

STATE OF MICHIGAN
COURT OF APPEALS

In re T. T. GRACE, Minor.

UNPUBLISHED
September 30, 2021

No. 356460
Clinton Circuit Court
Family Division
LC No. 20-029289-NA

Before: BECKERING, P.J., and SHAPIRO and SWARTZLE, JJ.

PER CURIAM.

Respondent-father appeals as of right the trial court’s order terminating his parental rights to the minor child, TTG, under MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood the child will be harmed if returned to the home). On appeal, father argues that the trial court erred when it found clear and convincing evidence to terminate his parental rights and that termination was in the child’s best interests. We disagree.

I. BASIC FACTS AND PROCEDURAL HISTORY

On February 5, 2020, TTG and his half brother, AMG, were removed from their mother’s care due to her use of illegal substances. TTG was placed with father, and AMG was placed with the children’s maternal aunt.¹ However, a month later, TTG was removed from father’s care because he tested positive for fentanyl while on parole. The Department of Health and Human Services (DHHS) then also placed TTG with his aunt.

Father entered a plea of admission to the trial court’s exercise of jurisdiction, admitting a history of substance abuse and that he testified positive for fentanyl while TTG was in his care, which was also a violation of his parole. The trial court entered an order of disposition requiring father to participate in services. The DHHS offered services such as substance abuse screenings, counseling services, parenting classes, and a psychological evaluation, but father failed to engage

¹ The trial court ultimately terminated the parental rights of AMG’s father to AMG and the parental rights of the minor children’s mother to both children, but neither parent has appealed.

in any of these services. Due to his failure to substantially participate in services, the trial court granted the request to change the permanency goal from reunification to adoption and DHHS filed a supplemental petition to terminate his parental rights in September 2020. According to the termination petition, father participated in 9 out of 22 offered parenting visits. The petition also stated that father was unemployed, uncooperative with the DHHS caseworker, and had not provided proof of housing.

At the termination hearing, father's parole officer testified that father was paroled in March 2019. As a condition of parole, father was referred to substance abuse treatment at least three times. The parole officer believed he finished a treatment program once in 2019. However, father was arrested on June 5, 2020, for violating parole. He was charged with driving under the influence causing serious injury (DUI) for an incident that occurred on May 10, 2020, and he failed to report this accident to his parole officer. In regard to this accident, a Michigan State Police officer testified that father drove a vehicle into a tree while his fiancée was a passenger and she suffered serious injuries. Father admitted that he used heroin earlier that day, and a blood draw confirmed there was heroin in his system. The parole officer explained that father was sentenced for those parole violations, but a second warrant was issued for his arrest on August 4, 2020, because he failed to submit to drug testing and he moved his residence without permission.

Rachel Serres, the DHHS caseworker involved in the case, testified that the barriers to father reunifying with TTG at the time of disposition were substance abuse, housing, and cooperating with DHHS. Father was offered random drug screens, but he did not participate. He entered substance abuse treatment twice at Meridian Health, on his own and without a referral, but both times he left after the detoxification period and did not complete the rest of the program, which would have included individual and group therapy. In addition, Serres referred father to Holy Cross, which provides random drug screens, individual and group therapy, and housing assistance. Father never followed through with this referral, and he frequently failed to maintain contact with the caseworker. The last time Serres spoke to father, on September 11, 2020, he said he was receiving Suboxone treatment and wanted to complete that before working with DHHS further.

Serres testified that she was unsure whether father had any mental health issues because he failed to participate in a psychological evaluation. Further, she stated that he did not maintain stable housing. At one point, he was living in a hotel room, and, at the time of termination hearing, he was in jail. While father reported applying and interviewing for jobs, he did not have a stable source of income. Father was referred to supportive visitation, but there was a waitlist, and when the visitation service was available, he was in jail and could not participate. Father had one in-person visit with TTG before the COVID-19 pandemic caused visits to be moved to Zoom. When he appeared for the visits, they generally went well. But he missed about half of his scheduled visits until they were suspended in June due to his absences. Father did not ask how TTG was doing after parenting visits were suspended. Father did not provide any financial or material support to TTG while he was placed with his aunt. Serres did not believe TTG had a strong bond with father.

Serres also testified that TTG was six years old at the time of the termination hearing and was doing well in his aunt's care. She was also caring for AMG and had her own son, and the three boys got along well and behaved as if they were all brothers. TTG was familiar and

comfortable with his aunt since his mother had used the aunt as a safety plan before removal. The aunt took TTG to all of his medical and dental appointments, and was facilitating his virtual learning during the pandemic. She was willing to adopt both TTG and AMG.

Following the two-day termination hearing, the trial court found statutory grounds to terminate father's parental rights and found termination to be in TTG's best interests. Father now appeals.

