

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
June 2, 2011

In the Matter of RIDLING/RIDLING-
FOSTER/FOSTER, Minors.

No. 299729
Oakland Circuit Court
Family Division
LC No. 08-752006-NA

In the Matter of RIDLING-FOSTER/FOSTER,
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Before: MURPHY, C.J., AND STEPHENS AND M. J. KELLY, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from an order terminating their parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). The mother's parental rights were terminated to all three children, while the father's rights were terminated to the two younger children. The parental rights of the father of the older child were also terminated during these proceedings, but he is not participating in these appeals. We affirm.

Respondents argue that the trial court erred in terminating their parental rights. We disagree and find that the statutory grounds for termination of both respondents' parental rights were established by clear and convincing evidence, and that termination of their parental rights was in the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000).

The children were originally brought into care in October 2008 upon allegations that the mother left them unattended in order to go to the bar to drink and do drugs. The mother had an extensive history of drug use and protective services involvement dating back to 1992 and her older children. The mother had several criminal convictions, including prostitution. She and the father had a history of domestic violence. The mother pleaded no contest to the allegations in the petition and disposition occurred in December 2008, at which time she was ordered to undergo substance abuse treatment, submit to random drug screening, attend parenting classes, attend individual counseling, attend domestic violence counseling, regularly visit the children, maintain suitable housing, and maintain a legal source of income.

As both the petitioner and the GAL note, there is no dispute that the mother was compliant with many aspects of her parent-agency agreement. She completed parenting classes and attended individual therapy. She regularly visited the children and those visits always went well, with the mother bringing home-cooked meals and inquiring after the children's welfare. The mother received SSI income for her bipolar disorder and also worked at Subway until she injured her foot. Even her housing was relatively stable, except in those instances in which the mother had to give up her housing in order to attend inpatient drug treatment. The mother completed domestic violence counseling, though it could be argued that she did not benefit based on allegations that she and the father were involved in a domestic dispute in July 2009, which led to the father's arrest. However, giving the benefit of the doubt to the mother and also looking to the fact that she and the father were divorced at the time of the termination hearing, it could be argued that domestic violence was no longer an issue.

However, the simple fact of the matter was that the mother had an ongoing addiction to crack cocaine and alcohol that she could not seem to overcome. The mother was compliant with the PAA in that she attended inpatient drug treatment. In fact, the mother attended three inpatient treatments during the two years that the children were in care and had entered a fourth at the time of the best interests hearing. Nevertheless, the mother continuously relapsed. In the fall of 2009, it appeared that the mother gave up on testing altogether, missing 40 screens between November 2009 and March 26, 2010. The missed screens were treated as positive by the agency. The mother argues that the screens were excused because the worker, Rachel Lubetsky, testified that the mother was seeking medical treatment for her foot injury; however, that is a distortion of the testimony. Lubetsky admitted that the mother may have needed to miss one or two screens because of doctor's appointments, but there was no adequate explanation for the vast number of screens that the mother missed.

It appears that, in spite of her efforts, the mother was simply unable to overcome her addiction. She cannot argue that her drug use did not affect her ability to parent. The children were made temporary wards as a direct result of the mother's drug use — she left them unattended in order to go the bar and smoke crack. Thus, assuming that the mother was fully compliant in all other aspects of the PAA, her continued drug use resulted in a finding that the conditions leading to adjudication continued to exist, that because of her drug use she could not provide proper care or custody of the children, and that there was no reasonable likelihood that the mother would be able to remedy her drug use within a reasonable amount of time considering the children's ages. The mother had a 20-year drug habit and made genuine attempts at getting clean while the children were in care. She simply could not. There is nothing in the record to support a finding that additional time would have changed the outcome of the case. Additionally, the mother's drug use placed the children at risk of physical and emotional harm. Not only did the mother place the children in danger by leaving them unattended to go to the bar and use drugs, the mother also placed them at risk of emotional harm because both of the older children had elevated anxiety and fear of abandonment.

Having found the foregoing subsections proven by clear and convincing evidence, the trial court then had to determine whether it was in the children's best interest to terminate the mother's parental rights. The mother's situation was truly tragic. There is no question that she and the children shared a strong bond. The mother was always appropriate during visits and genuinely cared for their well-being. The children testified that they enjoyed living with their

mother and wanted to return to her care. They indicated that she at all times provided them with food, shelter, clothing, and love. Nevertheless, the trial court did not err in refusing to return the children to their admittedly crack-addicted mother. As discussed above, numerous attempts were made to help the mother overcome her addiction. The children had been in care for two years and there was no reason to believe that the mother would suddenly be able to break free from her addiction. Dr. Parks, a psychologist, testified that both of the children he interviewed were anxious about being abandoned and both were eager to please. Dr. Parks did not think the mother would ever overcome her addiction and believed that further contact with the mother would subject the children to harm. Similarly, Lubetsky opined that termination of the mother's parental rights was necessary because there was no progress in combating her addiction. The children waited for two years and could not be asked to wait longer. They deserved permanence and stability.

Like the mother, the father argues that the trial court erred in terminating his parental rights. He argues, additionally, that reasonable efforts were not made toward reunification and that the agency violated statutory law in failing to provide an initial service plan (ISP) within 30 days after the children's removal. The father claims that he was treated as an afterthought and that more should have been done to help him. We disagree.

The father maintained that he should not have been named in the petition, as the allegations of abuse and neglect pertained only to the mother's conduct. He was granted a separate trial even though the trial court had already validly asserted jurisdiction over all of the children. The trial court then ordered that the father remain a respondent and the matter proceeded to disposition. The father was in jail on charges of felonious assault in September 2009 when was presented with his parent agency agreement (PAA). He was subsequently acquitted in October 2009, but he then was arrested in Bay City for failure to pay child support and remained incarcerated in Bay City until November 2009. There were two and a half months from the time the father was released from jail until the supplemental petition was filed in January 2010. The termination hearing began in March 2010 and concluded in August 2010. During the entire pendency of the case, the father did very little. He consistently visited with the children and attended court hearings, but complied with no other aspect of his PAA and even refused to sign it.

