

STATE OF MICHIGAN
COURT OF APPEALS

In re A. BRADBURN, Minor.

UNPUBLISHED
February 9, 2016

No. 327704
Clare Circuit Court
Family Division
LC No. 12-000085-NA

Before: BOONSTRA, P.J., and K. F. KELLY and MURRAY, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating his parental rights to his child, AB, under MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), MCL 712A.19b(3)(g) (failure to provide proper care and custody), and MCL 712A.19b(3)(j) (reasonable likelihood of harm). For the reasons set forth in this opinion, we affirm.¹

I. BACKGROUND

The Department of Health and Human Services (DHHS) filed a petition for child protective proceedings against respondent and AB's mother. The DHHS filed the petition after respondent allegedly threatened to kill AB's mother and physically abused the woman's daughter by another man. The trial court entered an order requiring respondent to leave the family home and have no contact with AB's mother. However, it rescinded the order upon discovery that the couple continued to live together. Both parents engaged in a treatment plan designed to address the barriers to reunification with AB.

Respondent faced criminal charges during the case relating to the act of domestic violence that gave rise to the petition. AB's mother was incarcerated after AB came forward and disclosed that she sexually abused him; allegations which she later admitted. The DHHS filed a petition to terminate both parents' parental rights to AB. While the trial court terminated the parental rights of AB's mother, the court found that the DHHS did not prove the statutory grounds with respect to respondent. The trial court determined that respondent did not have sufficient opportunities to rectify the barriers to reunification and ordered that he continue therapy.

¹ The parental rights of AB's mother were also terminated, but she has not appealed.

After respondent received more services, the DHHS again petitioned to terminate his parental rights. Petitioner adduced evidence that respondent maintained contact with AB's mother while she was incarcerated and had expressed an intention to marry her. Petitioner also adduced evidence that respondent misled his counselors about his continuing relationship and contact with AB's mother. The trial court terminated respondent's parental rights finding that his mental health problems were unresolved, and it was likely that respondent would reconnect with AB's mother after her release from prison, which would put AB in danger of continued abuse.

II. ANALYSIS

Respondent does not challenge the statutory bases on which the trial court relied in terminating his parental rights or argue that termination was not in the child's best interests. Rather, he argues that petitioner violated both his right to due process and its obligation to provide him with accommodations under the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq.* Because respondent failed to raise either argument below, we review them for plain error affecting substantial rights. *In re TK*, 306 Mich App 698, 703; 859 NW2d 208 (2014).

"The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State." *Santosky v Kramer*, 455 US 745, 753; 102 S Ct 1388; 71 L Ed 2d 599 (1982). "When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures" *Id.* at 753-754. The state violates the due process rights of a parent when it takes action with the purpose of assuring the creation of a ground for termination of parental rights and then proceeds to seek termination on that same ground. *In re B & J*, 279 Mich App 12, 19-20; 756 NW2d 234 (2008).

Respondent argues that the state violated his due process rights by rescinding the order that removed him from the family home and then using his relationship with AB's mother as a ground for terminating parental rights. It is true that the court used respondent's continued contact and potential marriage to AB's mother as a ground for termination because she had sexually abused AB. However, AB had not yet made allegations of abuse at the time the trial court rescinded the order requiring respondent to move out of the family home. Therefore, there is no way that respondent could view the court's action as a "blessing" of his relationship with AB's mother in spite of her abuse. Thus, respondent's argument that the state violated his due process rights by deliberately creating the grounds for termination is unfounded.

We also note that respondent resumed his relationship with AB's mother while she was incarcerated for sexually abusing AB. When it became clear that respondent was continuing contact with AB's mother, one of his counselors attempted to help him "move forward and . . . let go of that relationship." Thus, respondent actually received a service intended to help him end his relationship with AB's abuser. Consequently, we discern no plain error requiring reversal.

Respondent also asserts for the first time on appeal that DHHS did not tailor reunification services to his disability as required by the ADA. A disabled parent may not raise violations of

the ADA as a defense to termination of parental rights proceedings. *In re Terry*, 240 Mich App 14, 25; 610 NW2d 563 (2000). Nevertheless, the ADA requires the DHHS “to make reasonable accommodations for those individuals with disabilities so that all persons may receive the benefits of public programs and services.” *Id.* Thus, petitioner's reunification services and programs are required to comply with the ADA. *Id.*

There is no specification as to the disability that affects respondent—other than he was affected by “mental disabilities”—or any explanation of what accommodations the DHHS should have offered. However, respondent’s psychological evaluation indicated that he functions intellectually within the “average range,” has no apparent learning disabilities, and “possesses the necessary intellectual ability to make use of clinical services.” Consequently, respondent’s claim that the DHHS failed to accommodate unspecified “mental disabilities” lacks merit.

Respondent also contends that his caseworker maliciously caused confusion and distrust after the first termination hearing by failing to coordinate treatment with respondent’s various counselors and therapists. However, the caseworker agreed that respondent’s three therapists were not communicating with each other, and she testified that she was arranging a meeting with all three of them together to coordinate care.

Respondent also argues that the prosecution waited to file charges against him in order to derail his progress and make it easier to terminate parental rights. These allegations are pure speculation. Further, the court took into account the fact that respondent did not have services available to him during incarceration, and did not terminate respondent’s parental rights after the first termination hearing.²

Finally, in one sentence, respondent argues that evidence that petitioner undermined respondent’s progress might be present in two hearing transcripts dated October 29, 2012 and February 25, 2015 that are missing from the record. Respondent does not elaborate further on this point and simply speculates that evidence supporting his argument might be present in the missing transcripts. Respondent did not file a motion to settle the record, which is the proper procedure to follow when transcripts from the lower court are not obtainable. See MCR 7.210(B)(2)(a).

Affirmed.

/s/ Mark T. Boonstra
/s/ Kirsten Frank Kelly
/s/ Christopher M. Murray

² Respondent also argues that the DHHS did not accommodate or tailor services to him because it did not grant his request to have a different caseworker. However, respondent did not cite any authority to support the proposition that the DHHS must assign a new caseworker at the request of a parent.