STATE OF MICHIGAN

COURT OF APPEALS

In re E. M. KRUEGER, Minor.

UNPUBLISHED
March 18, 2021

No. 354284
Wayne Circuit Court
Family Division
LC No. 19-002221-NA

Before: TUKEL, P.J., and JANSEN and CAMERON, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating his parental rights to the minor child, EK, pursuant to MCL 712A.19b(3)(a)(*ii*) (parent has deserted child for more than 91 days), MCL 712A.19b(3)(b)(*i*) (child injured or abused because of parent's act or parent's failure to prevent injury, and reasonable likelihood of future injury or abuse), and MCL 712A.19b(3)(j) (reasonable likelihood of harm to child). We affirm.

I. FACTUAL BACKGROUND

EK was born on September 21, 2017. On December 18, 2019, petitioner, the Michigan Department of Health and Human Services (the DHHS), filed a petition requesting jurisdiction over EK and termination of respondent's parental rights to EK under MCL 712A.19b(3)(a)(*ii*) (parent has deserted child for more than 91 days), MCL 712A.19b(3)(b)(*i*) (child injured or abused because of parent's act or parent's failure to prevent injury, and reasonable likelihood of future injury or abuse), MCL 712A.19b(3)(g) (failure to provide care and custody), and MCL 712A.19b(3)(j) (reasonable likelihood of harm to child). Specifically, the petition included the following allegations: (1) respondent had not visited or had any contact with EK, or provided for her care or supervision, since before July 2018; (2) as of the date of the petition, respondent had failed to comply substantially with the court-ordered child support payments; (3) on July 6, 2019, respondent operated his vehicle while intoxicated, causing AK, EK's sibling, to suffer from serious injuries; (4) respondent's substance-abuse history was relevant to his present ability to properly care for EK; (5) respondent was charged with and convicted of operating while intoxicated causing serious impairment of another person's body function ("OWI-injury"), MCL 257.625(5), and child endangerment, MCL 257.625(7)(a)(*ii*); and (6) respondent had already violated a condition of his probation by testing positive for alcohol and marijuana.

On December 20, 2019, a preliminary hearing was held before a referee, at which the referee authorized the petition and ordered that EK remain in the sole care and custody of EK's mother, and suspended respondent's parenting time. The case subsequently proceeded to trial before a referee on February 28, 2020, regarding petitioner's request for jurisdiction over EK and termination of respondent's rights under MCL 712A.19b(3)(a)(*ii*), (b)(*i*), (g), and (j). On the basis of the evidence presented, the trial court entered an order of adjudication on March 3, 2020, adopting the referee's findings and holding that there were statutory grounds to exercise jurisdiction over EK because respondent had failed to provide necessary care for EK and he presented a substantial risk of harm to EK's mental well-being.

The trial court also found that petitioner had established by clear and convincing evidence that there were statutory grounds for termination of respondent's parental rights to EK under MCL 712A.19b(3)(a)(*ii*), (b)(*i*), and (j). Specifically, the trial court found: (1) respondent had deserted EK by paying support inconsistently before August 2019 and not at all after August 2019; (2) respondent failed to visit EK or even attempt visitation for more than 1½ years; (3) respondent last saw EK when she was 10 months old; (4) respondent admitted he was to blame for not having a relationship with EK; (5) respondent caused very serious injuries to AK when he left her unrestrained in a car he was operating while "blackout" drunk; (6) respondent had a diluted drug screen in November 2019, which resulted in the revocation of respondent's bond; and (7) respondent's substance abuse issues were long-standing. Moreover, the trial court found that termination of respondent's parental rights was in the best interests of EK because respondent did not have a relationship with EK, and there was a reasonable likelihood that EK would also suffer from injury in the foreseeable future because respondent exposed AK to harm. The trial court further stated, "[f]orcing [EK] to begin a relationship with a virtual stranger under these circumstances would be harmful," and given respondent's hostile relationship with EK's mother, it was not in the best interests of EK "to create stress in her family life and destabilize her home."

