

STATE OF MICHIGAN
COURT OF APPEALS

In re L.M. Ferrell, Minor.

UNPUBLISHED
February 26, 2015

No. 322834
Kent Circuit Court
Family Division
LC No. 13-050953-NA

Before: BECKERING, P.J., and BORRELLO and GLEICHER, JJ.

PER CURIAM.

Respondent father appeals as of right the trial court’s order terminating his parental rights to the minor child following his voluntary release of those rights. We affirm.

Child Protective Services became involved in respondent father and mother’s care of the minor child in approximately September of 2012, and the first petition in this case was filed on April 1, 2013. On May 30, 2014, after a host of services were provided or recommended to respondent, petitioner filed a supplemental petition seeking termination of both parents’ rights based on several grounds under MCL 712A.19b(3). A termination hearing was held on June 27, 2014. Rather than proceed with the termination hearing, respondent consented to termination of his parental rights pursuant to a “difficult and loving” amendment to the petition. In particular, respondent admitted that he was “unable to provide a safe, stable, non-neglectful home environment for his child, and will be unable to do so within a reasonable time.” Thus, he agreed that it was in the child’s best interests for him to release his parental rights.¹

Respondent now contends that the order terminating his parental rights must be reversed because petitioner failed to make reasonable efforts to reunify him with the minor child. We review this unpreserved issue for plain error affecting substantial rights. *In re VanDalen*, 293 Mich App 120, 135; 809 NW2d 412 (2011).

“When a child is removed from a parent’s custody, the agency charged with the care of the child is [usually] 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). “The adequacy of the petitioner’s efforts to provide services may bear on whether there

¹ The child’s mother also voluntarily relinquished her parental rights. She has not appealed.

is sufficient evidence to terminate a parent's rights." *In re Rood*, 483 Mich 73, 89; 763 NW2d 587 (2009). "[A trial] court is not required to terminate parental rights if the State has not provided to the family of the child . . . such services as the State deems necessary for the safe return of the child to the child's home." *Id.* at 104 (internal quotations and citation omitted). "While the DHS has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of [the parent] to participate in the services that are offered." *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012).

Respondent does not challenge the adequacy of the agency's efforts to provide services to address his ongoing substance abuse, domestic violence, and parenting issues. Rather, he asserts only that the agency failed to provide him with sufficient services pertaining to his emotional stability. Respondent told his caseworker early on that he had endured a traumatic past, and he requested services to address that issue. In response, the agency referred him for a psychological examination. Respondent was ultimately diagnosed with a mood disorder, a panic disorder, and residual features of post-traumatic stress disorder. The examining psychologist recommended that he be referred for mental health services and an evaluation for psychiatric medication.

Following the psychological evaluation, the agency referred respondent for numerous services to address his mental health. Specifically, he was referred to Network 180 for a medication evaluation in October 2013. While respondent apparently contacted Network 180, he subsequently neglected to participate in a mental health evaluation for several months, despite Network 180's indication that such an evaluation was necessary before medication could be prescribed. It was not until June 4, 2014—after petitioner had been directed to file the supplemental petition for termination—that respondent informed the agency that he had participated in a mental health evaluation at Network 180. Network 180 apparently referred respondent to a primary care physician for medication, but there is no indication in the record that respondent followed through on that referral. Network 180 also referred respondent to counseling services at Family Outreach, but again, there is no indication that he followed through with that referral.

In addition to Network 180, the agency referred respondent for a number of other services to address his mental health. First and foremost, respondent was encouraged to participate in individual counseling sessions at the YWCA, which, although primarily designed to address his domestic violence issue, also incorporated a mental health aspect. Respondent's attendance at these counseling sessions was inconsistent after October 2013, and he had no contact whatsoever with the YWCA in April or May of 2014. Additionally, respondent was referred to Arbor Circle following a substance abuse assessment for the stated purpose of providing counseling services to address his use of marijuana as a coping mechanism for his traumatic past. Respondent failed to appear for his initial appointment at Arbor Circle on March 27, 2014. Eventually, he did participate in an intake appointment at Arbor Circle on April 30, 2014—again, after the trial court had directed petitioner to file the supplemental petition—but subsequently participated in only two counseling sessions before failing to appear for a third. There is no indication in the record that respondent had any further contact with Arbor Circle. Finally, respondent was referred to Bethany Christian Services for mental health counseling and an evaluation for medication in December 2013. He was assigned an individual counselor and informed that he could participate in this counseling if he did not feel his other counseling services were sufficiently addressing his mental health concerns. An appointment for this

service was thereafter scheduled for January 27, 2014, but respondent failed to appear, and there is no indication that he had any further contact with Bethany Christian Services in regard to these counseling services.

