id.* (citation and quotation marks omitted). A clear and obvious error occurred when the trial court failed to advise respondent mother that her child support obligation continued after she released her parental rights to SP. MCR 3.804(C)(1) provides:

Before executing a release, as part of the explanation of the parent’s legal rights, the parent shall be informed that the obligation to support the child will continue until a court of competent jurisdiction modifies or terminates the obligation, an order of adoption is entered, or the child is emancipated by operation of law.

Thus, under the plain language of the court rule, the trial court was required to advise respondent mother that her child support obligation continued after she released her parental rights to SP until an order of adoption is entered. Therefore, a clear and obvious error occurred when the trial court failed to advise respondent mother of her continuing child support obligation.

Nonetheless, respondent mother has not shown that the trial court’s failure to advise her of her continuing child support obligation affected the outcome of the proceedings. Respondent mother failed to assert in her brief on appeal that she would have declined to release her parental rights to SP if the trial court advised her of her continuing child support obligation. Considering that respondent mother has not shown that a clear and obvious error affected her substantial rights, the trial court’s failure to advise respondent mother that her child support obligation continued after she released her parental rights to SP did not result in plain error affecting respondent mother’s substantial rights. See *In re Beers*, 325 Mich App at 677.

C. MOTION FOR REHEARING

In general, issues that are raised, addressed, and decided by the trial court are preserved for appeal.” *In re TK*, 306 Mich App 698, 703; 859 NW2d 208 (2014). Respondent mother did not raise the issue that she was deprived of her right to file a motion to set aside the order terminating her parental rights under MCL 710.64(1). For this reason, the trial court neither addressed nor decided whether respondent mother was deprived of the opportunity to file a motion under MCL 710.64(1) because she was incarcerated. Therefore, this issue is unpreserved.

Unpreserved claims are reviewed for plain error affecting substantial rights. *In re Williams*, 286 Mich App at 274. “To avoid forfeiture under the plain-error rule, the proponent must establish that a clear or obvious error occurred and that the error affected substantial rights.” *In re Beers*, 325 Mich App at 677 (citation omitted). “An error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings.” *Id.* (citation and quotation marks omitted).

Respondent mother’s incarceration did not deprive her of her right to file a motion for rehearing or to set aside the order terminating her parental rights, and it did not result in a clear or obvious error affecting respondent mother’s substantial rights.

Respondent mother failed to provide factual support or a legal analysis for this issue. Respondent mother failed to show how her incarceration deprived her of her rights under MCL

710.64(1). “An appellant may not merely announce [her] position and leave it to this Court to discover and rationalize the basis for [her] claims, nor may [s]he give only cursory treatment with little or no citation of supporting authority.” *Houghton ex rel Johnson*, 256 Mich App at 339 (citations and quotation marks omitted). “An appellant’s failure to properly address the merits of [her] assertion of error constitutes abandonment of the issue.” *Id.* at 339-340 (citation omitted). Thus, respondent mother abandoned her claim that her incarceration deprived her of her right to file a motion for rehearing or to set aside the order terminating her parental rights.

Even assuming that respondent mother did not abandon this claim, respondent mother’s purported inability to file a motion for rehearing or to set aside the order terminating her parental rights did not result in plain error affecting her substantial rights.

To avoid forfeiture under the plain-error rule, the proponent must establish that a clear or obvious error occurred and that the error affected substantial rights.” *In re Beers*, 325 Mich App at 677 (citation omitted). “An error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings.” *Id.* (citation and quotation marks omitted). Respondent mother did not assert that any specific error occurred, and she did not explain how her incarceration prevented her from filing a motion under MCL 710.64(1). Respondent mother’s attorney could have filed a motion under MCL 710.64(1) on her behalf. Thus, respondent mother has not established that a clear or obvious error occurred. Furthermore, respondent mother has not asserted that her inability to file a motion under MCL 710.64(1) affected the outcome of the trial court proceedings. Thus, respondent mother has not established that her incarceration affected her substantial rights. In sum, respondent mother’s incarceration did not deprive her of her right to file a motion for rehearing or to set aside the order terminating her parental rights, and it did not result in a clear or obvious error affecting respondent mother’s substantial rights.

III. TERMINATION OF RESPONDENT FATHER’S PARENTAL RIGHTS

Respondent father asserts that the trial court clearly erred when it determined that termination of his parental rights was in SP’s best interests under MCL 712A.19b(5). We disagree.

“[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence.” *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). This Court reviews the trial court’s ruling that termination is in the child’s best interests for clear error. *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). “A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court’s special opportunity to observe the witnesses.” *In re Moss*, 301 Mich App at 80 (citation and quotation marks omitted).

A. BEST-INTEREST FACTORS

“If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child’s best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.” MCL 712A.19b(5). “In deciding whether termination is in the child’s best interests, the court may consider the 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 “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, 711; 846 NW2d 61 (2014).

