

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of T N PURSIFULL, Minor.

UNPUBLISHED
August 26, 2014

No. 318880
Wayne Circuit Court
Family Division
LC No. 13-513981-NA

Before: MURPHY, C.J., and WHITBECK and TALBOT, JJ.

PER CURIAM.

Respondent father, J. Pursifull, appeals as of right the trial court's order terminating his parental rights to his minor child under MCL 712A.19b(3)(b)(i) (parent's act caused physical injury), (g) (failure to provide proper care and custody), (i) (parent's rights to siblings terminated), and (j) (likelihood of harm to the child if returned to the parent). We affirm.

I. FACTS

A. BACKGROUND FACTS

On September 9, 2013, the Department of Human Services (the Department) petitioned the trial court to take jurisdiction over the child and terminate Pursifull's parental rights at the initial dispositional hearing. The Department alleged that (1) the child tested positive for marijuana and cocaine at birth, and (2) a Kentucky court had terminated Pursifull's parental rights to the child's three siblings after he failed to comply with the services that Kentucky Children's Protective Services provided to him. At the preliminary hearing on August 19, 2013, Pursifull stated that he had enrolled in a substance abuse program and wished to work with the foster care worker.

B. ADJUDICATION AND INITIAL DISPOSITION

Neither Pursifull nor K. Marion, the child's mother, appeared at the combined adjudication trial and dispositional hearing on October 4, 2013. Before trial, the Department indicated that it was not requesting a separate hearing on the child's best interests. Pursifull's counsel requested a separate best-interests hearing. The trial court ruled that the Department could present evidence about the child's best interests at the adjudication.

Jennifer Johnston, a Child Protective Services worker, testified that the child tested positive for marijuana and cocaine when she was born. According to Johnston, she spoke with

Pursifull and Marion in the hospital. Pursifull admitted that he was aware Marion smoked marijuana while pregnant but he was not concerned about it. He denied knowing that Marion used cocaine, and Marion denied using cocaine. Pursifull repeatedly stated that he supported marijuana, but he did not have a medical marijuana card. Marion admitted that she smoked marijuana while pregnant.

According to Johnston, Pursifull's other children were placed in foster care in Kentucky after Pursifull and Marion engaged in domestic violence, went to jail, and left no one to care for the children. Pursifull and Marion also had substance abuse issues. Neither Pursifull nor Marion knew that the Kentucky court had terminated their parental rights to the siblings, but they admitted that they left the children in Kentucky. They told Johnston that they moved to Michigan to be near relatives. Pursifull informed Johnston that he was a self-employed electrician and had suitable housing.

The Department offered three of the Kentucky court's documents—three judgments, a statement of findings of fact, and a statement of conclusions of law—into evidence. Pursifull's counsel challenged the admission of the documents on hearsay grounds. The trial court ruled that the documents were admissible under the rule of completeness. The Kentucky documents indicated that Pursifull had repeatedly failed to provide essential parental care for his children, had abandoned them for at least 90 days, and did not significantly improve his parental conduct.

Johnston testified that Pursifull seemed interested in completing a treatment plan. She gave Pursifull the foster care worker's name and phone number, but Pursifull failed to call the foster care worker. Pursifull told Johnston to contact them through E. Marion, the child's aunt, with whom the Department placed the child. E. Marion informed Johnston that she did not have any contact with Pursifull, except when he appeared at two parenting time visits in August. Johnston sent a letter to Pursifull's address in September, in which she asked him to contact her for a home assessment. Pursifull did not respond. Johnston also went to Pursifull's home, but no one answered. Johnston left a card requesting that Pursifull call her, but he did not. Johnston testified that the foster care worker also was unable to get in contact with Pursifull.

According to Johnston, the child was doing well with E. Marion, and E. Marion was an appropriate and loving caregiver who was willing to adopt the child. Johnston testified that an adoption would be better for the child than a guardianship because the child was a newborn and needed the stability that an adoption would provide.

C. THE TRIAL COURT'S FINDINGS AND CONCLUSIONS

The trial court found that a Kentucky court terminated Pursifull's parental rights to the child's siblings and that he was convicted of endangering the welfare of a child in Kentucky less than six months before the adjudication. It found that the child was born with marijuana and cocaine in her system. Reasoning that Pursifull did not "see anything wrong with their use of marijuana" and was "a self-described marijuana advocate," the trial court found that Pursifull would continue to use marijuana, put the child in danger, and deprive her of a stable home. The trial court also found that Pursifull had moved to Michigan and abandoned his other children in Kentucky and did not have a stable home.

