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STATE OF MICHIGAN
COURT OF APPEALS

In re MP, Minor.

UNPUBLISHED
June 20, 2024

No. 369229
Kent Circuit Court
Family Division
LC No. 14-195392-LG

Before: RICK, P.J., and JANSEN and LETICA, JJ.

PER CURIAM.

Respondent-father (respondent), appearing *in propria persona*, appeals as of right the trial court order denying his petition to terminate guardianship of the minor child. We affirm.

I. FACTUAL AND PROCEDURAL HISTORY

In a prior appeal, this Court summarized the facts as follows:

This case originated in 2014 when the minor child’s mother filed for a limited guardianship placement plan for the child. At that time, the child’s biological father was unknown. In 2015 during a period of incarceration, testing established respondent as the child’s biological father. Later in 2015, the court appointed the child’s maternal aunt as her guardian and she continued to be the child’s guardian. In March 2022, respondent petitioned to terminate the limited guardianship and requested that the child be placed in his custody. According to respondent, he obtained release from incarceration in February 2022. The Department of Health and Human Services (DHHS) completed an investigative report regarding respondent’s petition. The report stated that the 10-year-old child had lived with the guardian from age 4 and desired to continue living with the guardian. The DHHS investigator opined that it would be harmful to the child’s mental health to move to respondent’s house at that time. The report recommended that the petition to terminate the limited guardianship be denied.

After a brief hearing, the trial court determined that the minor child’s best interests would be best served by continuation of the limited guardianship and

denied respondent's petition. On May 6, 2022, the trial court entered an order denying respondent's petition to terminate the guardianship. On the same day, the trial court entered a second order finding that the parent of the minor, a reference to respondent, had not substantially complied with the limited guardianship placement plan and that it was in the best interests of the child that the guardianship be continued.

In May 2022, respondent moved for reconsideration arguing that he never agreed to the placement plan which was filed before his parentage was established. Respondent also argued that he had not been served with any of the documents at the initiation of the guardianship, because, as respondent acknowledged, it was not known at that time that he was the father. Respondent asserted that he had established that he could provide for the child's needs and granting him custody would improve the child's living conditions. The trial court denied respondent's motion for reconsideration. [*In re Price*, unpublished per curiam opinion of the Court of Appeals, issued January 19, 2023 (Docket No. 362113), slip op at 1-2.]

The *Price* Court rejected respondent's challenges to the continuation of the limited guardianship, concluding that the trial court did not abuse its discretion, and affirmed the denial of the petition to terminate the guardianship. *Id.* at slip op at 1, 3-4.

In March 2023, respondent filed another petition to terminate the limited guardianship. On April 24, 2023, the trial court entered an order denying the petition. The trial court's order also noted that it was the third petition that respondent filed within a year and it was duplicative; it failed to assert a change in circumstances. The trial court's order further provided that any additional petition filings would be reviewed for merit and placed in the file unless a hearing was ordered by the court. This procedure was to be in effect until October 7, 2023, a year from the date of the last petition. After respondent filed a motion for reconsideration of this order, the trial court denied respondent's reconsideration motion.

On July 13, 2023, the guardian filed her annual report with the court addressing the minor's condition. On July 25, 2023, the trial court renewed the letters of guardianship through July 15, 2024. On October 17, 2023, respondent filed a petition to terminate the guardianship. This petition once again asserted that respondent did not agree to the placement plan in 2014. It further alleged that the guardian was negligent in her duties by failing to produce the child for visitation, failing to supervise the child's birthday celebration, failing to meet basic hygiene and food needs, failing to address the child's mental health issues, and failing to address the child's educational struggles. Also, on October 17, 2023, the trial court appointed an investigator from DHHS to review the guardianship. The investigator's report did not recommend termination of the guardianship, citing the duration of the child's placement with her guardian, the child's placement in the guardian's home with a sibling, and the child's mental health if moved to respondent's home. It was further recommended that the child increase visitation with respondent and engage in counseling.

On December 1, 2023, a hearing was held on respondent's petition to terminate. Respondent asserted that he was not receiving his visitation every other weekend as scheduled. In response, the guardian noted that respondent did not celebrate birthdays or holidays. When a celebration occurred, the guardian asked for the child to remain with the guardian and offered

make-up visitation time. The guardian alleged that there were times when respondent failed to attend his scheduled visitation or failed to call. The trial court delineated a detailed visitation schedule on the record and denied the petition to terminate the guardianship. But, the December 1, 2023 written form order specified that a full guardianship was to be continued.

On December 13, 2023, respondent filed a motion for reconsideration, contending that the original 2014 petition filed by the child's mother excluded him from the placement plan. Moreover, the trial court erroneously found that a full guardianship was at issue. Additionally, for the first time, respondent alleged that the guardian failed to file a proof of service addressing the annual report. Respondent alleged that these facts constituted palpable error, deprived him of due process of law, and warranted a different result. The trial court determined that the motion for reconsideration merely presented the same issues ruled upon by the court and denied the motion. From this decision, respondent appeals.

II. ANALYSIS

Respondent alleges that the trial court erred in denying the petition to terminate the guardianship and the reconsideration motion "in reckless disregard of a legal duty and of the consequences to another party." We disagree.

