

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
August 14, 2012

In the Matter of R. L. ROHMER, Minor.

No. 308745
Oakland Circuit Court
Family Division
LC No. 2011-784823-NA

Before: GLEICHER, P.J., and OWENS and BOONSTRA, JJ.

PER CURIAM.

Respondent appeals as of right from the order terminating her parental rights to the minor child (RR) pursuant to MCL 712A.19b(3)(1). We affirm.

I. BASIC FACTS AND PROCEDURE

Respondent has had a history of involvement with Children's Protective Services (CPS) as a result of her seven-year substance abuse problem. Despite attempts at treatment and numerous services, respondent's parental rights to her two older children were terminated in 2009. Respondent continued to use illegal drugs and was in a methadone clinic at the time of RR's birth. After RR was born in July 2010, a CPS complaint was filed, and RR's father was advised of respondent's CPS history and of his responsibility to keep the child safe. Seven months later another CPS complaint was filed alleging that respondent had tested positive for marijuana. She subsequently admitted using marijuana with RR's father while RR was present in the home. This violated her probation and respondent was sentenced to jail and to a substance abuse program.

A subsequent neglect petition alleged that respondent failed to provide proper care for RR and placed him at a threatened risk of harm by continuing to abuse drugs and violating her probation. It was also alleged that RR's father put the child at a threatened risk of harm by allowing him to have continued contact with respondent while she was abusing drugs as well as using marijuana in the home while RR was present. The petition requested termination of respondent's parental rights based on her failure to benefit from reasonable efforts that had been made from prior referrals for parenting classes, individual therapy, substance abuse treatment, and two permanency planning conferences. The child's father pleaded to the allegations against him to establish jurisdiction. Respondent's attorney acknowledged that, under *In re CR*, 250 Mich App 185; 646 NW2d 506 (2002), the father's plea was sufficient to establish jurisdiction and requested a bench trial regarding the statutory grounds and the child's best interests:

THE COURT: All right. The Record should reflect that the jurisdiction has already been obtained because of the plea of the dad. I had him replead. Do you have any objection to me finding that jurisdiction exists with this Court as to her?

[Respondent's counsel]: No, I totally understand under *In re C.R.* that this Court is invoking that and finding temporary wardship, we accept that, my client accepts that the Court already has jurisdiction. This trial is just about statutory grounds.

At the termination hearing, respondent's counsel again accepted that the court had jurisdiction by virtue of the father's plea. The trial court found that petitioner had proven by clear and convincing evidence that a statutory basis existed, under MCL 712A.19b(3)(1), to terminate respondent's parental rights. The trial court based this determination on the prior termination of her parental rights to her two older children due to serious and chronic neglect and physical abuse (including giving Methadone to one of the children), and the failure of prior attempts to rehabilitate her. The court then scheduled a best-interest hearing and permitted continued visitation by the mother. After extensive testimony from treatment providers, family, and a psychologist, the trial court found that termination of respondent's parental rights was in the best interests of the minor child.

II. JURISDICTIONAL CHALLENGE

For the first time on appeal, respondent challenges the trial court's exercise of jurisdiction in this case. Repeatedly throughout these proceedings, respondent's counsel conceded that jurisdiction was properly established by the father's plea to allegations in the petition. Further, respondent's counsel did not merely fail to object to the lower court's exercise of jurisdiction, but affirmed, repeatedly, that the court's jurisdiction was proper. A party may not take a position before the trial court and then argue on appeal that the resulting action was error. *Holmes v Holmes*, 281 Mich App 575, 587, 588; 760 NW2d 300 (2008). Respondent's counsel's affirmation was thus not mere "forfeiture" of a right (failure to assert a right in a timely fashion), but was "an intentional and voluntary relinquishment of a known right", *i.e.*, a waiver. See *Walters v Nadell*, 481 Mich 377, 384 n 14; 751 NW2d 431 (2008), quoting *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 69-70; 642 NW2d 663 (2002). Waiver of objection to an issue generally forecloses review of that issue. *People v Dobek*, 274 Mich App 58, 65; 732 NW2d 546 (2007). By contrast, a forfeited issue may be reviewed for plain error affecting substantial rights. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

We conclude that respondent waived any challenge to the lower court's jurisdiction. However, we note that our conclusion that there was no error requiring reversal would not change if we reviewed the issue for plain error. This Court has explained in *CR*, 250 Mich App at 205, that the trial court's jurisdiction is tied to the child, not the parent:

As we have explained, the court rules simply do not place a burden on a petitioner like the FIA to file a petition and sustain the burden of proof at an adjudication with respect to every parent of the children involved in a protective proceeding before the family court can act in its dispositional capacity. The family court's jurisdiction is tied to the children, making it possible, under the

proper circumstances, to terminate parental rights even of a parent who, for one reason or another, has not participated in the protective proceeding.

