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STATE OF MICHIGAN

COURT OF APPEALS

In re MOORE, Minors.

UNPUBLISHED
February 19, 2019

No. 344802
Wayne Circuit Court
Family Division
LC No. 18-000285-NA

Before: CAVANAGH, P.J., and BORRELLO and REDFORD, JJ.

PER CURIAM.

Respondent appeals as of right an order terminating his parental rights to his minor children, RM and RCM, under MCL 712A.19b(3)(g)[1] (failure to provide proper care or custody), MCL 712A.19b(3)(h) (children would be deprived of normal home for more than two years because of parent's incarceration), MCL 712A.19b(3)(j) (reasonable likelihood of harm if returned to custody of the parent), and MCL 712A.19b(3)(n)(*i*) and (n)(*ii*)[2] (the parent was convicted of criminal sexual conduct and continuing the parent-child relationship would be harmful to the child). We affirm.

This termination case arose because respondent sexually abused seven-year-old HF and nine-year-old DG. Respondent lived in a home with RM and RCM, their mother, HF, and other

[1] MCL 712A.19b(3)(g) was amended, effective June 12, 2018, by 2018 PA 58. The trial court entered its order terminating respondent's parental rights on June 6, 2018. Therefore, the previous version of the statute applied in this case and statutory grounds to terminate a parent's parental rights under MCL 712A.19b(3)(g) were present if "[t]he 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 and custody within a reasonable time considering the child's age."

[2] MCL 712A.19b(3)(n)(*i*) and (n)(*ii*) were amended, effective June 12, 2018, by 2018 PA 58. The amendment did not change the language of MCL 712A.19b(3)(n)(*i*) and (n)(*ii*), but moved it to MCL 712A.19b(3)(m)(*i*) and (m)(*ii*) respectively.

relatives. Respondent pleaded guilty to second-degree criminal sexual conduct (CSC-II), MCL 750.520c, with DG, and was charged with two counts of CSC-II for abusing HF. Petitioner sought termination of respondent's parental rights to RM and RCM.

Respondent makes two arguments on appeal. First, that petitioner failed to make reasonable efforts to reunify him with RM and RCM, and second, that termination of his parental rights was not in the best interests of RM and RCM. We disagree.

To preserve the issue of whether reasonable efforts were made to reunify a child with his or her family, a respondent must "object or indicate that the services provided to them were somehow inadequate" at the trial court level. *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). Respondent failed to object to his lack of a service plan at the trial court level. Thus, the issue was unpreserved.

Unpreserved issues are reviewed for plain error. *In re VanDalen*, 293 Mich App 120, 135; 809 NW2d 412 (2011). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) the error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *Id*. (quotation marks and citations omitted). "Generally, an error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings." *In re Utrera*, 281 Mich App 1, 9; 761 NW2d 253 (2008).

"[W]hen 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." *In re HRC*, 286 Mich App 444, 462; 781 NW2d 105 (2009). A petitioner, however, "is not required to provide reunification services when termination of parental rights is the agency's goal." *Id*. at 463 (citations omitted). "[T]ermination is required at the initial disposition hearing and additional reunification efforts shall not be ordered" if the requirements of MCR 3.977(E) are met. *In re Moss*, 301 Mich App 76, 91; 836 NW2d 182 (2013). MCR 3.977(E) provides:

> The court shall order termination of the parental rights of a respondent at the initial dispositional hearing held pursuant to MCR 3.973, and shall order that additional efforts for reunification of the child with the respondent shall not be made, if
>
> (1) the original, or amended, petition contains a request for termination;
>
> (2) at the trial or plea proceedings, the trier of fact finds by a preponderance of the evidence that one or more of the grounds for assumption of jurisdiction over the child under MCL 712A.2(b) have been established;
>
> (3) at the initial disposition hearing, the court finds on the basis of clear and convincing legally admissible evidence that had been introduced at the trial or plea proceedings, or that is introduced at the dispositional hearing, that one or more facts alleged in the petition:
>
> (a) are true, and

(b) establish grounds for termination of parental rights under MCL 712A.19b(3)(a), (b), (d), (e), (f), (g), (h), (i), (j), (k), (*l*), (m), or (n);

(4) termination of parental rights is in the child's best interests.

In this case, petitioner sought to terminate respondent's parental rights in the original petition because of respondent's CSC-II offenses. The trial court found by a preponderance of the evidence that there were grounds to assume jurisdiction, that clear and convincing evidence established that at least one of the statutory grounds for termination were met, and that termination of respondent's parental rights served the children's best interests. Petitioner, therefore, had no obligation to make any efforts to reunify respondent with RM and RCM. See MCR 3.977(E); *In re Moss*, 301 Mich App at 91.

We now turn to respondent's best interests argument. "Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App at 90. We review for clear error the trial court's conclusions regarding best interests. *In re Schadler*, 315 Mich App 406, 408; 890 NW2d 676 (2016). "A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *Id*. (quotation marks and citation omitted).

"The trial court should weigh all the evidence available to determine the children's best interests." *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). In considering the child's best interests, the trial court's focus must be on the child and not the parent. *In re Moss*, 301 Mich App at 87. "In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App at 41-42 (citations omitted). "The trial court may also consider a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption." *In re White*, 303 Mich App at 714. When the trial court makes its best interests determination, it may rely upon evidence on the entire record, including the evidence establishing the statutory grounds for termination. *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000), superseded by statute on other grounds as recognized in *In re Moss*, 301 Mich App at 83. Under the doctrine of anticipatory neglect, "[h]ow a parent treats one child is certainly probative of how that parent may treat other children." *In re LaFrance*, 306 Mich App 713, 730; 858 NW2d 143 (2014) (alteration in original; quotation marks and citation omitted). While the trial court should consider the needs of each child individually, it is only required to address the specific needs of each child "if the best interests of the individual children *significantly* differ." *In re White*, 303 Mich App at 715.

In this case, the trial court considered all the evidence and concluded that "the evidence is overwhelming" that respondent's parental rights should be terminated because of his CSC-II convictions and his failure to take responsibility for his actions. The trial court specifically considered respondent's excuse noted in the clinical report that HF initiated their sexual

interaction and his statement that HF was in control of the situation. The trial court concluded from this evidence that respondent "has no understanding whatsoever of appropriate sexual boundaries and will not have that in the foreseeable future." The evidence of record in the clinical report also included discussion of a video recording of respondent engaging in sexually inappropriate behavior with a minor. Based on all the evidence of record and these findings, the trial court concluded that RM and RCM "are at risk every moment [respondent] is their father." Finally, the trial court also specifically noted that RM and RCM were living with their grandmother, who qualified as a relative, and that even though this factor weighed against termination of respondent's parental rights it was "overwhelmingly countered by" respondent's guilty pleas of CSC-II.

The record reflects that the doctrine of anticipatory neglect applies in this case. *In re LaFrance*, 306 Mich App at 730. The trial court correctly concluded that respondent's sexual abuse of HF and DG was probative of how he will treat RM and RCM in the future. Further, nothing in the record indicates that the best interests of RM and RCM significantly differ, so the trial court was not required to consider their best interests individually. See *In re White*, 303 Mich App at 715.

Reviewing the matter in its entirety, we conclude that the trial court's legal conclusions were correct and factually supported.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Stephen L. Borrello
/s/ James Robert Redford