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STATE OF MICHIGAN

COURT OF APPEALS

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In re P. MARTENS, JR., Minor.

Nos. 371987; 371988
Kalamazoo Circuit Court
Family Division
LC No. 2021-000191-NA

Before: M. J. KELLY, P.J., and BORRELLO and RICK, JJ.

PER CURIAM.

In these consolidated appeals,[1] respondents appeal as of right the trial court order terminating their parental rights to their minor child. For the reasons stated in this opinion, we affirm in both cases.

I. BASIC FACTS

Petitioner, the Department of Health and Human Services (DHHS), filed a petition in Kalamazoo County seeking removal of the child from respondents' care and termination of respondent-mother's parental rights. The petition alleged that respondents had issues with substance abuse, domestic violence, mental health, that they lacked stable housing, and that respondent-mother's parental rights to five other children had previously been terminated. Further, it was alleged that respondents were "working to flee the county." An ex parte order was issued directing that the child be taken into protective custody and placed with DHHS for care and supervision. Based upon that order, a caseworker from Kalamazoo County and members of law enforcement went to a homeless shelter in Ingham County in order to take custody of the child. At that time, respondents and the child had been at the homeless shelter for approximately 20

[1] *In re P Martens Jr Minor*, unpublished order of the Court of Appeals, entered August 13, 2024 (Docket Nos. 371987 and 371988).

minutes. Following a preliminary hearing, the court authorized the petition and respondents were granted parenting time.

At the adjudication hearing, DHHS indicated that it was changing its goal for respondent-mother to reunification. An amended petition was filed. Thereafter, respondent-father entered a no contest plea to an amended allegation in the petition stating that he and respondent-mother engaged in "domestic violence" on May 7, 2021, while the child was present. Respondent-mother entered a plea of admission to the same allegation. At the hearing, respondent-mother testified that the domestic-violence had taken place in Kalamazoo County and that the child "was there at the time of the writing of the petition." Similarly, respondent-father stated that the domestic-violence occurred in Kalamazoo County, that he and respondent took the child to Ingham County, and that the child was removed from their care in Ingham County. He testified that, on the day that the petition was filed, the child had been—at some point—in Kalamazoo County. Based upon respondents' pleas, the trial court found statutory grounds to take jurisdiction over the child under MCL 712A.2(b).

After the initial dispositional hearing, respondents were ordered to comply with a case services plan. Reunification services included supervised parenting time, substance-abuse screenings, parenting classes, one-on-one parenting skills training, housing resources, and psychological and substance abuse evaluations. Based upon the recommendations from the evaluations, respondents were referred to counseling for substance-abuse and domestic violence. Initially, respondents made progress toward reunification and were allowed unsupervised visitation. However, after safety concerns arose in February or March 2022, visitation was switched back to supervised.

In October 2023, DHHS filed a supplemental petition seeking termination of respondents' parental rights on several statutory grounds. The petition alleged that, notwithstanding the reunification services provided to respondents, their barriers to reunification still included domestic violence, emotional instability, substance abuse, lack of parenting skills, and unstable housing. In response, respondent-father filed a motion requesting that the matter be dismissed and that the child be returned to respondents' care, alleging that the trial court lacked subject-matter jurisdiction under MCL 712A.2(b) because the child was "found in" Ingham County, not Kalamazoo County when the child was removed from their care. Following a hearing, the trial court denied his motion.

A termination hearing was held on January 9, 2024 and May 14, 2024. Based upon the testimony and evidence presented, the trial court found by clear and convincing evidence that there were statutory grounds to terminate respondent-father's parental rights under MCL 712A.19b(3)(a)(*ii*); (c)(*i*); (c)(*ii*); and (j). The court also found by clear and convincing evidence that there were statutory grounds to terminate respondent-mother's parental rights under MCL 712A.19b(3)(a)(*ii*); (c)(*i*); (c)(*ii*); (i); (j); and (*l*). Finally, the court found that termination of respondents' parental rights was in the best interests of the child. These consolidated appeals follow.

II. JURISDICTION

A. STANDARD OF REVIEW

Respondent-father argues the trial court lacked subject-matter jurisdiction under MCL 712A.2(b) because the child was "found within" Ingham County when he was taken into care. Moreover, although (as pertinent to this appeal) MCR 3.926(A) defines the phrase "found within the county" as used in MCL 712A.2 as being either the county in which the child is physically located or the county in which the offense against the child occurred, respondent-father argues that the court rule is unconstitutional because it violates the separation-of-powers doctrine in Const 1963, art 3, § 2. "Whether a violation of the separation of powers doctrine has occurred is a question of law that this Court reviews de novo." *Fieger v Cox*, 274 Mich App 449, 463; 734 NW2d 602 (2007) (quotation marks and citation omitted). Likewise, "[a] trial court's determination regarding the existence of subject-matter jurisdiction is a question of law that this Court reviews de novo." *In re Martin*, 237 Mich App 253, 255; 602 NW2d 630 (1999).