II. STATUTORY GROUNDS

On appeal, respondent first argues that the trial court clearly erred by finding that statutory grounds existed to terminate his parental rights. We disagree.

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 Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "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 Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011).

Respondent first argues that the trial court erred by terminating his parental rights under MCL 712A.19b(3)(a)(*ii*). A trial court may terminate a parent's parental rights pursuant to MCL 712A.19b(3)(a)(*ii*) if "[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." This Court has held that termination is proper under MCL 712A.19b(3)(a)(*ii*) when "the record shows that respondent failed to make any substantial effort to communicate with [his child] or obtain assistance in regaining custody of her for a period well beyond the statutory period." *In re TM* (*After Remand*), 245 Mich App 181, 194; 628 NW2d 570 (2001), overruled in part on other grounds, *In re Morris*, 491 Mich 81 (2012); see also *In re Mayfield*, 198 Mich App 226, 230, 235; 497 NW2d 578 (1993) (termination supported

where the respondent did not seek custody of his child for five years and had not seen the child for two years).

We conclude that, on the basis of the record before us, the trial court's finding that there were statutory grounds to terminate respondent's parental rights was not clearly erroneous. Petitioner presented sufficient evidence to establish that respondent had failed to make any substantial effort to visit or communicate with EK, or seek custody of EK, for a period in excess of 91 days. Respondent had no contact with EK since the time she was 10 months old until the termination hearing, when she was two years old—a period far in excess of the 91-day statutory period. Furthermore, it is undisputed that in the 91 days before the petition for termination of respondent's parental rights to EK was filed, respondent neither sought any contact with EK nor took any steps to obtain custody of her.

Rather than dispute his complete absence from EK's life for the 91-day period before the petition was filed, respondent argues that EK's mother thwarted his efforts to visit EK, and he did not abandon EK because EK's mother had sole legal and physical custody and her attitude toward him prevented him from seeing EK. This argument lacks merit. This Court has previously affirmed termination of parental rights under MCL 712A.19b(3)(a)(*ii*) where the respondent maintained that a custodial parent prevented contact with the child and the respondent did not seek court intervention to obtain parenting time. *In re TM*, 245 Mich App at 193-194. By his own admission, respondent did not have a relationship with EK, he was to blame for not initiating contact with EK's mother to visit or communicate with EK, and his hostile relationship with EK's mother was "not a good excuse" for letting "a while" pass since the last time he had asked for visitation with EK. While respondent maintained that EK's mother's "attitude" toward him prevented him from seeing EK, respondent acknowledged that he never sought custody or parenting time in court, and he unequivocally stated that EK's mother had never interfered with his ability to visit EK. Regardless, the reasons for abandonment are irrelevant. *In re TM*, 245 Mich App at 193-194. Where made no efforts for legal custody between July 2018 and termination in June 2020, the trial court did not err in terminating respondent's parental rights to EK under MCL 712A.19b(3)(a)(*ii*).

Respondent also challenges termination of his parental rights under MCL 712A.19b(3)(b)(*i*) and MCL 712A.19b(3)(j). However, only a single statutory ground needs to be established to support termination of parental rights under MCL 712A.19b(3). *In re Martin*, 316 Mich App 73, 90; 896 NW2d 452 (2016). Thus, having concluded that termination was proper under MCL 712A.19b(3)(a)(*ii*), we need not address respondent's arguments related to termination under MCL 712A.19b(3)(b)(*i*) and MCL 712A.19b(3)(j).

We do, however, briefly address respondent's argument that he was deprived his due process rights "in this rush to terminate short trial" when he was not "afforded the chance to be given temporary custody [of EK] with a Treatment Plan, as he had in Oakland County, based on the opinion of a perhaps upset former girlfriend, the Mother of [EK], and his lack of contact resulting from her attitude toward him[.]" Respondent asserts that the proceedings below "failed to give him the chance to demonstrate he could be a fit and proper parent to [EK]." Because respondent is raising this issue for the first time on appeal, it is not preserved. This Court reviews unpreserved constitutional claims for outcome-determinative plain error. *In re Hildebrant*, 216 Mich App 384, 389; 548 NW2d 715 (1996). To avoid forfeiture under the plain error rule, there

must be a plain error that affected substantial rights. *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. *Id*. at 763.

