STATE OF MICHIGAN

COURT OF APPEALS

In re DRENDALL, Minors.

UNPUBLISHED
September 17, 2020

Nos. 352018; 352019
Isabella Circuit Court
Family Division
LC Nos. 2017-000154-NA; 2017-000155-NA

Before: CAVANAGH, P.J., and BORRELLO and TUKEL, JJ.

PER CURIAM.

Respondent-father appeals as of right two orders terminating his parental rights to three minor children, GND, GBD, and JD, under MCL 712A.19b(3)(c)(*i*) (failure to rectify conditions leading to adjudication), (g) (failure to provide proper care or custody), and (j) (likelihood of harm to child).[1] We affirm.

I. UNDERLYING FACTS

In December 2017, petitioner, the Department of Health and Human Services (DHHS), alleged that respondent digitally penetrated the vagina of seven-year-old AR, his stepdaughter and the half-sister of GND and JD.[2] Because of this allegation, petitioner sought termination of respondent's parental rights in the initial petitions.[3] But DHHS changed tactics—to no longer seek termination in the initial petition—in order to acquire jurisdiction over the children; respondent

[1] GND's mother is deceased. The parental rights of the mother of GBD and JD were terminated in the course of the current proceedings, but she is not a party to this appeal.

[2] DHHS also alleged that respondent showed pornography to and made a lewd comment to his oldest child, SD. Although the court initially acquired jurisdiction over this child, she reached the age of 18 while the case was still pending, and the court's jurisdiction over her was dismissed.

[3] The proceedings involving GND were assigned a separate lower court docket number; therefore, two petitions—and two versions of other documents—were filed.

acquiesced to the assumption of jurisdiction by admitting that he was serving a jail term for drunk driving and, therefore, that he could not care for the children. He did not admit to the sexual abuse. Respondent was jailed from January 2018 until June 2018. Subsequently, the prosecutor's office charged him in connection with the alleged sexual abuse, and respondent was found guilty of one count of second-degree criminal sexual conduct involving a child under the age of 13 and one count of accosting a child for immoral purposes. In July 2019, respondent was sentenced to 142 months to 15 years imprisonment. Respondent was serving this prison sentence when his parental rights were terminated.[4]

II. STATUTORY GROUNDS FOR TERMINATION

Respondent argues that the trial court erred by finding statutory grounds for termination of his parental rights. We disagree.

This Court "reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination." *In re White*, 303 Mich App 701, 709-710; 846 NW2d 61 (2014). To be clearly erroneous, a trial court's determination must be more than possibly or probably incorrect. *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *Id*. In reviewing the trial court's determination, this Court must give due regard to the unique "opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *Id*., citing MCR 2.613(C). Finally, this Court must consider "the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *Id*.

"Only one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights, even if the court erroneously found sufficient evidence under other statutory grounds." *In re Ellis*, 294 Mich App at 32. In relevant part, MCL 712A.19b(3) authorizes a trial court to terminate parental rights if it finds by clear and convincing evidence that any of the following exist:

> (c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:
>
> > (*i*) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.
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> * * *
>
> (g) The parent, although, in the court's discretion, financially able to do so, fails to provide proper care or custody for the child and there is no reasonable expectation

[4] The same trial court judge presided over the termination proceedings and the criminal trial.

> that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.
>
> * * *
>
> (j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

The trial court found, by clear and convincing evidence, three statutory grounds for terminating respondents' parental rights, MCL 712A.19b(3)(c)(*i*), (g), and (j). The statutory grounds of subsection (c)(*i*) are met "when the conditions that brought the children into foster care continue to exist despite time to make changes and the opportunity to take advantage of a variety of services." *In re White*, 303 Mich App at 710 (citation and quotation marks omitted). The trial court terminated respondent's parental rights to the children in December 2019, more than 182 days after its initial dispositional order in this case.

On January 30, 2018, respondent acquiesced to the court's jurisdiction over his children by pleading to certain allegations. In particular, he admitted that on January 17, 2018, he was convicted of "Drunk Driving third offense," sentenced to eight months in jail, and that he would not be "able to provide for the care and custody of [his] children" while incarcerated.

By the time of the termination hearing, respondent had been convicted of the criminal sexual conduct offense, and, on July 26, 2019, had been sentenced to 142 months' to 15 years' imprisonment. Respondent admitted at the termination hearing, which took place on October 23, 2019, that his then-current incarceration resulted from his having been convicted of one count of second-degree criminal sexual conduct involving a child under the age of 13 and one count of accosting a child for immoral purposes. Respondent admitted that because of the prison sentence, he did not have the current ability to care for his children.[5] The primary conditions leading to adjudication—respondent's incarceration and corresponding inability to care for his children—continued to exist at the time of termination, and the temporal period listed in MCL 712A.19b(3) had passed.