In *In re Bechard*, 211 Mich App 155, 160-161; 535 NW2d 220 (1995), we stated that a parent's plea or "consent to jurisdiction" cannot give the court jurisdiction in regard to claims against the other parent if there was nothing for the consenting parent to plead to because the petition does not allege abuse or neglect against that parent. Here, the petition alleged neglect against the child's father directly, thus allowing him to plead to the petition and for the court to acquire jurisdiction over the child on the basis of that plea.

Respondent's main objection to what she has dubbed the "one parent doctrine" is that the child's father had little risk of losing parental rights by pleading to the allegations in the petition, but his plea put her on a "fast track" to termination because of her previous termination of parental rights to other children. Thus she claims that the "one parent doctrine" deprived her of her constitutionally protected right to due process. We disagree. Respondent's right to due process was not affected by the "one parent doctrine," as the adjudicative proceeding determines whether the trial court may exercise jurisdiction over the child, not whether parental rights should be terminated. See *In re Mason*, 486 Mich 142, 154; 782 NW2d 747 (2010); *In re Brock*, 442 Mich 101, 108; 499 NW2d 752 (1993). We find no plain error affecting substantial rights in the trial court's exercise of jurisdiction over RR.

III. TERMINATION OF PARENTAL RIGHTS

Next, respondent contends that the trial court clearly erred in finding that termination of her parental rights was in the best interests of the child, because she had made progress on her addiction and had been benefiting from services and improving her parenting skills. She also points out that her psychologist believed she could improve to a point where the child would no longer be at risk in her custody.

This Court reviews the trial court's determinations that termination of parental rights is in the child's best interest under the "clearly erroneous" standard. MCR 3.977(K); *In re Jenks*, 281 Mich App 514, 516-517; 760 NW2d 297 (2008). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the basis of all evidence is left with the definite and firm conviction that a mistake has been made, giving due regard to the trial court's opportunity to observe the witnesses. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Testimony from various witnesses indicated that respondent had been making progress while in Solutions for Recovery and Grace Centers of Hope. Additionally, evidence indicated that RR seemed happy to see his mother at visitation, and there were never any negative issues related to the quality of parenting time. Respondent's psychologist testified that, based on respondent's progress, he did not believe that termination of her parental rights was yet in the child's best interests. However, there was also abundant evidence that termination was in the child's best interests, and that evidence grew even after the psychologist gave his recommendation. The same psychologist who had felt, as of the time of his testimony, that termination was premature, qualified that opinion upon respondent's continued progress in maintaining sobriety. He also acknowledged that termination is better at a younger age, such as

RR's. This opinion was supported by evidence that respondent's older children were harmed by the later-age termination of her parental rights to them.

The record suggests that trial court's determination of whether termination was in the best interests of the child clearly turned on whether the court felt that respondent could obtain and maintain a sober lifestyle in the reasonably near future. Although she had shown apparent progress over the prior nine months while in a supervised setting, her history demonstrated several relapses and continued drug use even during pregnancies and despite the loss of her parental rights to other children. The psychologist testified that, when looking at respondent and her history, she posed a significant danger to her children when she relapsed or used controlled substances. Significantly, at least one of those relapses occurred subsequent to the psychologist's testimony and qualified recommendation, as respondent was not able to maintain sobriety even during the pendency of the best-interest hearings, and admitted using heroin while on an unsupervised overnight pass. As the trial court noted, respondent's psychologist recognized respondent's significant risk of relapse; that risk was realized when respondent used heroin a mere two weeks before the final termination hearing.

Upon careful review of the record we do not believe that the trial court clearly erred in finding that termination of respondent's parental rights was in the best interests of the child.

Affirmed.

/s/ Elizabeth L. Gleicher

/s/ Donald S. Owens

/s/ Mark T. Boonstra