The trial court also found that terminating Pursifull’s parental right was in the child’s best interests. The trial court found that Pursifull had “shown a lack of interest in being involved in the child’s life” and had not made efforts to bond with the child. The trial court found that a guardianship was not appropriate because of the “overall disinterest in the child’s life, that the parents have shown,” and because of the lack of parental visitation. The trial court assumed jurisdiction over the child and terminated Pursifull’s parental rights.

II. KENTUCKY DOCUMENTS

A. STANDARD OF REVIEW

This Court reviews de novo questions of law concerning the admissibility of evidence.¹

B. LEGAL STANDARDS

The trial court may terminate the parents’ parental rights at the initial dispositional hearing under limited circumstances.² In order to do so, the trial court must find on the basis of “clear and convincing *legally admissible* evidence” that the facts in the petition are true and establish a statutory basis for terminating the parent’s parental rights.³

Hearsay is generally inadmissible, unless it is subject to a hearsay exception.⁴ The rule of completeness provides that, “[w]hen a writing . . . is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing . . . which ought in fairness to be considered contemporaneously with it.”⁵

C. APPLYING THE STANDARDS

Pursifull contends that the trial court erred by admitting the Kentucky court documents under the rule of completeness. The Department and the child’s guardian ad litem concede that the evidence was not admissible under the rule of completeness, but contend that the error was harmless. We agree with the Department and guardian ad litem.

This Court will not modify the trial court’s orders on the basis of a harmless error.⁶ The erroneous admission of evidence is harmless when it did not prejudice the party against whom it

¹ *People v Layher*, 464 Mich 756, 761; 631 NW2d 281 (2001).

² MCR 3.977(E).

³ MCR 3.977(E)(3) (emphasis supplied); *Utrera*, 281 Mich App at 15-16.

⁴ MRE 802.

⁵ MRE 106.

⁶ MCR 2.613(A).

was admitted.⁷ An error prejudices a party if it affects the outcome of the lower court proceedings.⁸

Here, the trial court could have simply taken judicial notice of the Kentucky court's findings and conclusions because the accuracy of signed and sealed court documents cannot be reasonably questioned.⁹ Thus, the Kentucky court's documents were admissible and Pursifull cannot establish that their admission prejudiced him. We will not reverse a trial court's decision if the decision did not prejudice the complainant.

We conclude that the trial court's statement that the documents were admissible under the rule of completeness constituted harmless error.

III. REASONABLE EFFORTS

A. STANDARD OF REVIEW

This Court reviews for clear error the trial court's finding that the Department engaged in reasonable efforts to reunify a child with his or her parent.¹⁰ A finding is clearly erroneous if this court is definitely and firmly convinced that the trial court made a mistake.¹¹

B. LEGAL STANDARDS

A parent has a fundamental liberty interest in the care and custody of his or her children under the Fourteenth Amendment of the United States Constitution.¹² The trial court must make reasonable efforts to reunify a child with his or her family unless aggravating circumstances are present, such as when "[t]he parent has had rights to the child's siblings involuntarily terminated."¹³ The Department need not provide services to a family when it does not intend to reunify the child with the parents.¹⁴

⁷ See *People v Rodriquez*, 216 Mich App 329, 333; 549 NW2d 359 (1996).

⁸ *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

⁹ See MRE 201; *Sturgis v Sturgis*, 302 Mich App 706, 712; 840 NW2d 408 (2013) (taking judicial notice of previous court opinions).

¹⁰ *In re Mason*, 486 Mich 142, 152, 166; 782 NW2d 747 (2010).

¹¹ *Id.*

¹² *Santosky v Kramer*, 455 US 745, 753; 102 S Ct 1388; 71 L Ed 2d 599 (1982).

¹³ MCL 712A.19a(2)(c); *Mason*, 486 Mich at 152.

¹⁴ *In re HRC*, 286 Mich App 444, 463; 781 NW2d 105 (2009). See MCL 712A.18f(1)(b).

C. APPLYING THE STANDARDS

Pursifull contends that termination was inappropriate because the Department did not engage in reasonable efforts to reunify him with the child. We disagree.

Here, a Kentucky court had terminated Pursifull's parental rights to the child's siblings. The Department indicated in its initial petition that it sought to terminate Pursifull's parental rights. Accordingly, the Department did not need to engage in reasonable efforts to reunify Pursifull with his child because aggravating circumstances were present and it did not intend reunification.

IV. STATUTORY GROUNDS

A. STANDARD OF REVIEW

This Court reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination.¹⁵

B. LEGAL STANDARDS

The Department has the burden to prove at least one statutory ground for termination by clear and convincing evidence.¹⁶ MCL 712A.19b(3)(b) provides that the trial court may terminate a parent's rights if

The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(i) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home. . . .