Respondent argues that this Court should assume that his appeal of his criminal convictions will be successful. But respondent failed to cite any precedential authority for the proposition that a court reviewing a termination of parental rights based on incarceration should make such an assumption. As such, respondent's argument is abandoned. See *Cheesman v Williams*, 311 Mich App 147, 161; 874 NW2d 385 (2015) ("An appellant may not merely announce a position then leave it to this Court to discover and rationalize the basis for the appellant's claims; nor may an appellant give an issue only cursory treatment with little or no citation of authority."). Furthermore, respondent similarly failed to articulate how or why his appeal would be successful, and he may not leave it up to this Court to unravel his arguments for him. See *id*. In addition, an

[5] Significantly, at no point did respondent set forth any sort of care plan to be implemented for his children during his incarceration.

appellant bears the burden of furnishing a reviewing court with "a record to verify the factual basis of any argument upon which reversal" is predicated. *People v Elston*, 462 Mich 751, 762; 614 NW2d 595 (2000). Respondent has not done so. Finally, even *if* respondent succeeded in his criminal appeal, it would not be reasonable, considering the children's young ages and the length of time they have been in care, for them to wait longer for respondent to be retried.[6]

In addition, another condition leading to adjudication was respondent's issue with alcohol. Indeed, it was because of drunk driving that he had been incarcerated in the first place. Respondent violated his probation for the driving offense by again drinking alcohol, and his attendance at Alcoholics Anonymous meetings was sporadic at best. This condition was not adequately rectified by the time of termination and, given respondent's history regarding alcohol, there was no reasonable likelihood that it would be rectified within a reasonable time considering the children's ages.

The trial court did not err by finding statutory grounds to terminate respondent's parental rights under MCL 712A.19b(3)(c)(*i*). Because only one statutory ground is required to terminate respondent's parental rights to the children, we decline to address the other statutory grounds on which the trial court based its decision. See *In re Ellis*, 294 Mich App at 32.

III. REASONABLE EFFORTS

Respondent argues that DHHS failed to offer respondent sufficient parenting time and failed to refer respondent for a psychological examination, parenting classes, assistance, or counseling, and that, therefore, his parental rights should not have been terminated. We disagree.

This Court has stated that to preserve an argument about reasonable efforts for family reunification, a parent must object to services offered at the time they are offered. *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). The Michigan Supreme Court has expressed some skepticism about this rule, but declined to overturn it. *In re Hicks/Brown*, 500 Mich 79, 88-89; 893 NW2d 637 (2017). Respondent did not make a timely argument below that the service referrals made by DHHS were inadequate. Accordingly, this issue is not preserved in relation to these referrals. Defendant did argue below that his parenting time should not be suspended; this argument, therefore, is preserved.

When properly preserved, "[w]e review the trial court's findings regarding reasonable efforts for clear error." *In re Smith*, 324 Mich App 28, 43; 919 NW2d 427 (2018). We review unpreserved issues, however, for plain error. *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

[6] The children are all under 11 years old and have been in care since December 2017. Even if a new trial—the remedy respondent seeks in his criminal appeal—were eventually ordered, it would not be reasonable for them to wait to see if respondent might possibly be acquitted.

affected substantial rights." *Id.* (quotation marks omitted), citing *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). "Generally, an error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings." *In re Utrera*, 281 Mich App 1, 8-9; 761 NW2d 253 (2008). The appellant bears the burden of persuasion with respect to prejudice. See *Carines*, 460 Mich at 763 ("It is the defendant rather than the Government who bears the burden of persuasion with respect to prejudice.") (quotation marks and citation omitted).

"Generally, when a child is removed from the parents' custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *In re HRC*, 286 Mich App 444, 462; 781 NW2d 105 (2009). "While the DHS has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered." *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). A respondent must also demonstrate that he or she has benefitted from services proffered. *Id.*[7]

Respondent contends that he was not referred for a psychological examination or counseling, but a caseworker, DM, testified that respondent *never followed through* with a referral to Community Mental Health. In addition, respondent participated in counseling on his own. A counselor testified that respondent began therapy with him on February 28, 2019, but was "unsuccessfully discharged" in July 2019 due to his incarceration. Respondent does not explain what other type of counseling or psychological services should have been offered or how they would have affected the case.[8] Nor can respondent demonstrate a clear, obvious, outcome-determinative error with regard to parenting classes or parenting assistance. A caseworker spoke of difficulty in communicating with respondent regarding the setting up of parenting classes, and another caseworker testified that respondent had taken at least *some* parenting classes.

The bottom line is that respondent did, in fact, receive many services—such as the aforementioned counseling, recovery meetings, family team meetings, assistance with transportation, and a cognitive-change program—and no plain error affecting substantial rights is apparent with regard to the lack of any additional referrals. See *In re VanDalen*, 293 Mich App at 135.

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[7] Although DHHS sought termination at the initial disposition because of aggravated circumstances, and reasonable efforts toward reunification are not required in such a circumstance, see *In re HRC*, 286 Mich App at 463, the trial court, for several months, repeatedly denied DHHS's request to terminate.

[8] Respondent appears to take issue with the fact that he found and participated in some services on his own or through the criminal court instead of with the help of DHHS—but he does not explain why this was improper. Respondent further testified that he informed DHHS of the services in which he was engaged. DHHS is not to be faulted for a failure to refer respondent to services that he already was receiving.

