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STATE OF MICHIGAN

COURT OF APPEALS

In re N. Harp, Minor.

UNPUBLISHED
February 11, 2021

No. 354407
Berrien Circuit Court
Family Division
LC No. 2018-000042-NA

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

PER CURIAM.

The circuit court terminated respondent-mother's parental rights to her 10-year-old daughter, NH, under MCL 712A.19b(3)(a)(*ii*) (desertion) and (c)(*i*) (failure to rectify the conditions that led to adjudication). Respondent lived in other states throughout the proceedings and failed to keep in consistent contact with the Department of Health and Human Services (DHHS). She also failed to keep the DHHS apprised of her participation in services. Respondent's transient residence and lack of communication stymied the DHHS's reunification efforts. Although the DHHS could have done more to facilitate parenting time, this additional service would not have tipped the scales in this case. Accordingly, we affirm.

I. BACKGROUND

NH was born in respondent-mother's home state of Arizona. Respondent lost custody of NH to the child's father, who moved to Michigan at some point. Respondent has not seen NH in person since she was a baby. NH lived with her father, stepmother, and her four half-siblings in Michigan. In October 2017, Child Protective Services (CPS) became involved with the family, and the children were removed from the home in May 2018. CPS and the DHHS searched for respondent for several months, through prior addresses and social media, to no avail.

Respondent finally appeared in July 2018, but was unable to provide care and custody for her child in the father's stead. Respondent had recently been released from prison and was living in a "sober living apartment" provided by the Arizona Department of Corrections. NH could not live with her mother there. Moreover, respondent was unemployed, had no source of income, and lacked the means to travel to Michigan to pick up or even visit her child. Respondent had been diagnosed with borderline personality and bipolar disorders and was allegedly in treatment.

However, respondent ignored the DHHS's request for contact information for respondent's therapist and other service providers.

Respondent pleaded nolo contendere to grounds for jurisdiction in September 2018. The DHHS agreed to arrange video conference visits between mother and child and to work with the state of Arizona under the Interstate Compact on the Placement of Children (ICPC)[1] to assess respondent as a placement for the child. However, respondent disappeared for several months with no notice to her Michigan attorney or the DHHS. Respondent did not make contact again until February 2019, after she entered an in-patient substance abuse rehabilitation program. Even then, respondent provided no documentation of her treatment and did not authorize the DHHS to contact her service providers. The DHHS provided respondent with a case service plan, requiring counseling, substance abuse treatment, and parenting classes.

Respondent recommended her mother in Arizona as a relative placement for NH. In order to investigate the propriety of the grandmother's home, the DHHS would be required to cooperate with the state of Arizona through the ICPC. However, respondent advised the DHHS that she did not intend to remain in Arizona; she planned to move to Washington in the near future. Respondent preferred for the DHHS to wait until she was settled in her new state before starting the ICPC process. Respondent repeatedly delayed her move, thereby delaying her progress in reunifying with her child.

By May 2019, respondent was in monthly contact with the caseworker and allegedly had completed her in-patient treatment program. Respondent also started video chats with NH. It should be noted that NH's father had moved out of state by that time and had stopped participating in services even before his move. Father had fallen out of contact with all his children.

NH did not adjust well to her video visits with her mother. NH lashed out in the foster home, throwing tantrums, lying, and stealing. She had trouble sleeping and starting hoarding food. After only three visits, NH refused to participate. The guardian ad-litem noted on the record:

> As to the visits, this child has continuously, adamantly to anyone who will listen, me, the foster parent, counselors, to anyone who will listen that she does not want to be returned to her mother. She wants to stay where she's at. I realize she's only nine years old but certainly this is a strong-willed child who is very adamant about making the statements about her position.

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[1] The ICPC "provides for the movement and safe placement of children between states when the children are in the custody of a state." "The primary purpose of the ICPC is to ensure that children placed out-of-state are placed with care-givers who are safe, suitable and able to meet the child's needs. The ICPC requires an assessment of these factors before a child is placed out-of-state." The ICPC applies "when a court or public child welfare agency seeks to place a child with a parent located out-of-state if the court or agency has evidence that the parent may not be fit to care for the child or if the court or agency seeks an evaluation of the parent's fitness." *ICPC FAQ's*, American Public Human Services Association, available at <https://aphsa.org/AAICPC/AAICPC/icpc_faq_2.aspx#question1> (accessed February 2, 2021).

At an August 2019 hearing, the court found that respondent had "very minimal compliance" with her case service plan and had "very minimal compliance" with parenting time. The court ordered the DHHS to file a termination petition. Respondent objected, stating that she was "involved in services" and was employed. Respondent admitted that she had provided inconsistent reports about her plan to move to Washington. The court again directed respondent to provide documentation of her services, employment, and plans for her move. And the court warned respondent that the focus was on NH, who had been in care for more than a year at that point and required permanency.