B. ANALYSIS

At issue is whether the family division of the Kalamazoo Circuit Court has jurisdiction to hear this case involving child protective proceedings brought under the juvenile code, MCL 712A.1. *et seq*. As recently explained by this Court:

> Jurisdiction has two parts—subject matter and personal. Subject-matter jurisdiction is the right of the court to exercise judicial power over a class of cases, not the particular case before it. Personal jurisdiction is a court's authority to make decisions which affect the parties' rights and liabilities. [*Mol v Mol*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 371184); slip op at 4 (quotation marks and citations omitted).]

On appeal, respondent-father suggests that, because the child was removed from respondents' care in Ingham County, the family division of the Kalamazoo Circuit Court lacks subject-matter jurisdiction under MCL 712A.2(b). Respondent-father's argument, however, conflates the existence of subject-matter jurisdiction with the *exercise* of jurisdiction. Whether the trial court's interpretation of jurisdiction under MCL 712A.2(b) was correct as a matter of law has no effect on whether the court had subject-matter jurisdiction because, as noted above, subject-matter jurisdiction concerns a court's right to exercise judicial power over certain classes of cases independent of the particular facts of those cases. *Mol*, ___ Mich App at ___; slip op at 4.

"With respect to subject-matter jurisdiction, circuit courts are Michigan's courts of general jurisdiction." *Id*., citing Const 1963, art 6, § 1. By statute, circuit courts have "original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state." MCL 600.605. In turn, the family division of the circuit court "has sole and exclusive jurisdiction over . . . [c]ases involving juveniles as provided in [the juvenile code, MCL 712A.1 *et seq*.]." MCL 600.1021 and MCL 600.601(4). Based upon the foregoing, it is clear that the family division of the circuit court has constitutional and statutory jurisdiction over cases brought under the juvenile code. As such, the family division

of the Kalamazoo Circuit Court very clearly has the right to exercise judicial power over child protective proceedings brought under the juvenile code. Respondent-father's argument that the trial court lacked subject-matter jurisdiction, therefore, is without merit.

The jurisdictional requirements set forth in MCL 712A.2(b) provide for jurisdiction only if either the trial court or a jury finds that there is clear and convincing evidence that the statutory grounds for jurisdiction set forth in MCL 712A.2(b) are met. Stated differently, the exercise of jurisdiction under MCL 712A.2(b) is dependent upon the particular case and the particular child before the trial court, so the jurisdiction required by this section is personal jurisdiction, not subject-matter jurisdiction. See *Mol*, ___ Mich App at ___; slip op at 4; see also *People v Lown*, 488 Mich 242, 268; 794 NW2d 9 (2011) (stating that if the jurisdictional aspect of a statute requires dismissal of a particular defendant in a particular case when the rule is violated, then that is a matter of personal jurisdiction). Personal jurisdiction—unlike subject-matter jurisdiction—is subject to waiver. *Id.*

In this case, on October 14, 2021, respondent-mother entered a plea of admission to several allegations in the amended petition. Respondent-father entered a no-contest plea to the several allegations. The court accepted the pleas and entered an order assuming jurisdiction over the child. Although respondents were advised of their right to appeal the adjudicatory process, see MCR 3.971(B)(7), they did not do so. Instead, respondents engaged—sporadically—in services for over two years. Then, after the permanency goal was changed from reunification to termination, respondent-father filed a motion seeking to dismiss the petition based upon lack of subject-matter jurisdiction. Given that respondents' pleaded to jurisdiction and then raised no challenge to the court's exercise of jurisdiction for over two years, we conclude that any challenge to the exercise of jurisdiction under MCL 712A.2(b) was waived.

III. REUNIFICATION EFFORTS

A. STANDARD OF REVIEW

Respondent-father next argues that the order terminating his parental rights should be reversed because petitioner did not make reasonable efforts to reunify him with the child. "In order to preserve an argument that petitioner failed to provide adequate services, the respondent must object or indicate that the services provided to them were somehow inadequate. . . ." *In re Atchley*, 341 Mich App 332, 336; 990 NW2d 685 (2022) (quotation marks and citation omitted). Respondent-father did not object to the adequacy of the reunification efforts. Accordingly, this issue is unpreserved. Unpreserved arguments are reviewed for plain error affecting substantial rights. *In re Pederson*, 331 Mich App 445, 463; 951 NW2d 704 (2020).

