

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED  
April 19, 2011

In the Matter of PLAUNT, Minors.

No. 300028  
Roscommon Circuit Court  
Family Division  
LC No. 09-727973-NA

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Before: METER, P.J., and SAAD and WILDER, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating his parental rights to a minor child<sup>1</sup> under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). We affirm.

Respondent raises two issues concerning procedural due process. "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).

First, respondent contends that he was denied his right to procedural due process because the court did not satisfy the requirement of MCR 3.963(B)(1) to show "reasonable grounds" to believe that placement of the child with respondent would endanger the health, safety, or welfare of the child. We disagree. Contrary to respondent's claim, the court did not base its conclusion to place the child in foster care merely on respondent's criminal history. In addition to setting forth his criminal history, the petition alleged that respondent had been diagnosed with bipolar disorder and intermittent explosive anger disorder and had been involved in 13 protective services investigations. Additionally, the mother reported that respondent had perpetrated domestic violence and abuse toward the children. The caseworker confirmed that respondent had a prior substantiation of physical neglect of the child and that the mother had a personal protection order against him. In addition, the evidence showed that respondent had failed to provide support or care for the child for some time, resided outside the county with his girlfriend,

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<sup>1</sup> This matter initially involved two children, but the younger child was found not to be respondent's biological or legal child in a divorce judgment entered during these proceedings, although he remained the child's "equitable parent." The younger child's biological father and the children's mother released their parental rights. Although both children's names appear on the order terminating respondent's parental rights, the court mentioned only the older child in its opinion.

had no income, was living on food stamps, was about to become a full-time student, and provided no evidence that he had a suitable home for the child. This evidence was sufficient to support the court's finding that there were reasonable grounds to believe that placement with respondent would endanger the health, safety, or welfare of the child.

Second, respondent contends that the trial court erred and violated his procedural due process rights because it failed to follow the requirements of the Indian Child Welfare Act. We disagree. Under 25 USC 1903(4), an "Indian child" is "any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) . . . eligible for membership in an Indian tribe and . . . the biological child of a member of an Indian tribe." See also MCR 3.002(5). The trial court properly questioned respondent and the child's mother concerning membership or eligibility for membership in an Indian tribe or band. The child's mother indicated that the child did not belong to any Indian tribe or band. Respondent's vague statement that he had "Indian in my family" but did not know if he was a member or eligible for membership in any Indian tribe or band was not sufficient to put the court on notice that the child was a member or eligible for membership in an Indian tribe or band. The fact that respondent may have had some Indian heritage did not make him an "Indian" under 25 USC 1903(3) and did not qualify the child as an "Indian child" under 25 USC 1903(4). See, e.g., *In re Johanson*, 156 Mich App 608, 613-614; 402 NW2d 13 (1986). The trial court did not err in concluding that the child was not a member or eligible for membership in an Indian tribe or band. Respondent was not denied his procedural due process rights.

Next, respondent contends that there was not clear and convincing evidence to support the statutory grounds for termination. We disagree. 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).

Other than the psychological evaluation, respondent did not comply with the terms and conditions of the case service plan, failed to exercise his parenting time, provided no support for the child, was uncooperative and extremely unappreciative of the services and assistance that were provided to him, and did not even appear for many hearings. There was clear and convincing evidence to support the court's conclusion that respondent had made no progress toward eliminating the conditions that led to the adjudication and there was no reasonable likelihood that they would be rectified within a reasonable time considering the child's age. MCL 712A.19b(3)(c)(i).<sup>2</sup> Following the psychological evaluation, additional recommendations were made to rectify other conditions. The record shows that respondent made no attempt to rectify those conditions. Therefore, the trial court also did not clearly err in finding clear and convincing evidence to support termination under MCL 712A.19b(3)(c)(ii).