Respondent actually received extra time to comply with her case service plan; the caseworker went on emergency leave without filing a termination petition as directed by the court. In the fall of 2019, respondent moved to Spokane, Washington. The court specifically directed respondent to keep the caseworker advised of her current addresses until she settled in her permanent home. And the court continued respondent's parenting time, without acknowledging that NH was still refusing to participate.

Respondent thereafter changed addresses frequently and did not notify the caseworker. As a result, the DHHS was unable to initiate the ICPC process with Washington. Respondent did not return a signed parent-agency agreement or medical authorizations for NH that were sent to her in Washington. But respondent continued her quest for meaningful parenting time with NH. At the February 13, 2020 hearing, respondent indicated that she had expressed her concerns to the caseworkers, but the caseworkers had not assisted. The GAL asserted, "[NH] continues to tell me every time I meet with her that she does not want to have any contact with her mother and she wants to stay where she's at." The court made no response. Respondent also reported that she had secured employment and was receiving services though Consistent Care Support Services. Once again, however, respondent provided no documentation to verify this information and signed no release for the DHHS to secure this information directly.

The matter proceeded to a termination hearing in March 2020. For the first time, respondent provided verification of housing. Although she claimed to have started parenting classes, respondent still did not provide proof. The caseworkers addressed the cessation of parenting time at the hearing as well. The original caseworker testified that NH "was uncomfortable because she didn't know her mom, she didn't have a relationship with her." The second assigned caseworker testified that NH "has stated that she does not want to participate" in video visits because "[s]he does not view [respondent] as her mom" and "there's a lack of bonds there . . . since [respondent] had left when she was 18 months, she does not remember." In closing argument at that hearing, respondent's counsel stated that respondent understood that NH would not be placed with her and that she hoped to develop a relationship with NH when she got older.

The court did not immediately determine whether to terminate the parents' rights. At a May 14, 2020 permanency planning hearing, respondent had a change of heart. Her counsel argued that a nine-year-old child should not be in control of whether visitation occurs. No therapist or counselor had ever opined that the visits were "actually detrimental to her." Counsel asked the court to order the visits while the case remained pending. The court found that respondent had not complied with the parenting-time portion of the case service plan, but acknowledged that "[t]herapeutic involvement" in the video parenting-time sessions would be "perfectly acceptable." Respondent's attorney complained:

> This Court just made a ruling that parenting time, there was no compliance by the mother and the mother is attempting it and she can't do that without the Department offering it and the Department's not offering it. So this is what I'm talking about is it's being held against her that she's not having parenting time but she can't unless the Department does it and the Department is not facilitating it.
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> From additionally it sounds like there are some statements made that the child acts out but I don't think that there's been any licensed professional saying it should stop.
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> So I agree with the Court's order but I just want to make sure that the Department is actually following that order because it sounds like they haven't been following that order . . . .

Counsel for the DHHS ignored the suggestion of therapeutic parenting-time, retorting that even respondent agreed that no one could hold the child in front of the camera or force a phone to her ear. The most the DHHS could do was make the offer to each party. The court changed its conclusions, finding that respondent had complied, but that NH would not participate. The court continued to leave it to DHHS discretion on how to include a therapeutic element in the visits.

Video visits with a counseling element never occurred. The court terminated respondent's parental rights on June 11, 2020.

II. REASONABLE EFFORTS

Respondent's sole challenge on appeal is that the DHHS failed to make reasonable efforts to reunify the family and therefore could not terminate her parental rights. Specifically, respondent contends that the DHHS should have followed through with interstate compacts with Arizona and Washington, should have provided financial support to transport NH to her mother, and should have facilitated counseling for mother and child during video visits.

"Absent exceptions not present here, [the DHHS] is required to make reasonable efforts to reunify families and to rectify the conditions that led to the initial removal." *In re Smith*, 324 Mich App 28, 43; 919 NW2d 427 (2018). "As part of these reasonable efforts, [the DHHS] 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." *In re Hicks/Brown*, 500 Mich 79, 85-86; 893 NW2d 637 (2017), citing MCL 712A.18f(3)(d). We generally review for clear error the circuit court's determination that reasonable efforts were expended. *Smith*, 324 Mich App at 43. To preserve a challenge to the adequacy of services, however, a respondent must object when the service plan is adopted or shortly thereafter. *Hicks/Brown*, 500 Mich at 88-89. Unpreserved challenges are reviewed for plain error affecting the respondent's substantial rights or impacting the fundamental fairness of the proceedings. *In re Utrera*, 281 Mich App 1, 8-9; 761 NW2d 253 (2008).