"It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow." *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998) (citation and quotation marks omitted). Not only has respondent failed to preserve this issue for appeal, but he has also made only a brief presentation which can hardly be classified as an argument, has not cited the record to support his factual assertions in regard to that argument, has not explained how the facts asserted amount to a due process violation, and has failed to cite any relevant supporting authority. Therefore, respondent's brief on appeal simply does not pose any valid argument warranting reversal of the order terminating respondent's parental rights on the ground of a due process violation.

Assuming, arguendo, that respondent properly presented this argument on appeal, petitioner's failure to offer respondent temporary custody of EK with a treatment plan does not require reversal of the order terminating respondent's parental rights, and the lack of such an offer did not deny respondent due process. The lack of an offer for temporary custody with a treatment plan was not what prevented respondent from seeing EK, and respondent failed to show that the lack of such an offer was outcome-determinative. Indeed, the referee granted respondent supervised agency visitations at the January 9, 2020 pretrial hearing. Moreover, even before the petition in this case was filed, the Oakland Circuit Court, in its July 2018 order granting EK's mother sole legal and physical custody of EK, granted respondent visitation. By respondent's own admission, no visitation occurred where respondent failed to contact EK's mother to arrange visitation. Respondent has thus failed to show how offering him temporary custody of EK with a treatment plan would have "give[n] him the chance to demonstrate he could be a fit and proper parent to [EK]," when the record shows he had not attempted to schedule the any previously entitled to visitation.

III. BEST INTERESTS

Respondent also argues on appeal that it was not in EK's best interests to terminate his parental rights. Again, 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 at 90 (footnote omitted). 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).

"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*, 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).

The trial court did not clearly err in finding that it was in the minor child's best interests to terminate respondent's parental rights. As emphasized by the trial court, respondent was convicted of OWI-injury and child endangerment. The evidence also established that, even before the petition for termination of respondent's parental rights to EK was filed, respondent failed to provide proper care and custody for EK where he lacked stable housing, did not pay child support regularly, had a long-standing history of substance and alcohol abuse, and had not visited EK since July 2018. The trial court concluded that there was no evidence of a bond between respondent and EK, that EK faced a risk of harm in respondent's care, that respondent could not meet EK's need for stability and permanency, and that respondent could not provide EK with a safe and secure home. Thus, the trial court did not err in finding that it was in EK's best interests to terminate respondent's parental rights.

Respondent complains that the trial court's findings were deficient because expert testimony was not presented, and a clinical evaluation of respondent or EK was not performed, in order to establish that termination was in the best interests of EK. These arguments are without merit. MCL 712A.19b(5) does not require that the trial court consider any specific type of evidence when making a best-interests determination. Instead, the determination of whether termination is in the child's best interests is based on consideration of all evidence contained within the entire record. *In re White*, 303 Mich App at 713. The record evidence in this case included the evidence presented during the earlier plea proceedings, which included respondent's plea, the trial court's judicial notice of his convictions, and testimony from CPS investigators. See *In re Hudson*, 294 Mich App at 264 ([C]hild protective proceedings are viewed as one continuous proceeding). Further, while the trial court had discretion to order a psychological evaluation if the court believed that the evidence was not "fully developed," a psychological evaluation is not mandatory. MCR 3.923(B); *In re Bell*, 138 Mich App 184, 187-188; 360 NW2d 868 (1984). Given the record evidence in this case, we conclude that the trial court was able to properly consider EK's best interests in the absence of psychological evaluations. Indeed, ample evidence demonstrated that termination of respondent's parental rights was in the best interests of EK.

Affirmed.

/s/ Jonathan Tukel
/s/ Kathleen Jansen
/s/ Thomas C. Cameron