

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
March 19, 2013

In the Matter of A. J. Q. CARTER, Minor.

No. 311494
Oakland Circuit Court
Family Division
LC No. 11-783549-NA

Before: CAVANAGH, P.J., and SAAD and SHAPIRO, JJ.

PER CURIAM.

Respondent mother appeals as of right an order terminating her parental rights to the minor child under MCL 712A.19b(3)(b)(i), (g), (i), (j), and (l). We affirm.

Respondent's parental rights to a sibling of the minor child at issue had been involuntarily terminated in March 2011 following allegations of physical abuse leading to serious physical injuries. The minor child at issue in this case was born in April 2011. A petition to terminate respondent's parental rights to this minor child was also filed in April 2011. Following several pretrial hearings, in August 2011, respondent pleaded no contest to the allegations set forth in the petition. Thereafter, the trial court held that those statutory grounds for termination were established by clear and convincing evidence and the matter was set for a best-interest hearing, MCL 712A.19b(5).

At the best-interest hearing, a licensed clinical psychologist testified about psychological evaluations of respondent in January 2010 and December 2011. His conclusions included that: (1) a lack of progress was shown, (2) the same factors that led this child's sibling to be at risk remained present, and (3) respondent was not in the position to provide permanency or stability for the minor child at issue. He recommended that respondent's parental rights be terminated. A foster care specialist also testified. She had been involved in the termination proceedings regarding this child's sibling, and noted that those proceedings were initiated after the child suffered significant physical abuse that resulted in head trauma and retinal hemorrhaging. Although several services had been provided to respondent in that matter, they were unsuccessful and respondent's parental rights were terminated. In this matter, the same issues continued. Although respondent was provided parenting time, her participation was inconsistent and affected her ability to bond with the child. Respondent also did not maintain stable housing, employment or transportation, and did not have the means to provide for the child. Following the best-interest hearing, the trial court concluded that respondent had not demonstrated that she would avail herself to services or benefit from such services to rectify her issues which continued

to exist since the previous termination proceeding. Accordingly, the trial court concluded that termination of respondent's parental rights was in the child's best interests. This appeal followed.

Respondent first argues that petitioner failed to demonstrate that reasonable efforts were undertaken to prevent removal of the minor child from her care; thus, her due process and reunification rights were violated. We disagree.

“Whether proceedings complied with a party's right to due process presents a question of constitutional law that we review de novo.” *In re Rood*, 483 Mich 73, 91; 763 NW2d 587 (2009). However, because this constitutional issue was not raised in the trial court, our review is for plain error affecting respondent's substantial rights. See *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999).

“Parents have a significant interest in the companionship, care, custody, and management of their children, and the interest is an element of liberty protected by due process.” *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003). Accordingly, in a child protective proceeding, petitioner must generally make reasonable efforts to reunify the child and family when the child was placed outside of a parent's home. See MCL 712A.19a(2); MCR 3.965(D)(1); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). However, reunification efforts are not required when the respondent's parental rights to the child's sibling were involuntarily terminated. MCL 712A.19a(2)(c); *In re Smith*, 291 Mich App 621, 623; 805 NW2d 234 (2011); *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009). In this case, it is undisputed that, in March 2011, respondent's parental rights to the child's sibling were involuntarily terminated. At the preliminary hearing in this matter, the court confirmed that services had been provided to respondent in the previous termination matter and that respondent failed to comply with the parent-agency agreement, which resulted in the termination of her parental rights. Accordingly, respondent has failed to establish a violation of her due process or reunification rights.

Next, respondent argues that the trial court reversibly erred when it concluded that a statutory basis existed for termination of her parental rights. We disagree. A trial court's decision that a ground for termination has been proven by clear and convincing evidence is reviewed for clear error. See *In re Rood*, 483 Mich at 90-91 (citation omitted).

On August 8, 2011, respondent entered “a no contest plea for jurisdiction and statutory basis” on the record. Respondent was represented by an attorney. She testified that she read and understood the April 2011 petition, and did not have any questions about the petition. Respondent also testified that she understood that she had the right to have a trial and that her plea was the same as admitting the allegations in the petition, including that her child needed to be protected. She also understood that the petition requested that her parental rights be terminated and acknowledged that her parental rights to another child were terminated. She testified that her plea was voluntary and not the result of any promises or threats. Petitioner's and respondent's attorneys then stipulated that “the allegations set forth in the supplemental petition would be at least a prima facie case or provable if” there was a trial. Thereafter, the court accepted respondent's plea as intelligently, voluntarily and knowingly made and found “that the statutory grounds for termination have been met by clear and convincing evidence based upon this plea.”

Respondent does not raise any challenge to her plea on appeal. See MCR 3.971. And she stipulated, through her attorney, that the allegations supporting the petition, i.e., the statutory grounds for termination, could be proven at a trial. “A party cannot stipulate a matter and then argue on appeal that the resultant action was error.” *Chapdelaine v Sochocki*, 247 Mich App 167, 177; 635 NW2d 339 (2001); see, also, *Czybor’s Timber, Inc v Saginaw*, 269 Mich App 551, 556; 711 NW2d 442 (2006). In any case, only one statutory ground for termination need be established for termination. MCL 712A.19b(3). Here, MCL 712A.19(3)(l) was clearly proven by clear and convincing evidence because respondent’s rights to another child had previously been terminated. Thus, this issue is without merit.

Finally, respondent argues that the trial court clearly erred in concluding that termination of her parental rights was in the best interests of the minor child. We disagree. The trial court’s best-interest determination is reviewed for clear error. *In re Rood*, 483 Mich at 90-91.

“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). Factors that a trial court may consider when making its best-interest determination include, for example, the respondent’s history and psychological evaluation, the child’s bond with the respondent, the respondent’s parenting ability, and the child’s need for permanency, stability, and finality. See *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009); *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004); *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001).

In this case, the record evidence included that: (1) respondent’s psychological evaluations had indicated a lack of progress, (2) the same factors that led to the previous termination of this child’s sibling continued to exist, and (3) respondent was unable to provide permanency or stability for the minor child. Further, although respondent was provided parenting time during the pendency of these proceedings, she did not take full advantage of the opportunity and did not have a strong bond with the child. She also did not maintain stable housing, employment, or transportation. Accordingly, we conclude that the trial court’s best-interest determination was not clearly erroneous.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Henry William Saad
/s/ Douglas B. Shapiro