MCL 712A.19b(3)(g) provides that the trial court may terminate a parent's rights 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.

MCL 712A.19b(3)(i) provides that the trial court may terminate a parent's rights if

¹⁵ MCR 3.977(K); *Mason*, 486 Mich at 152.

¹⁶ MCL 712A.19b(3); *In re Trejo Minors*, 462 Mich 341, 355; 612 NW2d 407 (2000).

[p]arental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.

And MCL 712A.19b(3)(j) provides that the trial court may terminate parental rights if

[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

The trial court may properly consider the parent's substance abuse when determining whether it is reasonably likely that the child will be harmed if returned to the parent's home.¹⁷

C. APPLYING THE STANDARDS

Pursifull contends that the trial court erred when it found that the Department proved statutory grounds supporting the termination of his parental rights. We conclude that the Department proved at least one statutory ground by clear and convincing evidence.

Johnston testified that Pursifull told her that he was aware that Marion was smoking marijuana while pregnant. The child tested positive for marijuana and cocaine when she was born. Johnston testified that Pursifull advocated for the use of marijuana and did not comply with his substance abuse treatment plan in Kentucky. And Pursifull's rights to the child's siblings were terminated in Kentucky because he failed to benefit from services offered to him and abandoned the children. Johnston and the child's foster care worker repeatedly attempted to contact Pursifull, but he never responded.

Given this evidence, we are not definitely and firmly convinced that the trial court made a mistake when it found that the Department proved grounds for termination under MCL 712A.19b(3)(g), (i), or (j). The Kentucky court terminated Pursifull's rights to the child's siblings after it unsuccessfully attempted to rehabilitate him. And Pursifull's chronic and continued drug use and failure to contact the foster care worker made it reasonably likely that the child would be harmed if returned to his home and that Pursifull would be unable to provide the child proper care and custody within a reasonable time.

V. THE CHILD'S BEST INTERESTS

A. MERGED HEARINGS

Pursifull contends that the trial court erred when it merged the adjudicative and best-interest phases of the proceedings. Pursifull does not provide any legal support for, or analysis

¹⁷ See *In re AH*, 245 Mich App 77, 87; 627 NW2d 33 (2001).

of, this asserted error. Accordingly, we conclude that he has abandoned this argument by failing to support it.¹⁸

B. THE TRIAL COURT'S BEST INTERESTS ANALYSIS

1. STANDARD OF REVIEW

The trial court must terminate a parent's parental rights if "the Department has established a statutory ground for termination by clear and convincing evidence and it finds from a preponderance of evidence on the whole record that termination is in the children's best interests."¹⁹ We review for clear error the trial court's determination.²⁰

2. LEGAL STANDARDS

The trial court should weigh all the available evidence to determine a child's best interests.²¹ To determine whether termination of a parent's parental rights is in a 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."²² The trial court may also consider a parent's history of domestic violence, the parent's visitation history, the child's well-being while in care, and the possibility of adoption.²³

3. APPLYING THE STANDARDS

Pursifull contends that the trial court erred when it found that it was in the child's best interests to terminate his parental rights. We disagree.

Here, the trial court considered a wide variety of factors before finding that termination was in the child's best interests. The trial court considered Pursifull's failure to become involved in proceedings, the child's lack of bond to him, and his poor visitation history. The trial court found that Pursifull's home was unstable and the child needed stability. The trial court considered Pursifull's history of substance abuse. Finally, the trial court considered that the child's current caretaker wished to adopt her. Given Pursifull's lack of involvement in the child's life, his history, and Johnston's testimony, we are not definitely and firmly convinced that

¹⁸ See *In re CR*, 250 Mich App 185, 199; 646 NW2d 506 (2001).

¹⁹ MCL 712A.19b(5); *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014)..

²⁰ MCR 3.977(K); *Trejo*, 462 Mich at 355-356.

²¹ *Trejo*, 462 Mich at 356-357.

²² *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted).

²³ *White*, 303 Mich App at 714.

the trial court made a mistake when it concluded that terminating Pursifull's parental rights was in the child's best interests.

VI. CONCLUSION

We conclude that the trial court did not err by terminating Pursifull's parental rights without engaging in efforts to reunify him with the child and that the trial court's admission of the evidence that Pursifull's right to the child's siblings under the rule of completeness was harmless error. We also conclude that the trial court did not clearly err when it found that statutory grounds supported terminating Pursifull's parental rights and that termination was in the child's best interests.

We affirm.

/s/ William B. Murphy
/s/ William C. Whitbeck
/s/ Michael J. Talbot