II. ANALYSIS

A. REASONABLE EFFORTS

First, father argues that the trial court erred by deciding to terminate his parental rights due to a lack of compliance with services because such services were never available. We disagree.

This Court reviews for clear error a trial court's "finding that reasonable efforts were made to preserve and reunify the family." *In re Fried*, 266 Mich App 535, 542-543; 702 NW2d 192 (2005). "A finding is clearly erroneous if[,] although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re COH, ERH, JRG, & KBH*, 495 Mich 184, 203-204; 848 NW2d 107 (2014) (quotation marks and citation omitted). To the extent that father seeks relief on the basis of DHHS's failure to provide reasonable reunification efforts, independent of the trial court's finding on the issue, father failed to preserve the issue by objecting at the time the trial court adopted a case service plan or at any time during the lower court proceedings. See *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012) (explaining that the "respondents failed to object or indicate that the services provided to them were somehow inadequate, thereby failing to preserve this issue"). We review unpreserved claims of error regarding termination proceedings for plain error affecting substantial rights. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

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 affected substantial rights. Generally, an error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings. [*In re Sanborn*, ___ Mich App ___, ___; ___ NW2d ___ (2021) (Docket Nos. 354915 and 354916); slip op at 1 (quotation marks and citations omitted).]

And even if plain error occurred, reversal is only warranted "when an error seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings" *Utrera*, 281 Mich App at 9 (quotation marks and citation omitted; alteration in original).

DHHS "has an affirmative duty to make reasonable efforts to reunify a family before seeking termination of parental rights." *In re Hicks/Brown*, 500 Mich 79, 85; 893 NW2d 637 (2017), citing MCL 712A.18f(3)(b), MCL 712A.18f(3)(c), and MCL 712A.19a(2). "As part of these reasonable efforts, [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." *Hicks/Brown*, 500 Mich at 85-86.

The trial court did not err by finding that DHHS made reasonable efforts to reunify father and TTG. Serres testified about the services to which she referred father, and those services were consistent with the case service plan. Father argues DHHS failed to coordinate services with the Department of Corrections (DOC), but it is unclear what is so significant about DHHS's supposed lack of coordination. In addition, the record reflects that Serres *was* in frequent contact with father's parole officer in an attempt to determine where he was and whether he was compliant with parole, which included treating his substance abuse and submitting to random drug screens. Thus, to the extent that father means to suggest DHHS imposed an unreasonable burden on him by requiring him to participate in duplicative services, this argument is unpersuasive. And even if it was persuasive, he failed to participate in *any* services following his adjudication, even the ones required of him for parole, making the argument unavailing regardless. Father also argues "[t]he services required by [DHHS] were never available and/or set up so he could demonstrate his ability to be a proper and fit parent for his son." This argument is inconsistent with Serres's testimony at the termination hearing that she referred father to Holy Cross, supportive visitation, drug screening, and a psychological evaluation. We must give special regard to the trial court's opportunity to judge the credibility of the witnesses before it. MCR 2.613(C). The trial court apparently found Serres's testimony persuasive, having found that DHHS made reasonable efforts toward reunification, and we must defer to the court's assessment of her credibility.

Father further argues that his lack of insurance and an available psychologist impaired his ability to participate in services. With respect to insurance, the record suggests this was only an issue for AMG's father, although the trial court misspoke and mentioned it in reference to father while announcing its findings at the conclusion of the termination hearing. With respect to a psychologist, the only mention in the record of difficulty locating a psychologist was during a pretrial hearing on April 30, 2020. But Serres testified that she would continue to work toward finding a psychologist. There is no reason to believe Serres failed to make those efforts, and even if she did fail to do so, father's near-total refusal to participate in services after the dispositional hearing suggests he would not have completed a psychological evaluation regardless. For these reasons, the trial court did not clearly err by finding that DHHS made reasonable efforts to reunify father and TTG. See *Frey*, 297 Mich App at 248 (stating that "[w]hile the [DHHS] 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").

B. STATUTORY GROUNDS

Father also appears to implicitly assert that the trial court erred by finding at least one statutory ground for termination. We disagree.

At a termination hearing, the petitioner bears the burden of establishing by clear and convincing evidence a statutory ground for termination of parental rights under MCL 712A.19b(3). See *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). "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; 846 NW2d 61 (2014).

The trial court terminated father's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). Because we conclude that the trial court did not clearly err as to subsection (c)(i), we need

not address subsections (g) and (j). *In re Olive/Metts Minors*, 297 Mich App 35, 41; 823 NW2d 144 (2012).

MCL 712A.19b(3)(c)(i) provides:

(3) The court may terminate a parent’s parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(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.

Termination under MCL 712A.19b(3)(c)(i) is appropriate “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[.]” *White*, 303 Mich App at 710 (quotation marks and citation omitted).

