

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ALLEN, Minors.

UNPUBLISHED
July 29, 2014

No. 318536
Macomb Circuit Court
Family Division
LC No. 2011-000320-NA

Before: BOONSTRA, P.J., and METER and SERVITTO, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating his parental rights to two minor children under MCL 712A.19b(3)(c)(i) and (g). We affirm.

Respondent contends that the trial court clearly erred in finding clear and convincing evidence to support the statutory grounds for termination. See MCR 3.977(K) and *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). We disagree.

The conditions that led to the adjudication were extremely poor housing and neglect of the children. The family had been provided numerous services. Their prior home had been condemned. The Department of Human Services (DHS) had assisted the family with obtaining a new home, beds, and other supplies, and the family received three intensive in-home programs. However, within approximately four months the new home was in deplorable condition, with fecal matter in many places, and the children were severely neglected, without proper clothing or supervision.

After the children were removed, respondent signed a parent-agency agreement and agreed to (1) obtain and maintain emotional stability, (2) obtain and maintain a substance-free lifestyle, (3) maintain the parent-child bond through consistent visitation, (4) obtain and maintain appropriate parenting skills, (5) maintain a legal source of income, (6) to maintain a safe and suitable home environment for six or more consecutive months, and (7) maintain a working relationship with the DHS. The termination hearing was held two years later. The record reveals that respondent had maintained a legal source of income. He had maintained the parent-child bond through fairly consistent visitation. However, although he had completed parenting classes, he demonstrated an inability to redirect inappropriate behavior by his children. A foster-care worker testified that respondent was inconsistent in demonstrating his parenting skills. In addition, respondent had been offered unsupervised visitation, but he never took advantage of the opportunity to take his children by himself. Thus, he had never demonstrated an ability to actually parent them without supervision. There was testimony that he only attended two

supervised visitations without the mother and had a tendency to leave the parenting behavior to her.

Respondent did not consistently attend therapy or follow up with a referral for “CARE” counseling. Moreover, rather than consistently attend Al-Anon and thus attempt to learn how to deal with a substance abuser (the child’s mother), he provided unverifiable documentation of his attendance. Respondent continued to stay with a substance abuser without adequately addressing his codependency issues. We note that respondent and the mother only separated right before the termination hearing. In addition, a foster-care worker had heard information about respondent getting on a waiting list for Section 8 housing; he did not have a safe and suitable home for the children, despite his mother’s last-minute claim that he and the children could live with her. In addition, respondent had failed to maintain consistent communication with the DHS.

The record shows that respondent did not take sufficient initiative or responsibility to get his life in order so that he could become a proper parent. Accordingly, we find that the conditions that led to the adjudication continued to exist and, given the passage of nearly two years since the adjudication, respondent demonstrated that there was no reasonable likelihood that he would rectify those conditions within a reasonable time considering the children’s ages. 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)(c)(i).

When the children were removed from their deplorable home in neglected condition, it was clear that respondent had not been able or willing to provide them with proper care or custody. After nearly two years of insufficient compliance with services, respondent demonstrated that he would not or could not prepare himself to adequately parent his children or accept the responsibilities of a parent. Although offered the opportunity to spend unsupervised time with his children, he did not do so. Instead, he was content to visit them during supervised visitations with the mother. He had no home that was suitable for the children. Based on his conduct over the time that the children were in foster care, there was no reasonable expectation that respondent would be able to provide proper care or custody for his children within a reasonable time. 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).

Respondent contends that the trial court clearly erred in finding that termination of his parental rights was in the best interests of the children. See MCL 712A.19b(5) and *In re Trejo*, 462 Mich 341, 356-367; 612 NW2d 407 (2000). We disagree. The record reveals that respondent had never really parented his children. He visited them, but never took them out on his own. He did not sufficiently benefit from parenting classes and was unable to redirect their behaviors. Although he argues that he was in complete compliance with his parent/agency agreement, the facts belie this assertion, as discussed above. The record reveals that he was not ready or able to care for the children.

The children had been in foster care for two years. The children have special needs and need permanency and stability. They need structure and discipline. They need to be taken to therapy and other appointments. Respondent demonstrated that he did not have a serious commitment to them. The trial court did not clearly err in finding that termination of respondent’s parental rights was in the best interests of the children.

Respondent also contends that his due-process rights were violated because the court failed to comply with MCR 3.977(H)(1)(b), regarding the timing of the termination hearing. The record discloses that respondent specifically requested and agreed to the adjournment, thereby waiving the time requirement and extinguishing any error. See *People v Carter*, 462 Mich 206, 216; 612 NW2d 144 (2000), and *Grant v AAA Michigan Wisconsin, Inc*, 272 Mich App 142, 148; 724 NW2d 498 (2006). In any case, the court rules provide no sanctions for a violation of MCR 3.977(H)(1)(b). See, e.g., *In re Jackson*, 199 Mich App 22, 28-29; 501 NW2d 182 (1993). In addition, we find that respondent suffered no prejudice from the adjournment. In fact, he benefited from the delay in that it gave him additional time to attempt to comply with the requirements of the parent-agency agreement before the termination hearing. *Id.* at 29. Respondent was provided a full hearing and an opportunity to be heard before the termination of his parental rights. His due-process rights were not violated.

Respondent also contends that his parental rights should not have been terminated because the DHS failed to make reasonable efforts to facilitate reunification. See *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010), and *In re Frey* 297 Mich App 242, 247; 824 NW2d 569 (2012); MCL 712A.19a(2). “When a child is removed from a parent’s custody, the agency charged with the care of the child is required to report to the trial court the efforts made to rectify the conditions that led to the removal of the child.” *In re Plump*, 294 Mich App 270, 272; 817 NW2d 119 (2011). However, “[w]hile the DHS has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of [a respondent] to participate in the services that are offered.” *Frey*, 297 Mich App at 248. We note that respondent did not specifically raise this issue in the trial court. Therefore, to obtain relief, he must demonstrate a plain error and show that the outcome of the proceedings would have been different in the absence of the plain error. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

The record does reveal that the referees expressed frustration concerning the performances of the DHS workers in this case. Nevertheless, we note that respondent knew from the beginning what he was required to do for reunification. He was present at all court hearings. There is no indication in the record that respondent lacked the cognitive skills to understand and comply with the court’s orders or to understand the pertinent issues in the case. Moreover, even if some DHS workers were lax in certain respects, there were still numerous referrals for services and attempts to aid in reunification. As discussed above, respondent did not adequately comply with and benefit from services. Again, respondent had the responsibility to participate in the services that were offered. *Frey*, 297 Mich App at 248. Respondent cannot demonstrate that, but for the alleged errors on the part of the DHS, he would not have had his parental rights terminated.

Affirmed.

/s/ Mark T. Boonstra
/s/ Patrick M. Meter
/s/ Deborah A. Servitto