As the record thus makes clear, respondent was referred to numerous services to address his mental health issues. Respondent failed to meet his “commensurate responsibility” to participate in those services. *In re Frey*, 297 Mich App at 248. Finally, we reject respondent’s contention that the agency failed to address issues of insurance and affordability. Petitioner expressly referred respondent to Network 180 *because* he lacked insurance. And, the record indicates that the reason for respondent’s lack of participation was attributable to his own actions and inactions, rather than to issues of affordability and insurance. The agency made reasonable efforts, and there was no plain error.

Respondent also contends that the order terminating his parental rights must be reversed because his consent to termination was not made knowingly and voluntarily. We again review this unpreserved issue for plain error affecting substantial rights. *In re VanDalen*, 293 Mich App at 135.

The release of parental rights must be “knowingly and voluntarily made.” *In re Burns*, 236 Mich App 291, 292; 599 NW2d 783 (1999). The record in this case establishes that respondent’s release was knowing and voluntary. Before accepting the release, the trial court elicited from respondent’s attorney that the attorney had discussed the matter with respondent in depth, and that the attorney was “confident that [respondent] understands what he’s doing.” Counsel emphasized to the trial court that the decision was “not easy for [respondent] but he thinks it’s the right decision for his [child].” The trial court asked respondent if he needed more time to discuss the matter with his attorney, but respondent answered in the negative. The trial court then properly advised respondent of a non-exhaustive list of rights respondent would be giving up by signing the release. Respondent expressed his understanding of those rights. This colloquy established that respondent understood the gravity of his decision to release his parental rights, and that he made the decision voluntarily.

Respondent nonetheless argues that his release was not knowing and voluntary because he was not competent to execute the release given his mental health issues. Respondent suggests that the trial court should have *sua sponte* inquired further into his competency. We disagree. In termination proceedings, this Court adopts the standards used to evaluate competency in criminal proceedings. A defendant who is incompetent may not be tried. *Godinez v Moran*, 509 US 389, 396; 113 S Ct 2680; 125 L Ed 2d 321 (1993). See also MCL 330.2022(1). However, defendants are presumed to be competent. *People v Abraham*, 256 Mich App 265, 283; 662 NW2d 836 (2003). Thus, where the defendant does not raise the issue of his competency before the trial court, “the trial court ha[s] no duty to *sua sponte* order a competency hearing,” *People v Inman*, 54 Mich App 5, 12; 220 NW2d 165 (1974), unless facts are brought to the trial court’s attention “which raise a ‘bona fide doubt’ as to the defendant’s competence[.]” *People v Harris*, 185 Mich App 100, 102; 460 NW2d 239 (1990).

As noted above, respondent was diagnosed with a mood disorder, a panic disorder, and residual post-traumatic stress disorder. However, there is absolutely no indication in the record that these illnesses rendered respondent incompetent to relinquish his parental rights. In fact, to

the contrary, reports from the caseworkers and respondent's examining psychologist noted that respondent demonstrated a rational understanding of the issues they discussed with him. Moreover, respondent's interactions with the trial court at the termination hearing did not reveal someone who was laboring under a cognitive impairment affecting his competency, but rather an individual with a rational understanding of the issues. And, according to counsel's representations at the termination hearing, respondent stated that the decision to terminate his parental rights was a difficult one, but respondent ultimately believed it was in his child's best interests. Counsel's statements tend to show that respondent was able to grapple with, and comprehend, the decision he made. Thus, where respondent did not raise the issue of his competency at the termination hearing, and where the evidence did not raise a "bona fide doubt" about his competency, *Harris*, 185 Mich App at 102, the trial court did not have a duty to *sua sponte* inquire into respondent's competency. There is no basis for invalidating respondent's consent to terminate his parental rights.

Affirmed.

/s/ Jane M. Beckering
/s/ Stephen L. Borrello
/s/ Elizabeth L. Gleicher