

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of RICHARD WALSH, JR., BOBBY
WALSH, CATHERINE M. WALSH, a/k/a
KATHERINE M. WALSH, and BRITTANY ANN
WALSH, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

RUTH WALSH and RICHARD WALSH, SR.,

Respondents-Appellants.

UNPUBLISHED

October 16, 1998

Nos. 208069; 208279

Barry Juvenile Court

LC No. 96-004690 NA

Before: Corrigan, C.J., and Doctoroff and Fitzgerald, JJ.

PER CURIAM.

Respondent Ruth Walsh ("respondent-mother" herein) appeals as of right and respondent Richard Walsh, Sr. ("respondent-father" herein) appeals by delayed leave granted the trial court's order terminating their parental rights to the minor children under MCL 712A.19b(3)(b)(i), (b)(ii), (c)(i) and (j); MSA 27.3178(598.19b)(3)(b)(i), (b)(ii), (c)(i) and (j). We affirm.

Docket No. 208069

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence with respect to respondent-mother. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Petitioner presented evidence showing that the children had been subject to neglect since before their sibling, Adam, died as a result of circumstances reflecting, in part, inadequate supervision. The evidence indicated that respondent-mother often became overwhelmed by the children and that, when she felt overwhelmed, she would withdraw. Moreover, there was clear and convincing evidence that respondent-mother was unable to place the children's

needs ahead of her own and that she was overly dependent upon respondent-father, thereby impeding her ability to provide proper care and custody.

Evidence indicated that respondent-mother required at least 1-1/2 to 2 years of treatment before the children could safely be returned to her care. However, it was not reasonable for the children to wait that long, particularly when respondent-mother had made little progress while in therapy for six to seven months and only superficially acknowledged her role in her son's death. There was also clear and convincing evidence that respondent-mother was provided with therapy to address the VanderBeck safety criteria, as ordered by the court, but that she made little progress in this therapy. The trial court did not err in giving little weight to the testimony of Judith Velthouse on this issue considering that her work with respondents was limited to grief counseling and housing problems.

Respondent-mother argues that the trial court improperly focused on the more recent claims that respondent-father sexually abused the children, which surfaced after the trial court assumed jurisdiction. However, the record indicates that the trial court did not consider the allegations of sexual abuse in finding that the statutory grounds for termination had been established. *In re Snyder*, 223 Mich App 85, 88-91; 566 NW2d 18 (1997).

Respondent-mother also argues that the trial court erred in failing to treat herself and her husband as separate individuals in determining whether termination of parental rights was warranted, and that she was thereby prejudiced because the new allegations of sexual abuse applied only to respondent-father. We find no merit to this claim. First, as mentioned previously, the trial court did not consider the allegations of sexual abuse in determining whether statutory grounds for termination had been established by clear and convincing evidence. Rather, the court considered the allegations only in the context of evaluating the children's best interests. Thus, contrary to what respondent-mother argues, the trial court found that there were statutory grounds upon which to terminate her parental rights independent of the allegations of sexual abuse.

Second, despite the fact that the allegations of sexual abuse were not proven in court, the children's sexual acting out behavior continued to pose a problem for the entire family, comprising one of the many ways in which the family was dysfunctional and, therefore, constituted an area for which treatment of the entire family was necessary. Under the circumstances, the trial court did not err in finding that respondent-mother should have addressed this issue in therapy, despite the fact that the allegations of sexual abuse were primarily directed at respondent-father. Respondent-mother was not acting in her children's best interests when she continually failed to support her children's accounts of sexual abuse.

Furthermore, the trial court did not err in denying respondent-mother's motion to sever her case from respondent-father's case, particularly where the evidence failed to indicate that she intended to separate from respondent-father and raise the children on her own, independent of his intervention.

Finally, we reject respondent-mother's claim that she was not provided with necessary or appropriate services to assist her in reuniting with her children. Although respondent-mother was referred to a program that was primarily intended to address sexual abuse, the therapist in that program

was also qualified to address the other elements that respondent-mother was ordered to address in therapy, namely, the VanderBeck safety criteria. Respondent-mother's therapist worked with respondent-mother in addressing these factors, but respondent-mother made little progress. Respondent-mother's parental rights were not terminated because of the therapist assigned to help her, but because of her own lack of progress.

Finally, respondent-mother failed to show that termination of her parental rights was clearly not in the children's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Hall-Smith*, 222 Mich App 470, 471-473; 564 NW2d 156 (1997). Thus, the trial court did not err in terminating respondent-mother's parental rights to the children.

Docket No. 208279

Respondent-father challenges several of the trial court's findings. However, our review of the record reveals that the trial court's findings are not clearly erroneous. *In re Miller, supra* at 337; MCR 5.974(I).

First, the trial court did not clearly err in finding that Adam was in the custody of both parents at the time of his death. Although respondent-father was at work at the time the child drowned, respondent-father was residing with respondent-mother at the time and both played a role in the overall circumstances that eventually led to Adam's death. The family was dysfunctional in many ways and respondent-father played a large role in the family's problems. Both respondents were unable to meet their children's basic needs. Their mutual inability to properly care for the children contributed to the circumstances that led to Adam's tragic death.

The trial court also did not clearly err in finding that the children were not properly fed while in both respondents' care. There was overwhelming evidence that the children were not provided with sufficient nutritious food.

Next, we reject respondent-father's claim that the trial court clearly erred in terminating his parental rights under section 19b(3)(c)(i) where he obtained a job and found a house. These were not the only terms of the parent-agency agreement that respondent-father was required to complete in order to rectify the conditions that led to the court's assumption of jurisdiction. The evidence indicated that respondent-father failed to make significant progress in rectifying the remaining aspects of the treatment plan such that the children could safely be returned to his care.

Furthermore, it was not unreasonable for the trial court to question the safety of respondent's new home when a river ran through the property, there was a history of inadequate supervision in the family, and respondent's son had died from drowning when he was allowed to wander off unsupervised. Also, respondents' limited income does not appear to have been a reason why they could not have located another home, had they explained the circumstances of their son's death, since they were offered assistance through an agency to help pay their rent on a new home until they could afford to pay it themselves.

Respondent-father also argues that his improper management of the family's money was not a sufficient reason to terminate his parental rights. However, this circumstance involved more than just an inability to budget the family's income. It involved respondent-father's intentional failure to provide adequate food and shelter for his family in favor of addressing his own personal needs.

Respondent-father also argues that he was not provided with appropriate therapy services to assist him in regaining custody of his children. We disagree. While the therapist initially focused on the allegations of sexual abuse, petitioner's caseworker intervened in the first month or two to ensure that the therapist also concentrated on the circumstances surrounding the court's assumption of jurisdiction. The caseworker recognized that this delayed respondent-father's progress in therapy. However, there was no evidence that the therapist was not qualified to address the other elements that respondent-father had been ordered to address in therapy. While respondent-father felt that he did not progress in therapy because the therapist was biased against him, the evidence showed that therapy was unsuccessful mainly because of respondent-father's lack of insight into the underlying problems with this family and lack of progress.

Finally, respondent-father argues that the trial court erred in failing to appoint a new therapist. We find no error. The trial court refused to appoint a new therapist because the therapist had already shifted the focus of the sessions to address the reasons underlying the court's assumption of jurisdiction. There was no evidence that the therapist was unqualified to treat respondent-father. Also, the counseling involved areas apart from the allegations of sexual abuse. The trial court did not clearly err in finding that a new therapist was not necessary.

Affirmed.

/s/ Maura D. Corrigan
/s/ Martin M. Doctoroff
/s/ E. Thomas Fitzgerald