

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

January 12, 2012

In the Matter of HOLLINS, Minors.

No. 304213

Wayne Circuit Court

Family Division

LC No. 98-369248

Before: MURRAY, P.J., and TALBOT and SERVITTO, JJ.

PER CURIAM.

Respondent A. Dann appeals as of right from the trial court's order granting petitioner's motion for reconsideration, thereby effectively reinstating a February 2010 order that terminated respondent's parental rights to the minor children. We affirm.

In an order dated February 17, 2010, the trial court terminated respondent's parental rights to the minor children pursuant to MCL 712A.19b(3)(g), (i), (j), and (l). The court also terminated the parental rights of the children's father. Respondent did not appeal that decision. However, the father appealed and this Court reversed the termination order with respect to the father only, because petitioner did not provide him with a case service plan or with required reunification services. *In re Hollins*, unpublished opinion per curiam of the Court of Appeals, issued November 16, 2010 (Docket No. 296968), slip op, p 1. This Court remanded the case "in order to allow [the respondent father] the opportunity to take advantage of and benefit from a service plan, reunification efforts, and DHS services." *Id.* at 4.

On remand, the trial court sua sponte decided that it should also set aside the February 17, 2010, termination order with respect to respondent. Accordingly, the court entered an order to that effect on January 14, 2011. Petitioner challenged that decision in a motion for reconsideration. On reconsideration, the trial court was persuaded that it had improperly set aside the February 2010 order with respect to respondent and, therefore, granted petitioner's motion for reconsideration, thus effectively reinstating the February 2010 order terminating respondent's parental rights.

Respondent argues on appeal that the trial court erred in granting petitioner's motion for reconsideration. She contends that the trial court properly exercised its authority when it set aside the original February 2010 termination order, and that the court erred when it subsequently granted petitioner's motion for reconsideration and determined that it should not have set aside the February 2010 order. We generally review a trial court's decision regarding a motion for reconsideration for an abuse of discretion. *Tinman v Blue Cross & Blue Shield of Mich*, 264

Mich App 546, 556-557; 692 NW2d 58 (2004). But questions of law underlying the trial court's decision are reviewed de novo. *Luckow Estate v Luckow*, 291 Mich App 417, 423; 805 NW2d 453 (2011).

Respondent contends that the trial court had the authority to set aside the February 2010 termination order under MCL 712A.21 and MCR 3.992, notwithstanding her failure to appeal that order or to timely move for reconsideration of the order. MCL 712A.21(1) provides:

At any time while the juvenile is under the jurisdiction of the court, an interested person may file a petition in writing and under oath for a rehearing upon all matters coming within the provisions of this chapter. Upon the rehearing, the court may affirm, modify, or set aside any order reviewed under this section. If parental rights have been terminated by an order entered in the proceedings and custody of the juvenile has been removed from the parents, guardian, or other person, *the petition for rehearing shall be filed not later than 20 days after the date of entry of the order terminating parental rights*. The petition shall set forth in detail the place, manner, and all other information requested by the court in reference to the proposed future custody of the juvenile. The rehearing shall be conducted in accordance with the provisions of this chapter relating to the conduct of original hearings. The court may enter an order for supplemental disposition while the juvenile remains under the court's jurisdiction. [Emphasis added.]

MCR 3.992(A) provides:

Except for the case of a juvenile tried as an adult in the family division of the circuit court for a criminal offense, *a party may seek a rehearing or new trial by filing a written motion stating the basis for the relief sought within 21 days after the date of the order resulting from the hearing or trial*. The court *may entertain an untimely motion for good cause shown*. A motion will not be considered unless it presents a matter not previously presented to the court, or presented, but not previously considered by the court, which, if true, would cause the court to reconsider the case. [Emphasis added.]

In addition, MCR 3.993(A)(2) provides that an order terminating parental rights is appealable to this Court as of right. Chapter 7 of the Michigan Court Rules governs appeals from the family division of the circuit court except as modified by MCR 3.993. MCR 3.993(C)(1). Accordingly, MCR 3.993 is subject to MCR 7.204(A)(1)(c), which requires that an appeal by right from an order terminating parental rights be taken within 14 days after entry of the order. MCR 3.993(C)(2) further provides that “[t]he Court of Appeals may not grant an application for leave to appeal an order of the family division of the circuit court terminating parental rights if filed more than 63 days after entry of an order of judgment on the merits, or if filed more than 63 days after entry of an order denying reconsideration or rehearing.” In this case, respondent never filed an appeal of right or an application for leave to appeal from the February 2010 order at any time. Thus, her failure to timely act barred her from obtaining appellate relief from that order.

The trial court likewise had no authority under these statutes and court rules to set aside the February 2010 order terminating respondent's parental rights after she failed to move for reconsideration of the original order or to timely appeal that order. MCL 712A.21(1) restrictively grants the trial court authority to affirm, modify, or set aside an order on the petition of an interested person "filed not later than 20 days after the date of the entry of the order terminating parental rights." Here, respondent did not petition the trial court for rehearing of its termination order within 20 days. Similarly, MCR 3.992(A) requires a party seeking rehearing to move in writing within 21 days after the date of the order resulting from the hearing. Respondent did not avail herself of this opportunity.

Respondent emphasizes that MCR 3.992(A) permits the trial court to entertain an untimely motion for good cause shown. This extension provision does not apply here, however, because there was no motion, and accordingly, no showing of good cause. Further, this Court's decision in the father's appeal in Docket No. 296968 did not provide any basis for finding good cause to reconsider the termination of respondent's parental rights. Contrary to what the trial court may have believed initially, this Court's decision did not suggest that respondent, like the children's father, should be afforded an opportunity to participate in services. This Court never addressed respondent's parental rights and had no occasion to do so because respondent did not appeal the termination order.

We also reject respondent's argument that good cause was shown by her progress in a subsequent case involving another child, or because public policy disfavors termination of only one parent's parental rights. There is no general disapproval of terminating only one parent's parental rights. "[T]he parental rights of one parent may be terminated without the termination of the parental rights of the other parent[.]" *In re Marin*, 198 Mich App 560, 568; 499 NW2d 400 (1993). Further, respondent's progress in a case involving a later-born child has no relevance to a prior order involving respondent's other children.

Accordingly, the trial court did not err in granting petitioner's motion for reconsideration, thereby effectively reinstating the February 10, 2010, order terminating respondent's parental rights.

Respondent also attacks the February 2010 order itself, arguing that the evidence did not establish the statutory grounds for termination, and that termination of her parental rights was not in the children's best interests. However, because the only order appealed was the order granting reconsideration, and that order has been affirmed, there is no basis upon which to decide the termination issue itself.

Affirmed.

/s/ Christopher M. Murray
/s/ Michael J. Talbot
/s/ Deborah A. Servitto