"[A] parent's failure to comply with the parent-agency agreement is evidence of a parent's failure to provide proper care and custody for the child," *In re JK*, 468 Mich 202, 214;

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<sup>2</sup> Only one statutory basis need be established in support of termination, see *McIntyre*, 192 Mich App at 50, but, for the sake of completeness, we will address additional bases.

661 NW2d 216 (2003), and can be a valid indication of neglect, *In re Trejo*, 462 Mich 341, 361 n 16; 612 NW2d 407 (2000). Respondent had no suitable home and no income, was in serious arrearage of his support obligation, had not complied with any services other than the psychological evaluation, had not maintained contact with the worker or his attorney, had not attended many court hearings (including the termination hearing), and had not even visited his child in the year before the termination. Thus, the trial court did not clearly err in finding clear and convincing evidence to support termination of respondent's parental rights under MCL 712A.19b(3)(g). In addition to respondent's failure to comply with the case service plan, there was evidence of prior criminal behavior, domestic violence, perceived threatening behaviors and anger issues when dealing with the workers and volunteers, refusal to participate in services, and lack of financial support for and contact with his son. Therefore, the trial court did not clearly err in finding clear and convincing evidence to support termination of respondent's parental rights under MCL 712A.19b(3)(j).

Respondent also contends that the court erred in terminating his parental rights because petitioner did not provide him with services reasonably designed to help him rectify the problems that led to the adjudication. MCL 712A.19f(1), (2), and (4); *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). We disagree. The record is replete with petitioner's efforts to provide services to respondent. Because respondent had moved so far from the visitation site and had no income, petitioner accommodated him by offering two hours' visitation every other week and providing reimbursement for gas. However, respondent used that reimbursement money for other expenses. Petitioner then provided him with transportation to visitation. Respondent's intimidating behavior toward the transporter caused the loss of that service. Respondent was notified several times by Catholic Charities but never contacted them for the counseling, parenting, and anger management classes they could provide. Respondent refused to cooperate with petitioner and refused to participate in services. Most importantly, he did not maintain contact with his son and did not attend visitation for over a year before the termination hearing. The record clearly supports the court's conclusion that petitioner complied with its statutory duty to provide adequate services reasonably designed to help respondent reunify with his child. The trial court did not clearly err in its findings. MCR 3.977(K); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999).

Finally, respondent contends that he was denied the effective assistance of counsel. In order to demonstrate that he has been denied the effective assistance of counsel, a respondent must establish (1) that the performance of his counsel was below an objective standard of reasonableness under prevailing professional norms, and (2) a reasonable probability that, in the absence of counsel's unprofessional errors, the outcome of the proceedings would have been different. *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001); *Matter of Trowbridge*, 155 Mich App 785, 786; 401 NW2d 65 (1986). The respondent must also demonstrate that the proceedings were fundamentally unfair or unreliable. *People v Rodgers*, 248 Mich App 702; 645 NW2d 294 (2001). Because respondent failed to move for a hearing or a new trial on the basis of ineffective assistance of counsel, this Court's review is limited to errors apparent on the record. *People v Rodriguez*, 251 Mich App 10, 38; 650 NW2d 96 (2002).

Respondent's contention that he was denied effective assistance of counsel because his counsel failed to demand services that were designed to reasonably accommodate him is without merit. All along, respondent told the workers that he did not need services and would not

participate in them. Respondent has not identified what services his attorney should have recommended with which he would have complied. Respondent also contends that his attorney made insufficient arguments and failed to challenge the exhibits or testimony presented against respondent. Our review of the record finds no apparent errors and no evidence that counsel's performance was below an objective standard of reasonableness. Moreover, given respondent's prior history and his conduct during this case, his failure to comply with services, his negative attitude, his failure to visit his child for over a year before trial, the fact that his child felt no bond with him, his failure to provide financial support, and his failure to communicate with his attorney or present himself at trial, we find no reasonable probability that the outcome of the proceedings would have changed if his attorney had acted differently.

Affirmed.

/s/ Patrick M. Meter  
/s/ Henry William Saad  
/s/ Kurtis T. Wilder