B. ANALYSIS

Generally, "petitioner has a statutory duty to make 'reasonable efforts to reunify the child and the family. . . .' " *In re Atchley*, 341 Mich App at 338, quoting MCL 712A.19a(2). In order to fulfill that duty, petitioner "must create a service plan outlining the steps that both it and the parent will take to rectify the issues that led to court involvement and to achieve reunification." *In re Hicks/Brown*, 500 Mich 79, 85-86; 893 NW2d 637 (2017). Yet, although petitioner has a duty to provide reasonable reunification services, "there exists a commensurate responsibility on the

part of respondents to participate in the services that are offered." *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). "This means a respondent-parent must both participate in services and "demonstrate that they sufficiently benefited from the services provided." *In re Atchley*, 341 Mich App at 339.

Petitioner provided numerous services aimed at rectifying respondent-father's barriers to reunification, including supervised and unsupervised parenting time, substance-abuse screenings, parenting classes, one-on-one parenting skills training, housing resources, and psychological and substance abuse evaluations. Respondent-father's participation in the services offered was sporadic. He briefly attended counseling through Integrated Services of Kalamazoo. He then entered an inpatient program, but was discharged for violating the program's rules. After his discharge, petitioner referred respondent-father to additional services through Community Mental Health. Respondent-father, however, elected to begin substance abuse counseling and individual therapy with a counselor through the VA. Again, respondent-father did not participate in the services for long. Instead, he stopped that program and again sought treatment from Integrated Services of Kalamazoo. He did not sign a release allowing his caseworker to be provided with information related to that therapy. Moreover, he did not participate in the services for long.

On appeal, respondent-father argues petitioner failed to make reasonable efforts toward reunification because it did not ensure that the above service providers were complying with the recommendations contained in his psychological and substance abuse evaluation. Specifically, he asserts that there is no indication his counselors followed the recommendation to encourage him to open up and stop engaging in denial. Although the record reflects that only one of his many counselors was provided with copies of the evaluations, given the record in this case, it is apparent that his participation with each service provider was sporadic and short-lived. The caseworker was not always able to communicate freely with the counselors and information on his progress was not always available because respondent-father did not sign the appropriate paperwork. Moreover, even if the recommendations had been given to each of the providers, there is nothing on this record suggesting that respondent-father's history of changing providers and failure to demonstrate any meaningful benefit from the counseling would have been different. See *In re Fried*, 266 Mich App 535, 543; 702 NW2d 192 (2005). The trial court did not commit plain error affecting respondent-father's substantial rights when it determined petitioner made reasonable efforts to facilitate reunification.

IV. STATUTORY GROUNDS—RESPONDENT-FATHER

A. STANDARD OF REVIEW

Respondent-father next argues that termination was improper because the trial court relied upon inadmissible hearsay when finding statutory grounds to terminate his parental rights. We review this unpreserved issue for plain error affecting his substantial rights. *In re Pederson*, 331 Mich App at 463.

B. ANALYSIS

Generally, at a termination hearing, "all relevant and material evidence, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative

value." MCR 3.977(H)(2). However, "[i]f . . . termination is sought on the basis of grounds new or different from those that led the court to assert jurisdiction over the children, the grounds for termination must be established by legally admissible evidence." *In re Jenks*, 281 Mich App 514, 516; 760 NW2d 297 (2008), citing MCR 3.977(F)(1)(b).

In this case, the trial court exercised jurisdiction because respondent-father admitted to issues with domestic violence. "[A]ll relevant and material evidence, including oral and written reports," on the issue of domestic violence could be received by the court at the termination hearing and "relied upon to the extent of its probative value." See MCR 3.977(H)(2). Additional barriers to reunification were identified in the case services plan, including issues with substance abuse, housing, mental health, and parenting skills. Because those issues were not the basis for the trial court's original assumption of jurisdiction, legally admissible evidence was required to prove them. See MCR 3.977(F)(1)(b); *In re Jenks*, 281 Mich App at 516.

Yet, only one statutory ground for termination need be established. *In re Pederson*, 331 Mich App at 472 (quotation marks and citation omitted). The trial court found that termination was warranted under MCL 712A.19(b)(3)(c)(*i*), which provides that the court may terminate a parent's parental rights when:

> (c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds [that]
>
> (*i*) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

Here, more than 182 days elapsed since the initial disposition. And the condition that led to adjudication was respondents' engagement in domestic violence in front of the child. Therefore, "all relevant and material evidence, including oral and written reports," on the issue of domestic violence could be received by the court at the termination hearing and "relied upon to the extent of its probative value." See MCR 3.977(H)(2).

Respondent-father was referred to services to address his issues with domestic violence and anger management. Indeed, respondent-father was specifically referred to a program for domestic violence perpetrators. Respondent-father never completed the intake. He briefly participated in a domestic-violence education program through the VA, but he did not complete it. Respondent-father also submitted to individual therapy at times during the proceedings. However, he participated sporadically and demonstrated no benefit from it.