As noted by respondent, the DHHS did not follow through with the ICPC process. The proper authorities in Arizona and Washington were never contacted and therefore never evaluated respondent's fitness or the appropriateness of respondent's mother home. However, the delay was caused by respondent's actions and choices. The DHHS recognized the applicability of the ICPC

in September 2018. Respondent disappeared for five months, preventing any progress in the case. When respondent reappeared, she claimed that she planned to move to Washington and preferred to begin the ICPC process after her move. Respondent repeatedly pushed back her move date. And once respondent did move, despite repeated warnings from the court, respondent did not keep the DHHS apprised of her address, limiting the DHHS's ability to act. The DHHS cannot be faulted in this regard.[2]

The more pressing issue in this case is whether the DHHS permitted an elementary-school-aged child to end all parenting time without making appropriate efforts to facilitate the visits. MCL 712A.18f(3)(e) provides for inclusion in the parent-agency agreement of "regular and frequent parenting time," "unless parenting time, even if supervised, would be harmful to the child as determined by the court." And any time a child is removed from his or her parent's care, the court must permit "regular and frequent parenting time," at least once a week, "unless the court determines either that exigent circumstances require less frequent parenting time or that parenting time, even if supervised, may be harmful to the juvenile's life, physical health, or mental well-being." MCL 712A13a(13). "[T]he issue of the amount, if any, and conditions of parenting time following adjudication and before the filing of a petition to terminate parental rights is left to the sound discretion of the trial court and is to be decided in the best interests of the child." *In re Laster*, 303 Mich App 485, 490; 845 NW2d 540 (2013). Once the termination petition is filed, the court is then permitted to suspend the parent's visits. MCR 3.977(D); MCL 712A.19b(4).

NH has been under DHHS jurisdiction since October 2017, when she was seven years old. Respondent could not be located until July 2018, after NH had already been taken into foster care. The court quickly ordered the DHHS to facilitate parenting time between the out-of-state respondent and her child, but respondent disappeared for several months. When respondent reappeared, the DHHS arranged video visits over SKYPE. NH's foster mother supervised three visits in the spring and early summer of 2019. However, the foster mother was no longer willing to act as supervisor because NH's "behaviors increase and she tends to act out after the calls." She also noted that respondent appeared to be under the influence of some substance during one of the calls and fell "in and out of sleep." By August 20, 2019, the DHHS had discontinued the visits because NH did not want to participate and because the DHHS had not heard from respondent in some time. But respondent appeared by phone at the August 29, 2019 hearing. And despite that the court was aware of this situation, the court did not inquire whether SKYPE visits could be accomplished if supervised by someone else or with a therapeutic element.

It is insufficient to include parenting time in the case service plan but make no effort to facilitate parenting time when the respondent parent desires it and attempts it. "[U]nless parenting time, even if supervised, would be harmful to the child as determined by the court," MCL 712A.18f, parenting time should be encouraged and facilitated by the DHHS. The DHHS should have acted earlier and more directly to try to eliminate this difficulty. That being said, respondent

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[2] Respondent complains that the DHHS failed to finance NH's cross-country move to live with respondent or her grandmother. Although respondent could not afford to transport NH, her home was also never approved as a fit and suitable home for the child. The issue of financing a move never ripened.

did not advocate for a specific remedy until a permanency planning hearing conducted only *after* the termination hearing. By that time, the court could have suspended respondent's parenting time without any cause. And objecting at the eleventh hour to the services provided under the case service plan is inadequate to preserve a challenge. By the time respondent specified her objection, there was nothing to be done.

Any error in this regard was harmless in any event. Even had respondent and NH developed a bond through video visits, termination would still have been warranted. By ignoring multiple requests for documentation and contact information for her service providers, respondent failed to overcome evidence that she had not remedied the conditions that led to adjudication. Respondent failed to communicate with the DHHS case workers for extended periods of time. Although respondent claimed that she had entered an in-patient substance abuse treatment program, participated in counseling and treatment for her mental illnesses, and attended parenting classes, respondent would not provide documentation of these services and did not sign releases for the service providers to communicate with the case workers. The only proof of rehabilitation respondent produced was proof of employment and housing on the eve of termination. This was too little too late and did not establish that respondent was stable and sober.

Despite possible missteps in theses lengthy proceedings, the DHHS established grounds for termination and that termination was in in the child's best interests.

We affirm.

/s/ Elizabeth L. Gleicher
/s/ Kirsten Frank Kelly
/s/ Michael J. Riordan