

STATE OF MICHIGAN
COURT OF APPEALS

In re K.D.A. DAVIS, Minor.

UNPUBLISHED
June 21, 2016

No. 329416
Wayne Circuit Court
Family Division
LC No. 15-519602-NA

Before: MURPHY, P.J., and SAAD and BORRELLO, JJ.

PER CURIAM.

Respondent appeals the trial court order that terminated her parental rights to the minor child pursuant to MCL 712A.19b(3). For the reasons provided below, we affirm.

I. REUNIFICATION EFFORTS

Respondent argues that petitioner failed to make reasonable efforts at reunification before her parental rights were terminated. However, she failed to object or indicate that the services provided to her were inadequate before the trial court. Thus, this issue is unpreserved, *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012), and our review is for plain error affecting respondent's substantial rights, *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

Failure to make reasonable efforts can prevent the petitioner from establishing statutory grounds to terminate a respondent's parental rights. See *In re Newman*, 189 Mich App 61, 67-68, 70; 472 NW2d 38 (1991). Generally, the petitioner is required to make reasonable efforts to rectify the conditions that caused a child's removal by adopting a service plan. *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008). However, when aggravated circumstances are present, the petitioner must seek termination of parental rights and is not required to provide reunification services. MCL 712A.19a(2); *In re HRC*, 286 Mich App 444, 463-465; 781 NW2d 105 (2009). Aggravated circumstances involve child abuse that encompasses, among other things, battering, torture, severe physical abuse, or life-threatening injury. MCL 722.638(1)(a)(iii) and (v). Here, there is evidence that the child suffered life-threatening injuries while in respondent's care that clearly constituted an aggravated circumstance under MCL 722.638(1)(a)(iii) and (v) because the child was the victim of intentional, severe physical abuse. Therefore, petitioner was not required to make reasonable efforts toward reunification in this case. Accordingly, respondent had not shown plain error.

II. BEST INTERESTS

A trial court must terminate a respondent's parental rights if it finds that a statutory ground under MCL 712A.19b(3) has been established by clear and convincing evidence and that termination is in the children's best interests. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014); see also MCL 712A.19b(5). On appeal, respondent does not challenge whether any of the statutory grounds under MCL 712A.19b(3) were established by clear and convincing evidence.¹ Instead, she claims that the trial court erred in finding that termination was in the child's best interests. We review a trial court's best interests decision for clear error. *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

Respondent argues that she was nurturing and appropriate with her child and that she would never intentionally injure him. Respondent's argument is unpersuasive. The record shows that the child sustained a life-threatening injury while in respondent's care and that she was unable to provide stable housing or meet his financial needs. Furthermore, there was evidence that respondent had a history of abusive behavior toward the child. It is in the child's best interests to be raised by a caregiver who will keep him safe and meet his physical needs. Respondent has clearly demonstrated that she is not able to maintain a proper home environment for him. Moreover, there is no evidence that any bond existed that would be compromised by the termination of respondent's parental rights. As a result, the trial court did not clearly err in its best-interests determination.

Respondent also asserts that the court did not expressly address the fact that the child was residing with a relative. "[A] child's placement with relatives weighs against termination under MCL 712A.19a(6)(a)" *In re Olive/Metts*, 297 Mich App 35, 43; 823 NW2d 144 (2012), quoting *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). "A trial court's failure to explicitly address whether termination is appropriate in light of the children's placement with relatives renders the factual record inadequate to make a best-interest determination and requires reversal." *In re Olive/Metts*, 297 Mich App at 43. Respondent's claim that the trial court did not consider the child's placement with his relative is unsupported by the trial court's record. At the conclusion of the best-interests hearing, the court specifically noted that the child was placed with his great-grandmother. Thus, respondent's claim is without merit.

¹ To the extent that respondent mentions that the statutory grounds were not proven in passing references in her brief on appeal, the issue is abandoned because of the cursory treatment of the issue, *MOSES, Inc v SE Mich Council of Gov'ts*, 270 Mich App 401, 417; 716 NW2d 278 (2006), and because, in any event, it was not listed in her statement of the questions presented in her brief, MCR 7.212(C)(5); *Ypsilanti Fire Marshal v Kircher (On Reconsideration)*, 273 Mich App 496, 543; 730 NW2d 481 (2007).

Affirmed.

/s/ William B. Murphy
/s/ Henry William Saad
/s/ Stephen L. Borrello