In this case, the order of disposition was entered on June 9, 2020, and the termination hearing began on December 9, 2020. Therefore, the time between the order of disposition and the beginning of the termination hearing was at least 182 days.² MCL 712A.19b(3)(c). Serres testified that the barriers to reunification at the time of disposition were substance abuse, housing, and cooperation with DHHS. She explained that father was referred to Holy Cross, which provides random drug screens, individual and group therapy, and housing assistance, but he failed to follow through with the referral. In addition, at the time of the termination hearing, father was incarcerated for a parole violation because he tested positive for heroin after getting into a car accident that caused serious injuries to his passenger. The last time that father contacted Serres was on September 11, 2020, and he indicated that he wanted to complete Suboxone treatment before working with DHHS further. Finally, father failed to obtain stable housing or income throughout the duration of this case. As a result, “the totality of evidence amply” supports that father “had not accomplished any meaningful change” in the conditions that led to adjudication. *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009). Moreover, considering father’s failure to rectify a single barrier in the 11 months that this case was open and his ongoing legal issues, there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering TTG’s age, who was six years old at the time of the termination hearing. Therefore, the record supports that the trial court did not clearly err when it found by clear and convincing evidence that termination was proper pursuant to MCL 712A.19b(3)(c)(i).

² The second termination hearing date occurred on January 26, 2021.

C. BEST INTERESTS

Father finally argues that the trial court clearly erred by finding that the termination of his parental rights was in the child's best interests. We disagree.

Once the trial court finds at least one statutory ground for termination proved by clear and convincing evidence, it must determine whether termination of parental rights is in the child's best interests. See MCL 712A.19b(5) ("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 . . ."). "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *Moss*, 301 Mich App at 90. The trial court's ruling regarding best interests is reviewed for clear error. *In re Schadler*, 315 Mich App 406, 408; 890 NW2d 676 (2016).

When determining the best interests of a child, the trial court should weigh all the evidence before it and consider a variety of factors. *In re Keillor*, 325 Mich App 80, 93-94; 923 NW2d 617 (2018). The court may consider, among other things,

the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, . . . the advantages of a foster home over the parent's home[,] . . . the length of time the child was in care, the likelihood that the child could be returned to [his or] her [parent's] home within the foreseeable future, if at all, and compliance with the case service plan. [*Id.* at 93 (second and third omission in original; first alteration in original; quotation marks and citation omitted).]

The court may also consider "the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption." *White*, 303 Mich App at 714. "[A] child's placement with relatives weighs against termination," and a trial court must explicitly consider this factor in determining whether termination is in a child's best interest. *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010).

TTG was removed from his mother's care on the basis of her substance abuse, and placed with father. A month later, however, TTG was removed from father's care because he tested positive for fentanyl. From March 2020 to January 2021, TTG, who was six years old, was cared for by his aunt. TTG's aunt was also caring for AMG, and she had her own son that was AMG's age. The three children got along well, and TTG's aunt provided for TTG's medical, dental, and educational needs. TTG's aunt was willing to adopt both TTG and AMG. According to Serres, TTG did not have a strong bond with father. While his parenting visits with TTG in the first few months of proceedings went well, between June 2020 and January 2021, he did not have any contact with TTG. Father also provided no material or financial support to TTG while he was in the care of his aunt.

The trial court explicitly considered that TTG was placed with a relative, but it concluded TTG's need for permanency, stability, and finality outweighed this consideration. The court noted that father had not substantially complied with his case service plan and had an inconsistent visitation history. The court also considered important the bond TTG had with AMG and his

aunt's son. Finally, the court noted TTG was "flourishing" in his aunt's home. The trial court did not clearly err by concluding, on the basis of the above, that termination was in TTG's best interests. Father failed to provide proper care and custody to the child for over 10 months, and he made little, if any, progress toward becoming able to provide proper care and custody. By contrast, TTG's aunt was willing and able to care for TTG, and she was willing to adopt him and AMG to provide them with the permanency, stability, and finality that is important for a young child. And while father asserts TTG had a strong bond with him, that was for the trial court to decide and weigh against the other relevant factors, and Serres's testimony clearly supported the opposite conclusion. Finally, father's assertion that termination was not in TTG's best interests because DHHS failed to provide services is unpersuasive for the reasons discussed earlier in this opinion. For these reasons, the trial court did not clearly err by finding termination to be in TTG's best interests. See *White*, 303 Mich App at 714 (concluding that the trial court did not err by finding that termination of parental rights was in children's best interests despite the children's strong bond with the respondent because the court also considered her failure to comply with the case service plan, that the children were doing very well in foster care, the possibility that the children would be adopted, and the children's strong need for permanence and stability).

Affirmed.

/s/ Jane M. Beckering
/s/ Douglas B. Shapiro
/s/ Brock A. Swartzle