

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
December 7, 2010

In the Matter of H. A. RYAN, Minor.

No. 297622
Kalamazoo Circuit Court
Family Division
LC No. 2009-000477-NA

Before: SERVITTO, P.J., and ZAHRA and DONOFRIO, JJ.

PER CURIAM.

Respondent appeals as of right from the order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(f). Because respondent's due process rights were not violated, and because clear and convincing evidence supported the trial court's ruling, we affirm.

Respondent is the father of a minor child born in October, 2005. In February, 2006, the child began residing with a great-aunt who had previously been babysitting for the child. Apparently, respondent and the child's mother simply failed to pick the child up. In December, 2006, the great-aunt was granted full guardianship over the child. On November 30, 2009, the child's guardian filed a termination petition, with the intent to adopt the child. At the conclusion of the termination hearing, the trial court terminated respondent's parental rights to the minor child.

On appeal, respondent contends that his consent to the guardianship was legally defective and, therefore, the trial court violated his due process rights by relying upon MCL 712A.19b(3)(f) to terminate his parental rights. Respondent did not raise this argument before the trial court. It is thus unpreserved. See *Polkton Charter Twp v Pellegrom*, 265 Mich App 88, 95; 693 NW2d 170 (2005). As respondent's unpreserved argument raises a constitutional question, this Court's review is limited to plain error that affected respondent's substantial rights. *People v Carines*, 460 Mich 750, 761-766; 597 NW2d 130 (1999).

According to respondent, there was no evidence that he consented to the guardianship. Be that as it may, evidence was presented that the child resided with and was dependent upon the guardian since early 2006 and that, despite the fact that respondent was well aware of where the guardian and child resided and had been there several times before the guardianship took effect, he made little to no attempt to visit with the child or provide for her support. Consent could thus be implied. Moreover, the clear wording of MCL 712A.19b(3)(f) establishes that all that is initially required is that the child has a guardian under the Estates and Protected Individuals Code, MCL 700.1101, *et seq.* There is no requirement that the court evaluate the circumstances

surrounding the placement of a child with a guardian. In this case, there was a stipulation that a full guardianship was in place, such that the court acted correctly when it based its termination order on MCL 712A.19b(3)(f).¹ There was no plain error in this case.

Respondent argues next that the evidence was insufficient to terminate his parental rights. This Court reviews for clear error both the trial court's decision that a ground for termination of parental rights was proven by clear and convincing evidence and the court's ruling regarding the child's best interests. MCR 3.977(K); *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003).

Pursuant to MCL 712A.19b(3)(f), the trial court may terminate a parent's parental rights if:

The child has a guardian under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, and both of the following have occurred:

(i) The parent, having the ability to support or assist in supporting the minor, has failed or neglected, without good cause, to provide regular and substantial support for the minor for a period of 2 years or more before the filing of the petition or, if a support order has been entered, has failed to substantially comply with the order for a period of 2 years or more before the filing of the petition.

(ii) The parent, having the ability to visit, contact, or communicate with the minor, has regularly and substantially failed or neglected, without good cause, to do so for a period of 2 years or more before the filing of the petition.

A review of the record shows that the parties stipulated to the presence of a full guardianship. During the relevant time period, November 30, 2007 through November 30, 2009, respondent paid only 12 percent of his support obligation owed pursuant to a support order². He also had no contact with, and made no efforts to see, the minor child, except for one meeting with a probate court caseworker (that respondent failed to follow through with), and one phone call where he did not leave a message for the child. He also did not send the child any letters, cards, or gifts. Respondent admitted that he had frequent contact with the child's mother, who continued to visit with and provide for the child, and also had frequent contact with the minor

¹If respondent believed he had not been fully informed about the potential consequences of agreeing to the guardianship, or had another complaint concerning the guardianship, then respondent should have long ago filed a petition in the probate court instead of remaining quiet about his claims for three years and only raising them when attempting to prevent the termination of his parental rights. This Court has no information concerning respondent's consent to the guardianship that was established in 2006 in the probate court. It is a well-established legal principle that a party must raise objections at a time when the trial court has an opportunity to correct the error. See *People v Grant*, 445 Mich 535, 551; 520 NW2d 123 (1994).

² The fact that a support order was in place meant the guardian/petitioner needed only to prove that respondent had failed to substantially comply with that support order for the statutory period. See *In re Hill*, 221 Mich App 683, 692; 562 NW2d 254 (1997).

child's sister. Finally, there was no evidence that respondent lacked the physical or mental ability to see the child or that the guardian prevented him from doing so.³ Respondent claims that the guardianship placed him in a detrimental and disadvantageous situation,⁴ but the relevant issue is whether he maintained contact with the child or at least made an effort to do so, not whether it was easy to do so. As such, the trial court did not clearly err when it found that a support order had been entered and that respondent had failed to substantially comply with that order during the relevant time period. The trial court also did not err in its finding that respondent had the ability to visit the child but regularly and substantially failed or neglected, without good cause, to do so during the relevant time period. MCL 712A.19b(3)(f).

Under MCL 712A.19b(5), a trial court is required to order termination 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." We find that, although there was a risk that the child would one day be confused and saddened by the fact that respondent's parental rights to a sibling were maintained while they were terminated with regard to her, the trial court did not clearly err in its best interest determination. The evidence demonstrated that while respondent made a few support payments over the years, he overwhelmingly left the parenting and support of the child to the guardian and made no effort to change the guardianship arrangement. The child, who had spent the vast majority of her life with the guardian, did not recognize respondent as her father and did not share a bond with him. There has been no showing that termination was not in the child's best interests.

Affirmed.

/s/ Deborah A. Servitto
/s/ Brian K. Zahra
/s/ Pat M. Donofrio

³ The only time the guardian objected to respondent's contact with the child actually occurred before the establishment of the guardianship when the (yet-to-be-appointed) guardian said the child could not go to respondent's house because of the presence of smoke and dogs. However, even in that incident, the guardian offered to bring the child to an alternative site.

⁴ He also emphasized the advantages allegedly enjoyed by the child's mother, who he claimed agreed to the adoption for the purpose of ending her child support obligation but who could continue seeing the child because she was related to the guardian. However, the purpose of this proceeding was to evaluate respondent's actions towards the child, and the circumstances of the mother's situation were not relevant.