The trial court did not clearly err when it determined that termination of respondent father’s parental rights was in SP’s best interests. The evidence shows that respondent father did not share a strong bond with SP. On the date of the evidentiary hearing, respondent father was incarcerated, and he acknowledged that he had not seen SP for the past nine months. SP was approximately two years old at that time, and respondent father was absent for a significant portion of her life. Furthermore, SP’s foster care worker testified that respondent father missed 25 scheduled visits with SP before his most recent incarceration, and she opined that SP did not share a strong bond with respondent father.

The evidence shows that respondent father lacks the ability to adequately parent SP. Since 1990, respondent father has had 12 misdemeanor convictions and 14 felony convictions. Respondent father was incarcerated for a significant portion of that period, including a significant portion of SP’s life. Additionally, respondent father pleaded guilty to child abuse after he left SP unattended in his vehicle during the winter. Respondent father’s ongoing risk of incarceration, and his demonstrated inability to properly supervise SP supports the trial court’s finding that respondent father lacked the ability to adequately parent SP.

The evidence shows that SP’s foster home had several advantages over respondent father’s home. As previously indicated, respondent father was incarcerated at the time of the evidentiary hearing. Before his incarceration, respondent father failed to provide proof that he had suitable housing. Respondent father admitted that he would need to find housing upon his release from jail. In contrast, SP’s foster mother and SP’s foster care worker both testified that SP was well cared for in her foster care placement, and she was bonded to her foster parents and foster siblings.

The evidence shows that termination of respondent father’s parental rights supported SP’s need for permanency, stability, and finality. SP’s foster mother testified that she was willing to adopt SP. Moreover, the earliest date respondent father may be released from jail is September 11, 2020. After that date, respondent father would need to complete his case service plan, thereby further postponing permanency, stability, and finality for SP.

Finally, the evidence shows that respondent father failed to comply with the terms of his case service plan. SP’s foster care worker testified that respondent father failed to complete parenting classes, failed to provide proof of suitable housing, and failed to provide proof of income. Notably, respondent father missed 17 scheduled drug screens and 25 scheduled visits with SP throughout the proceedings. Considering the foregoing, the trial court did not clearly err by determining that termination of respondent father’s parental rights was in SP’s best interests.

B. THE TRIAL COURT’S FINDINGS

Respondent father argues that the trial court clearly erred by considering irrelevant factors when making its determination regarding SP’s best interests. We disagree.

Respondent father asserts that the trial court clearly erred when it considered his irrelevant arrests for breaking and entering and stealing several items over 10 years ago. We disagree. The trial court mentioned respondent father's prior arrests when it was listing respondent father's parole violations. The trial court addressed respondent father's parole violations in order to highlight respondent father's risk of continued incarceration. Considering that respondent father's risk of continued incarceration is relevant in considering several best-interests factors including SP's bond with respondent father, SP's need for permanency, stability, and finality, and the advantages of SP's foster home over respondent father's home, the trial court did not clearly err by considering respondent's prior arrests. See *In re Olive/Metts Minors*, 297 Mich App at 41-42.

Respondent father asserts that the trial court clearly erred when it determined that he failed to comply with several aspects of his treatment plan, and relied on this conclusion in terminating respondent father's parental rights. Respondent father asserts also that the trial court clearly erred when it determined that he refused to accept responsibility for his actions, and relied on this conclusion in terminating respondent father's parental rights.

As previously concluded, the evidence shows that respondent father failed to comply with the terms of his treatment plan, and the trial court's finding in that regard was not clearly erroneous. Thus, the trial court did not err when it relied on this conclusion in terminating respondent father's parental rights. Additionally, the trial court did not err when it determined that respondent father refused to accept responsibility for his actions, and the trial court did not clearly err in using its conclusion to support the termination of respondent father's parental rights. During the evidentiary hearing, respondent father acknowledged that he pleaded guilty or was found guilty of several criminal offenses. However, respondent father attempted to justify his convictions by disputing that he committed the offenses. Respondent father acknowledged that he violated the terms of his parole on several occasions, but he provided several explanations as to why these violations were not his fault. Thus, the trial court did not clearly err when it determined that respondent father refused to accept responsibility for his actions.

The trial court did not expressly rely on this finding in making the best-interests determination. Instead, the trial court determined that respondent father's testimony regarding his parole violations and prior criminal history was not reliable. Indeed, respondent father's risk of continued incarceration is relevant in considering several best-interests factors including SP's bond with respondent father, SP's need for permanency, stability, and finality, and the advantages of SP's foster home over respondent father's home. In sum, the trial court did not clearly err by considering erroneous or irrelevant factors when making its determination regarding SP's best interests.

Affirmed.

/s/ David H. Sawyer

/s/ Anica Letica

/s/ James Robert Redford