STATE OF MICHIGAN

COURT OF APPEALS

In re LUCKETT, Minors.

UNPUBLISHED
August 13, 2013

No. 313038
Wayne Circuit Court
Family Division
LC No. 09-486289-NA

Before: BOONSTRA, P.J., and SAWYER and MURRAY, JJ.

PER CURIAM.

Respondent father appeals by right the trial court order terminating his parental rights to the minor children under MCL 712A.19b(3)(a)(*ii*), (c)(*i*), and (g). We affirm in part, vacate in part, and remand for further proceedings consistent with this opinion.

I. BASIC FACTS AND PROCEDURAL HISTORY

The oldest child, AL, was made a temporary ward of the court when she was three months old, after she sustained several unexplained fractures while in respondent's care. At the time of her removal, respondent had no income, no home, and no ability to provide for her. For the next three years, he failed to comply with any of the requirements of the treatment plan. He had not attended parenting classes, did not have a suitable home, and had not provided any support for the oldest child or for the two additional children, DL and NL, that were born during the pendency of this case and were also subject to the trial court's jurisdiction. Respondent provided no documentation of education or training, employment, income, or of even an address. With the exception of a couple of unauthorized visits, respondent did not maintain a relationship with his children after he left Michigan in June 2010, did not request visitation rights, did not request or seek custody, and had no plans to provide any care for his children. After numerous dispositional review hearings, many of which respondent failed to attend, petitioner sought termination of respondent's rights to all three children. Respondent did not attend the trial, and his appointed attorney stated that he had had no contact with respondent. The trial court terminated respondent's rights to all three children.

II. STATUTORY GROUNDS FOR TERMINATION

Respondent argues that the trial court erred in finding, by clear and convincing evidence, that statutory grounds for termination existed, because petitioner failed to provide respondent with services. We review the trial court's findings that statutory grounds existed for termination

under the clearly erroneous standard. MCR 3.977(K); *In re Gazella*, 264 Mich App 668, 672; 692 NW2d 708 (2005). A finding of fact is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake was made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). Here, respondent's parental rights were terminated under MCL 712A.19b(3)(a)(*ii*), (c)(*i*), and (g), which provide:

> (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:
>
> (a) The child has been deserted under any of the following circumstances:
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> * * *
>
> (*ii*) The child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period.
>
> * * *
>
> (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.
>
> * * *
>
> (g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care or custody within a reasonable time considering the child's age.

The record demonstrates that at the time respondent moved to Arizona, the conditions that led to the adjudication, i.e. respondent's lack of income, employment, home, and ability to provide for his children, had not been rectified. For over three years, since AL was made a temporary ward of the court, respondent failed to comply with any of the requirements of the treatment plan. He had not attended parenting classes, he did not have a home, and he had not provided any support for any of his children. He provided no documentation of employment or of income or of even an address. He had not maintained contact with his children, his workers, the court, or his attorneys. The trial court did not clearly err in finding clear and convincing evidence that the conditions that led to the adjudication continued to exist and there was no

reasonable likelihood that they would be rectified within a reasonable time. MCL 712A.19b(3)(c)(*i*).

However, respondent contends that petitioner failed to make reasonable efforts to provide services to him. Respondent did not raise this issue in the trial court, and therefore failed to preserve this issue for appellate review. *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). This Court reviews unpreserved issues for plain error affecting substantial rights. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

Generally, when a child is removed from the parents' custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan. MCL 712A.18f(1), (2), and (4); *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). Upon review of the record, we find that petitioner could have initially been more efficient in making referrals for services. However, when referrals were made, respondent failed to follow through. During the three years of this case, he made no efforts to comply with any of the requirements that would have enabled him to be reunited with his children. Given the difficulty in contacting respondent, and his failure to participate in the services to which he was referred, any deficiency in the services offered by petitioner did not affect the outcome of the proceedings and therefore had no effect on respondent's substantial rights. *Utrera*, 281 Mich App at 8-9.

Further, respondent's reliance on *In re Newman*, 189 Mich App 61, 66; 472 NW2d 38 (1991), is misplaced. Unlike the respondents in *Newman*, there is no evidence that respondent had limited intellectual capacity or needed hands-on instructions. Additionally, the respondents in *Newman* had remedied all the conditions listed in the petition, had been very cooperative, and had maintained visitation. *Id*. Here, respondent has not remedied any of the conditions listed in the petition, has not maintained visitation, and has not been cooperative, especially concerning maintaining contact. The trial court did not clearly err in finding clear and convincing evidence to support this statutory ground for termination. MCR 3.977(K); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999); *In re Gazella*, 264 Mich App 668, 672; 692 NW2d 708 (2005).

Because only one statutory ground for termination need be proven, *Sours*, 459 Mich at 632, it is unnecessary for this Court to address the other grounds found by the trial court.

