

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
November 10, 2011

In the Matter of TELLO/SALDANA, Minors.

No. 304060
Saginaw Circuit Court
Family Division
LC No. 10-032399-NA

Before: WHITBECK, P.J., and MURRAY and DONOFRIO, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (g) (parent fails to provide proper care or custody), and (j) (reasonable likelihood of harm if children are returned to parent). Because respondent was not denied his right to due process, clear and convincing evidence supported termination under subsections (g) and (j), and termination was in the children's best interests, we affirm.

I. DUE PROCESS

Respondent argues that the trial court violated his due process rights when it conducted the preliminary hearing without him or his attorney present. Because respondent failed to preserve this issue for our review by raising it in the trial court, we review this constitutional issue for plain error affecting substantial rights. *In re Williams*, 286 Mich App 253, 274; 779 NW2d 286 (2009).

Due process requires that a respondent be provided notice and an opportunity to be heard. *In re Rood*, 483 Mich 73, 92; 763 NW2d 587 (2009) (CORRIGAN, J.) When the minor children were removed from respondent's care, he was provided notice of the preliminary hearing. He did not appear at the hearing, although he called the court, spoke to the court clerk, and requested that an attorney be appointed to represent him. The trial court adjourned the hearing so that respondent could attend. When respondent again failed to appear, the children's mother informed the court that the time of the hearing conflicted with a previously scheduled criminal proceeding that respondent had to attend. It is unclear from the record whether respondent

received notice of the second hearing.¹ The trial court opted to proceed in respondent's absence, noting that he did not attend the first scheduled preliminary hearing despite notice of that date. There is no question that respondent received notice of all of the subsequent hearings, yet he appeared of his own accord at only two of the 10 subsequent hearings and attended two other hearings only when he was brought to the court from jail pursuant to a writ.

Under MCR 3.965(B)(1), a preliminary hearing may be conducted in the absence of a parent "if notice has been given or if the court finds that a reasonable attempt to give notice was made." Thus, in the instant case, the trial court could have conducted the preliminary hearing on the first date without respondent's presence because it is undisputed that he received notice. Because respondent did not appear at the first scheduled preliminary hearing and most of the subsequent hearings despite receiving notice, any error in conducting the preliminary hearing in respondent's absence is harmless. Further, the mother's plea of domestic violence, untreated mental health issues, and inability to maintain suitable housing or provide appropriate care was sufficient for the court to assume jurisdiction over the children. Thus, respondent fails to establish plain error that affected his substantial rights. In any event, despite his absence, the trial court ordered supervised visitation and ordered petitioner to provide a treatment plan for respondent.

II. REASONABLE EFFORTS

Respondent argues that petitioner failed to make reasonable efforts to provide services to rectify the conditions that led to the children's removal. We review the trial court's findings of fact, including whether petitioner made reasonable efforts to reunify the family, for clear error. MCR 3.977(K); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed[.]" *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

The trial court did not clearly err in finding that petitioner made reasonable efforts to reunify respondent with his children. Respondent argues that petitioner removed the children from his home without giving him prior assistance with housing. He contends that he wanted to take the children to a shelter but needed verification of custody in order to do so. The children had been in respondent's care for only two weeks when they were removed and were previously in their mother's care. Once the children were removed, respondent was offered services, including a psychological examination, counseling, substance abuse assessment and treatment, and parenting time. Respondent did not take advantage of any of these services and stopped attending parenting time nine months before the termination hearing. He also failed to keep in contact with the caseworker, his attorney, and the court and failed to attend most of the hearings because he feared being arrested on outstanding warrants.

¹ The legal file does not contain a proof of service to respondent with regard to the second preliminary hearing date.

Although respondent claims that petitioner failed to explain the requirements of his treatment plan and failed to seek him out when he was on work release, the caseworker and court-appointed special advocate testified regarding their unsuccessful efforts to communicate with him. Respondent refused to speak to the caseworker when she visited him in jail, and he failed to comply with his treatment plan or do anything to show that he was making efforts toward reunification. To the contrary, respondent was charged with possession of marijuana while this case was pending and admitted during a criminal proceeding that he was under the influence of marijuana and alcohol. Accordingly, the trial court did not clearly err in determining that petitioner made reasonable efforts toward reunification.

III. STATUTORY BASES

The trial court also did not clearly err when it found clear and convincing evidence to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(g) and (j). The children were removed from respondent's care because of his history of domestic violence with the children's mother and their lack of housing because neither parent had an appropriate home. Clearly, respondent was unable to provide proper care and custody at that time. The children remained in temporary care for 14 months, and numerous services were made available to respondent. Nonetheless, he was unable to provide proper care and custody for the children during the entire 14-month period. Respondent did nothing to work on his substance abuse issues, was unable to show proof of employment, failed to pay his criminal fines, which resulted in a bench warrant for his arrest, failed to address his anger issues, and failed to obtain appropriate housing. Respondent also missed visitation with the children, failed to maintain contact with the caseworker, and failed to appear at most of the hearings. Although he had essentially done nothing during that 14-month period, he nevertheless asked for more time at the termination hearing. Accordingly, the trial court did not clearly err when it terminated respondent's parental rights under MCL 712A.19b(3)(g) and (j).

The trial court did clearly err by terminating respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i). The conditions that led to adjudication—the mother's inability to provide housing and the domestic violence between she and respondent—were not at issue at the time of the termination hearing because the mother voluntarily relinquished her parental rights months prior. Any error was harmless, however, because clear and convincing evidence of only one statutory basis is sufficient for termination. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

IV. BEST-INTERESTS DETERMINATION

“If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.” MCL 712A.19(b)(5). Here, the trial court did not clearly err by determining that termination was in the children's best interests. They were very young, ages three through six, and deserved to be raised in a stable and permanent environment. Despite the strong bond that existed between respondent and the children, respondent did not put the children's needs before

his own, and at no time during the proceedings was he able to provide for their daily needs. The children's need for permanency and stability far outweighed any bond that respondent had with them.

Affirmed.

/s/ William C. Whitbeck
/s/ Christopher M. Murray
/s/ Pat M. Donofrio