The decision addressing authorization or dismissal of a petition is discretionary and reviewed for an abuse of discretion. See *In re Nikooyi*, 341 Mich App 490, 494; 991 NW2d 619 (2022). We review a trial court's decision regarding a motion for reconsideration for an abuse of discretion. *Zalewski v Zalewski*, 342 Mich App 429, 433; 995 NW2d 553 (2022). "An abuse of discretion occurs when the probate court chooses an outcome outside the range of reasonable and principled outcomes." *In re Portus*, 325 Mich App 374, 381; 926 NW2d 33 (2018). Unpreserved issues are reviewed for plain error affecting substantial rights. *In re Sanborn*, 337 Mich App 252, 258; 976 NW2d 44 (2021) (quotation marks and citation omitted). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) the error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *Id.* (quotation marks and citation omitted). In general, an error is deemed to affect substantial rights if it caused prejudice; that is, it affected the proceedings outcome. *Id.*

More specifically, respondent contends that the trial court abused its discretion by failing to consider that he was excluded as a party when the guardianship placement plan was issued. We disagree.

In the prior appeal, this Court rejected respondent's challenge premised on his exclusion from the original petition and the guardianship placement plan, stating:

In this case, the trial court determined that continuation of the guardianship for a period not to exceed one year served the child's best interests and it entered an order reflecting that decision. In so doing, the trial court did not abuse its discretion because it acted under the authority granted to it by MCL 700.5209(2)(b). See *In re Portus*, 325 Mich App at 381. This determination did not require a finding that respondent had not substantially complied with the limited guardianship placement plan. Compare MCL 700.5209(1) with MCL 700.5209(2)(b).

* * *

Respondent's argument regarding any notice issue with the limited guardianship placement plan is not relevant to the trial court's disposition of respondent's petition to terminate and, therefore, not relevant to this appeal. In MCL 700.5209(2), the relevant statute in this matter, the limited guardianship placement plan is not a consideration.

It appears that confusion about the limited guardianship placement plan arises from the form order that the trial court used. In its findings and conclusions made on the record at the hearing, the trial court analyzed whether terminating the guardianship served the child's best interests and concluded that the guardianship should be continued. The trial court did not make any reference to a limited guardianship placement plan at the hearing. The lower court record contains a limited guardianship placement plan for the child's biological mother, but no such document for respondent. The limited guardianship placement plan had been completed by the mother before it was known that respondent was the child's father.

In the form order completed by the trial court following the hearing, the trial court checked the boxes associated with the following phrase:

The court finds . . . [t]his is a limited guardianship. The parent(s) of the minor has/have not substantially complied with the limited guardianship placement plan, and it is in the best interests of the minor that the guardianship be continued.

This form language in the trial court's order adds a finding—that respondent has not substantially complied with the limited guardianship placement plan. That was not addressed at all in the hearing, the DHHS investigation report, or any of the filings. Moreover, such finding is not necessary for the trial court to deny respondent's motion to terminate the guardianship. This language is clearly a reference to the findings required under MCL 700.5209(1), but it does not accurately state the required findings for a motion to terminate governed by MCL 700.5209(2).

For a petition to terminate a guardianship in which MCL 700.5209(1) does not apply, the trial court may "[c]ontinue the guardianship for not more than 1 year after the hearing date if the court determines that it is in the best interests of the minor." MCL 700.5209(2)(b). This course of action does not require a finding regarding respondent's compliance with the limited guardianship placement plan. To the extent that the trial court found that respondent did not substantially comply with the limited guardianship placement plan, that finding appears to be in error. That error, however, does not require reversal because, to continue the limited guardianship, the trial court only needed to find that it served the child's best interests to do so. See MCL 700.5209(2)(b). [*In re Price*, unpub slip op at 7-10.]

Generally, the law of the case doctrine provides that “an appellate court’s determination of an issue in a case binds lower tribunals on remand and the appellate court in subsequent appeals.” *Rott v Rott*, 508 Mich 274, 286-287; 972 NW2d 281 (2021) (quotation marks and citation omitted). The doctrine is applied to maintain consistency and avoid reconsideration of matters decided in a single continuous proceeding. *Id.* In *In re Price*, this Court determined that respondent’s omission from the original petition and any failure to participate in a limited guardianship placement plan had no bearing on the trial court’s determination of the child’s best interests, MCL 700.5209(2)(b), despite any form order language. *In re Price*, unpub slip op at 7-10. We are bound by this determination. *Rott*, 508 Mich at 286-287.¹ Accordingly, the trial court properly denied the petition to terminate the guardianship under the circumstances.

Respondent next asserts that the trial court erred by designating the guardianship as “full” rather than “limited” on the order denying his petition to terminate the guardianship. This challenge does not entitle respondent to appellate relief.

The trial court plainly erred by designating the guardianship as “full” rather than “limited” in the December 2023 order denying the petition to terminate. *In re Sanborn*, 337 Mich App at 258. However, this error does not require reversal because it did not affect respondent’s substantial rights. See *id.* By designating the guardianship as full, the trial court was able to indicate that the guardianship was continued because it was in the child’s best interests, rather than erroneously indicating that the guardianship was continued because of a lack of compliance with the guardianship placement plan. See MCL 700.5209(1) and (2)(b).

Finally, respondent challenges the compliance with the proof of service for the annual reports filed by the child’s guardian. This issue was not raised in the petition to terminate the guardianship, but only in the motion for reconsideration. The trial court does not abuse its discretion by denying a motion for reconsideration premised on legal theory and facts that could have been pleaded or argued before the trial court’s original order. *Jackson v Bulk AG Innovations, LLC*, 342 Mich App 19, 25; 993 NW2d 11 (2022). And, this procedural challenge to service does not alter the substance of the trial court’s denial of the petition to terminate the guardianship; that a termination of the 12-year-old ward’s guardianship at that time would adversely impact the child’s mental health.

Affirmed.

/s/ Michelle M. Rick
/s/ Kathleen Jansen
/s/ Anica Letica

¹ Furthermore, we agree with the prior panel’s determination. At the time of the original petition seeking a limited guardianship, respondent was not identified as the child’s father. And, when respondent was confirmed as the child’s father, he was imprisoned. Respondent only expressed an interest in the child after he was released from prison.