III. DUE PROCESS

Next, respondent contends that he was denied the right to counsel and the right to be present at proceedings by speaker phone. We disagree. Respondent failed to preserve this issue for appeal. Thus, he must demonstrate plain error that affected his substantial rights. See *People v Carines*, 460 Mich 750, 762-764; 597 NW2d 130 (1999). MCR 3.915(B) charges parents with a minimum responsibility in regard to having counsel appointed for their benefit. Once informed of their rights, respondents are required to take affirmative action in order to have an attorney appointed. *In re Hall*, 188 Mich App 217, 222; 469 NW2d 56 (1991). That right may be waived or relinquished where the respondent fails to maintain contact with appointed counsel, does not appear at review hearings, and where contact information is unknown and counsel is unable to locate the respondent. An ongoing attorney-client relationship is essential to the continuation of appointed counsel. *Id*.

We find no evidence that respondent was denied counsel or not allowed to participate by speaker phone. He was given appointed counsel at the initial hearing and had counsel at every hearing thereafter until he left Michigan. After he left the state, he appeared by speaker phone at two hearings. There is no evidence on the record to indicate that respondent requested to appear by speaker phone at other hearings but was denied that opportunity. Respondent frequently failed to maintain contact with his attorney and to maintain correct contact information for his attorney or the court. Such failure has been deemed a waiver of the right to appointed counsel. *Hall*, 188 Mich App at 222. Respondent knew how to contact petitioner and the court. He failed to do so. There is no indication that he took any affirmative action to have counsel appointed for him when he was not present. Every time he appeared, the court made sure that he was represented by counsel. Respondent father had a "minimum responsibility" to maintain contact with his attorney and petitioner and to ask the court for representation if he wanted it. MCR 5.915(B). Under these circumstances, he was not deprived of his due process right to counsel or denied the right to appear in court by speaker phone.

IV. BEST INTERESTS DETERMINATION

Finally, respondent contends that the trial court did not articulate on the record or in writing its findings of fact and conclusions of law concerning the best interests of the children, including relative placement. MCL 712A.19b(1); MCR 3.977(I)(1); *In re Mason*, 486 Mich 142, 163-164; 782 NW2d 747 (2010); *In re Olive/Metts*, 297 Mich App 35, 43; 823 NW2d 144 (2012). We agree and remand this case for compliance with the articulation requirements.

The requirement to state on the record the findings of fact and conclusions of law concerning best interests is ingrained in our court rules, statutes, and case law. MCL 712A.19b(1); MCR 3.977(I)(1). See also *Trejo*, 462 Mich at 356 ("Again, the court must state its findings and conclusions regarding any best interest evidence on the record or in writing."). Recently, in *Olive/Metts*, 297 Mich App at 42, this Court explained that a trial court has a duty to "view each child individually when determining whether termination of parental rights is in that child's best interests." This is especially true in the context of placement with relatives, because "[a] trial court's failure to explicitly address whether termination is appropriate in light of the children's placement with relatives renders the factual record inadequate to make a best-interest determination and requires reversal." *Id*. at 43; see also *Mason*, 486 Mich at 163-165. Respondent's two legal and biological children reside with his aunt, and she would like to adopt them. The youngest, his legal child, is in a foster home that seeks to adopt him. Based on MCL 712A.19b(1), MCR 3.977(I)(1), *Trejo*, 462 Mich at 356, *Mason*, 486 Mich at 163-164, and *Olive/Metts*, 297 Mich App at 43, as well as the circumstances of this case, we conclude that remand is appropriate for the trial court to state its findings of fact and conclusions of law on the record or in writing, including the issue of relative placement, concerning the best interests of the children.

V. CONCLUSION

We affirm the trial court's finding of statutory grounds to terminate respondent's parental rights and find that he was not denied his rights to be present at hearings and to be represented by counsel. However, we vacate the trial court's best-interest determination and remand for the

court to state its findings of fact and conclusions of law on the record or in writing, including the issue of relative placement, concerning the best interests of each individual child.

Affirmed in part, vacated in part, and remanded for proceedings consistent with this opinion. We retain jurisdiction.

/s/ Mark T. Boonstra
/s/ David H. Sawyer
/s/ Christopher M. Murray

Court of Appeals, State of Michigan

ORDER

In re LUCKETT, Minors.

Docket No. 313038

LC No. 09-486289-NA

Mark T. Boonstra
Presiding Judge

David H. Sawyer

Christopher M. Murray
Judges

Pursuant to the opinion issued concurrently with this order, this case is REMANDED for further proceedings consistent with the opinion of this Court. We retain jurisdiction.

Proceedings on remand in this matter shall commence within 56 days of the Clerk's certification of this order, and they shall be given priority on remand until after they are concluded. As stated in the accompanying opinion, we remand this case for the trial court to state its findings of fact and conclusions of law on the record or in writing, including the issue of relative placement, concerning the best interests of each individual child.

The parties shall promptly file with this Court a copy of all papers filed on remand. Within seven days after entry, appellant shall file with this Court copies of all orders entered on remand.

The transcript of all proceedings on remand shall be prepared and filed within 21 days after completion of the proceedings.

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

AUG 13 2013

Date

Chief Clerk