As was his attitude in the trial court, the father continues to deflect responsibility by blaming the agency for failing to provide an ISP and appropriate reunification services. The father's claim rings hollow, as it appears that he was, in fact, served with an ISP that was prepared on November 3, 2008. Even assuming that the father did not receive a copy of the ISP, he must do more than simply claim procedural error but must also show how that error affected his rights. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999). The father has not done so. He was present for every hearing and represented by counsel at every hearing. At no time did he complain that he did not know what was expected of him. The ISP specifically set forth its objectives for the father, including: maintaining contact with the agency, obtaining adequate parenting skills, maintaining suitable housing and a source of income, and refraining from further criminal activity. These issues were discussed time and again throughout the proceedings.

The father argues that reasonable efforts were not made to reunify him with his daughters. Again, the father's argument fails. When children are removed from their parent's

custody, the agency is required to make reasonable efforts to rectify the conditions that caused the removal by adopting a service plan. MCL 712a.18(f)(2); *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005).

The father's reliance on *In re Mason*, 486 Mich 142; 782 NW2d 747 (2010), and *In re Rood*, 483 Mich 73; 763 NW2d 587 (2009), is misplaced. There are few, if any, similarities between this father's case and *Rood* or *Mason*. The fathers in *Rood* and *Mason* were essentially denied the right to participate throughout the proceedings. There was no attempt to engage the fathers in services or even to keep them apprised of the case as it progressed. In this case, there was testimony regarding the worker's attempts to actively engage the father in services. Unlike either of the fathers in *Mason* and *Rood*, the father was presented with a PAA, detailing his obligations there under. The fact that the PAA was unsigned is of no consequence where both the father and his attorney acknowledged that they were fully aware of its contents. Unlike either of the fathers in *Mason* and *Rood*, the father fully participated in each of the hearings. Also unlike *Mason* and *Rood*, the focus in this case was not entirely on the mother as custodial parent. The agency attempted to reach out to the father to no avail. Again, the father cannot argue that he was unaware of what was happening or what was expected of him. The agency actively sought to engage the father in services. It prepared various service plans throughout the course of the proceedings. He would have the panel believe that he was another incarcerated father, like the one in *Mason*, but the reality was that he spent most of the time *out* of jail and simply failed to participate in services. The father testified more than once that he did not seek help with housing or employment and that he did not take parenting classes or anger management because he did not believe he needed them.

Having found that the agency did not shirk its responsibility for providing reunification services, the issue becomes whether clear and convincing evidence existed to terminate the father's parental rights. It is true that the children were removed from the mother's care and that she was the custodial parent. It was her drug use and failure to supervise the children that brought the children to the agency's attention. Nevertheless, the father was not entirely blameless. Though he testified repeatedly that he had no knowledge of the mother's drug use, the trial court rejected the testimony. The father played a role in failing to protect his children. At no time did he attempt to seek custody of them or involve law enforcement. To the very end, the father denied having any responsibility for the children coming into care. His stubbornness is obvious in reading his testimony and is in keeping with his refusal to participate in services. He lacked insight into the situation and continuously placed his needs above the children's. Parenting classes may have helped the father understand the role he played in the case and allowed him to move forward from anger and hostility to cooperation. The need for anger management was also patently obvious based on the father's numerous disruptive statements during the court hearings. There was also undisputed evidence that the father and the mother had a volatile and, at times, violent relationship. The father cannot argue that the agency failed to do more when he refused to participate in services that were offered. Because of the father's lack of insight and emotional stability he was not in a position to provide the children with proper care or custody. There was absolutely nothing in the record that would support a finding that the father could rectify his deficiencies in a reasonable amount of time.

Additionally, the father's position during the case had actually deteriorated for the worse. He was arrested in January 2009 for resisting and obstruction, arrested again in July 2009 for

felonious assault, and was arrested again in November 2009 for failure to pay child support. Yet the father blamed the child protective proceedings for the fact that he lost his employment, stating that he missed too much work to come to court hearings. Because he had no income, he was unable to maintain housing. At the time of the best interests hearing he was living from family member to family member. Thus, not only did the conditions leading to adjudication continue to exist, but the father was simply without a means to provide the children with proper care or custody. In addition, the father's lack of insight and inability to place the children's needs ahead of his own placed the children at risk of future emotional harm.

The court also did not clearly err in determining that termination of the father's parental rights was in his children's best interests. There is no dispute that the father and his daughters shared a bond. He regularly visited with them and showed concern for their welfare and the foster care placements. However, he was not entirely appropriate during the visits. There was evidence that he was often angry and belligerent with the workers. He inappropriately yelled at them and his visits were briefly suspended until he could behave decently. Instead of focusing on his own behavior, the father was constantly criticizing the foster care placements and the agency. Additionally, while there may have been a bond, the father was never the custodial parent. He and the mother never really lived together for any substantial period of time. The father may have seen his children frequently, but he failed to protect them from a dangerous situation by allowing their crack-addicted mother to continue to care for them. Dr. Park testified that the father lacked insight and had periods of dysfunction. He was unable to abide by societal norms. These characteristics were not likely to change. The father's daughters had been in care for two years and the father did nothing to facilitate reunification. They should not have been asked to wait any longer and were entitled to permanence and stability.

Affirmed.

/s/ William B. Murphy
/s/ Cynthia Diane Stephens
/s/ Michael J. Kelly