As for parenting time, respondent argued at the August 6, 2018 review hearing for a continuation of parenting time. The trial court stated that it was suspending respondent's parenting time because criminal sexual conduct charges had been filed against him. The trial court said that it had to weigh respondent's "fundamental right to parenting time" against "a risk to the minors." The trial court further stated that it "want[ed] to make sure that [the children are] all safe" and that this was why it was suspending parenting time.[9]

The trial court had the authority to suspend parenting time, in its discretion. See *In re Laster*, 303 Mich App 485, 490-491; 845 NW2d 540 (2013) ("[T]here is no court rule or statutory provision that governs the trial court's authority concerning parenting time between adjudication and the filing of a termination petition, much less requiring the trial court to make a finding of harm before suspending parenting time."). We find no abuse of discretion in that regard. Respondent has not established that the trial court abused its discretion by suspending respondent's parenting time in light of his criminal sexual conduct criminal charges. As such, the trial court did not err by suspending respondent's parenting time.

IV. BEST INTERESTS

Respondent argues that the trial court erred by finding that termination was in the children's best interests and takes particular issue with the court's finding that the bonds between respondent and the children were not particularly strong. We disagree.

"Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts Minors*, 297 Mich App 35, 40-41; 823 NW2d 144 (2012). "[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). The trial court's ruling regarding best interests are reviewed for clear error. *In re Schadler*, 315 Mich App 406, 408; 890 NW2d 676 (2016). "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *In re Ellis*, 294 Mich App at 33. Furthermore, "[t]his Court gives effect to the Legislature's intent as expressed in the statute's terms, giving the words of the statute their plain and ordinary meaning. When the language poses no ambiguity, this Court need not look beyond the statute or construe the statute, but need only enforce the statute as written." *In re LE*, 278 Mich App 1, 22-23; 747 NW2d 883

[9] It could be argued that respondent's parenting time argument is moot given that we affirm the trial court's order terminating his parental rights and the argued error addressed additional parenting time before the termination order was entered. See *Kieta v Thomas M Cooley Law Sch*, 290 Mich App 144, 147; 799 NW2d 579 (2010) ("An issue becomes moot when a subsequent event renders it impossible for the appellate court to fashion a remedy."). That being said, it is possible that if respondent had received additional parenting time, and had positive interactions with the children during those visits, that his visits could have weighed against terminating respondent's parental rights. As such, we choose to address respondent's argument on the merits.

(2008), abrogated on other grounds as recognized by *In re Long*, 326 Mich App 455; 927 NW2d 724 (2018) (citations and quotation marks omitted).

"The trial court should weigh all the evidence available to determine the children's best interests." *In re White*, 303 Mich App at 713. In considering the child's best interests, the trial court's focus must be on the child and not the parent. *In re Moss*, 301 Mich App at 87. "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 at 41-42 (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 at 714. When the trial court makes its best interests-determination, it may rely upon evidence in the entire record, including the evidence establishing the statutory grounds for termination. *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000), superseded by statute on other grounds as recognized in *In re Moss*, 301 Mich App at 83. In cases concerned with multiple children, the trial court must determine each child's interests individually. *In re Olive/Metts*, 297 Mich App at 43-44. But a trial court is not required to make individual and redundant best-interest findings for each child when the best interests of the children do not significantly differ. *In re White*, 303 Mich App at 715-716.

DM, who was a caseworker on this case, testified that GND felt "secure and safe" in her foster-care placement, was bonded to her caregivers, and wanted to "stay [there] forever." DM additionally stated that GND did not seem particularly distressed that respondent was sentenced to prison. DM also characterized the bond between respondent and GND as "very casual." Furthermore, DM testified that GBD and JD were doing "[a]mazing" in their placement and were "very bonded" with their foster family. GBD and JD wanted to be adopted, and the foster parents were willing to provide permanency. According to DM, the lack of contact with respondent did not appear to be affecting GBD or JD. DM opined that no bond between them and respondent was apparent. Given this testimony, the trial court did not clearly err when it found that respondent's bond with the children was not particularly strong. While respondent presented testimony of his bond with the children, the trial court was the arbiter of credibility. See *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005).

Additionally, TD, GND's foster mother, testified that GND was very bonded to her and the foster family and that GND viewed TD's children as her siblings. TD said that she wanted to adopt GND and that GND wanted to "stay with [TD's family]." TD further testified that GND had undergone positive changes since coming into care and stated that GND told TD that respondent had hit her with a belt. FD, the foster mother of GBD and JD, stated that the children were doing "really well" and that the children were bonded with her. FD further testified that she was willing to adopt them and added, "they're quite excited to be adopted and be officially part of the family." FD additionally opined that the children were "really happy."

Given respondent's issues with alcohol abuse, his repeated incarcerations and long prison sentence, his sexual-assault conviction, the children's young ages and their need for permanency, the fact that they were all doing very well in their foster placements, and the probability of

adoptions, the trial court did not err at all, let alone clearly err, by finding that it was in the children's best interests to terminate respondent's parental rights.

V. CONCLUSION

For the reasons stated, the trial court's order terminating respondent's parental rights to the children is affirmed.

/s/ Mark J. Cavanagh
/s/ Stephen L. Borrello
/s/ Jonathan Tukel