

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of J.S.C. and R.C. III, Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ROBERTO COLON II,

Respondent-Appellant.

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UNPUBLISHED

April 13, 2010

No. 293845

Oakland Circuit Court

Family Division

LC No. 04-688108-NA

Before: JANSEN, P.J., and CAVANAGH and K. F. KELLY, JJ.

PER CURIAM.

Respondent appeals by right the trial court order terminating his parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

The trial court did not clearly err in finding that statutory grounds existed to terminate respondent's parental rights. On appeal from termination of parental rights proceedings, this Court reviews the trial court's findings under the clearly erroneous standard. MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). 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).

There was clear and convincing evidence to support all three statutory grounds for termination. At the adjudication, respondent was incarcerated. At the termination hearing, respondent was again incarcerated, albeit for the lesser crime of violating the curfew imposed as part of his parole. Regardless of the crime, his incarceration prevented respondent from completing or complying with the requirements of the parent/agency agreement. Despite early progress, after two years of services and opportunities, respondent was essentially in the same position as when this proceeding began. Failure to comply with the requirements of the parent/agency agreement is evidence of respondent's failure to provide proper care and custody for the children. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003); *In re Trejo*, 462 Mich 341, 360-363; 612 NW2d 407 (2000). He had not obtained employment and refused to accept several offers of steady employment because he did not "like" the jobs offered. Thus, he turned down opportunities for steady income, required in order to provide proper care and custody for

his children. Respondent demonstrated that he did not benefit from the programs and services offered to him when he reverted to his criminal lifestyle and used cocaine, absconded from parole, drove a car without permission, and stayed out after his curfew. Finally, the fact that respondent had no history of child abuse was not sufficient to conclude that his children would not be harmed if returned to his care. Respondent demonstrated that he could not take care of himself, let alone two minor children. His willful disregard for the rules of his parole resulted in a return to prison at the time of the termination hearing. Respondent's conduct supported the court's conclusion that there was a reasonable likelihood that the children would be harmed if placed in respondent's care.

Respondent contends that he was denied his due process rights because the DHS and the court failed to provide him with an initial service plan. Respondent's failure to preserve this issue for appeal by an objection in the trial court requires him to demonstrate plain error that affected his substantial rights. See *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999). Respondent bases his due process argument on *In re Rood*, 483 Mich 73, 95-96; 763 NW2d 587 (2009), where the court held, in pertinent part, "Within 30 days of the child's placement, and before the court may enter an order of disposition in a proceeding under § 2(b), the petitioning agency -- here the DHS -- must provide an initial service plan." This holding is supported by the requirements in MCR 3.965(E)(1), MCL 712A.13a(8)(a), and MCL 712A.18f(2).

However, even if respondent was not provided with an "initial service plan" within 30 days of the children's placement, he has wholly failed to demonstrate how this purported plain error affected his substantial rights. "The fundamental requisite of due process of law is the opportunity to be heard." *In re Rood*, 483 Mich at 92, citing *Grannis v Ordean*, 234 US 385, 394; 34 S Ct 779; 58 L Ed 1363 (1914). Here, respondent was notified of every hearing. He was present at every hearing, either by telephone or in person, and was represented by an attorney at every stage in the proceedings. Respondent was incarcerated when the children were removed from the mother. While incarcerated, he was presented with a parent/agency agreement, which he signed. It was apparent that he knew what was required in the parent/agency agreement as evidenced by the programs that he attended while incarcerated. Immediately upon his release, respondent was provided with visitation and services with the goal of reunification. Throughout these proceedings, the DHS provided services, referrals, and visitation with the children to respondent, except for those times when respondent was incarcerated. Respondent has not explained how the failure by the DHS to present him with an initial service plan while he was incarcerated unfairly prejudiced him or interfered with his ability to comply with his treatment plan or to be reunified with his children.

Respondent also contends that the DHS failed to provide reasonable services directed toward reunification. A claim that the respondent was not provided reasonable services directed toward reunification is relevant to the sufficiency of the evidence for termination of parental rights. *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005); *In re Newman*, 189 Mich App 61, 66-69; 472 NW2d 38 (1991). The record reflects that the DHS made every effort toward reunification. Similarly, there is no evidence to support respondent's claim that he was treated as "an irksome barrier in the road to termination." The court extended these proceedings for over two years to give respondent a chance to demonstrate his progress. However, respondent went back to his criminal lifestyle and was sent back to prison. His parental rights were terminated because, once he was no longer in a controlled environment, respondent made

poor choices, reverted back to his criminal lifestyle, and failed to comply with the requirements of his parent/agency agreement as well as his parole.

Finally, the trial court did not err in finding that termination of respondent's parental rights was in the best interests of the children. The trial court's decision regarding the children's best interests is reviewed for clear error. *In re Trejo*, 462 Mich at 356-367. At the termination hearing, respondent was essentially in the same position as he was at the adjudication, and there was no reasonable likelihood that he could rectify the conditions within a reasonable time. The children, who had special needs, had been in foster care for over three years. Respondent may have had good intentions but he deprived himself of the opportunity to demonstrate his parenting potential when he participated in continued criminal conduct. He never reached the level of unsupervised visits with the children. Respondent demonstrated that he did not have the determination and fortitude to properly care for his children and to think of their needs. The children needed and deserved permanency.

Affirmed.

/s/ Kathleen Jansen  
/s/ Mark J. Cavanagh  
/s/ Kirsten Frank Kelly