Respondents continued their relationship for most of the proceedings despite their long history of domestic violence, which resulted in criminal charges and personal protection orders (PPOs) being entered to prevent them from having contact. Respondents often violated these orders. Despite multiple contacts with law enforcement during the proceedings, and continuous complaints by caseworkers that respondent-father failed to control his temper, respondent-father denied that he had an issue with domestic violence. Indeed, he was discharged from his inpatient treatment program because of his continued contact with respondent-mother.

Finally, after the first day of the termination hearing, respondent-father twice engaged in domestic violence with respondent-mother. He was then arrested and charged with domestic violence in relation to an assault on respondent-mother. After respondent-father failed to attend a hearing in relation to that criminal charge, a warrant was issued for his arrest. Despite this, respondents maintained contact with each other. Respondent-father failed to appear at the termination hearing. At that time, his arrest warrant was still active. Thus, the conditions that led to adjudication continued to exist. Moreover, the trial court did not clearly err by finding that respondent-father would be unable to rectify his issues with domestic violence within a reasonable time considering the minor child's age. See MCL 712A.19b(3)(c)(*i*). At the time of termination, the minor child was 6 ½ years old, had extensive special needs, and had been out of respondent-father's care for most of his life. Despite having received reunification services aimed at rectifying his issues with domestic-violence for over two years, respondent-father made no significant progress. He was still engaging in domestic-violence with the child's mother.

In sum, the record supports the condition that led to adjudication continued to exist and there was no reasonable likelihood respondent-father would cure it within a reasonable time. See MCL 712A.19b(3)(c)(*i*).

Because termination was proper under MCL 712A.19b(3)(c)(*i*), any evidentiary errors relating to termination under MCL 712A.19(b)(3)(a)(*ii*), (c)(*ii*), and (j) were harmless and did not affect respondent-father's substantial rights.

V. STATUTORY GROUNDS—RESPONDENT-MOTHER

A. STANDARD OF REVIEW

Respondent-mother argues that the trial court clearly erred by finding statutory grounds to terminate her parental rights. We review "for clear error the trial court's finding that there are statutory grounds for termination of a respondent's parental rights." *In re Atchley*, 341 Mich App at 343.

B. ANALYSIS

The court terminated respondent-mother's parental rights under several statutory grounds, including MCL 712A.19b(3)(c)(*i*). At the time of termination, "182 or more days" had "elapsed since the issuance of [the] initial dispositional order." See MCL 712A.19b(3)(c)(*i*). The condition that led to adjudication was domestic violence. And, as indicated above, that condition had not been rectified at the time of the termination hearing. Instead, respondents were still engaging in domestic violence between the first date for the termination hearing and the second date for the termination hearing. Although respondent-mother was referred to multiple domestic-violence classes, she did not participate in any of the proffered services. According to the caseworker, respondent-mother did not believe there was "domestic violence in her relationship." While respondent-mother participated in individual therapy at times, it does not appear that she benefited. Indeed, her behavior was often erratic. Her progress could not be ascertained because respondent-mother refused to sign a release and expressed concern that her therapy records had been altered.

Respondent-mother was in an on-again, off-again relationship with respondent-father during the proceedings. She continued their relationship despite their long history of domestic violence, which resulted in criminal charges and PPOs being entered to prevent respondents from having contact with each other. Respondents often violated these orders. Additionally, respondent-mother was on notice that unresolved domestic violence issues could lead to termination because her parental rights to her five older children had been terminated in relation to this issue. Respondents had multiple contacts with law enforcement during the proceedings, including a September 2023 incident where respondent-father threatening to kill her and then drove a vehicle into a tree while she was a passenger. Respondent-mother recanted her statements about the September 2023 incident after it was discovered respondents were cohabiting and respondent-father was accused of felonious assault. And, between termination hearing dates, respondent-father was arrested and charged with domestic violence in relation to an assault on respondent-mother. Respondent-mother maintained contact with him even after a warrant was issued for respondent-father's arrest as a result of his failure to attend a proceeding in relation to the domestic violence charge. While respondent-mother seemed to have ended her relationship with respondent-father at the time of the May 2024 termination, respondent-mother still refused to engage in domestic violence services. Given this record, the trial court did not clearly err by finding that termination was warranted under MCL 712A.19(b)(3)(c)(*i*).[2]

Affirmed.

/s/ Michael J. Kelly
/s/ Stephen L. Borrello
/s/ Michelle M. Rick

[2] Given that only one statutory ground need be established, see *In re Pederson*, 331 Mich App at 472, we need not consider whether termination was proper on the other statutory grounds.