STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of DPE, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DAVID HEPPLER, JR.,

Respondent-Appellant,

and

SHANNON EDWARDS,

Respondent.

UNPUBLISHED
August 27, 2002

No. 236442
Van Buren Circuit Court
Family Division
LC No. 99-012457

Before: Whitbeck, C.J., and Bandstra and Talbot, JJ.

PER CURIAM.

Respondent-appellant David Heppler, Jr., appeals as of right from the family court order terminating his parental rights to the minor child, DPE, pursuant to MCL 712A.19b(3)(g) and (j). The family court also terminated Shannon Edwards' parental rights to the child, but she has not appealed. We affirm.

I. Basic Facts And Procedural History

In November 1999, when DPE was only three weeks old, the Family Independence Agency (FIA) removed DPE from respondents' home. According to the petition, the FIA took this action because Edwards' parental rights to another child had been terminated earlier because of neglect, and because domestic violence had occurred between the couple during Edwards' recent pregnancy with DPE. Following a hearing in December 1999, a hearing referee found that there had been reasonable efforts to eliminate the need to place DPE in foster care, but that returning the baby to Heppler and Edwards would present a substantial risk of harm to DPE. The family court, which took jurisdiction over DPE, recommended continued visitation and encouraged Heppler to establish paternity. The family court also encouraged Heppler and Edwards to undergo psychological evaluations and to attend counseling at the caseworker's direction. Though the family court entered respondents' denial of responsibility at this early

stage of the proceedings, Heppler subsequently pleaded no contest to the allegations in the petition, and consented to the family court's jurisdiction over DPE.

Following a dispositional review hearing in March 2000, the family court determined that the parents had not made progress toward rectifying the conditions that caused the child to come into foster care. In August 2000, after another review hearing, the family court again found that the parents had not made progress toward alleviating these conditions. At a third review hearing in November 2000, the family court heard testimony from caseworker Michelle Freeman. Freeman noted that Heppler had completed the Building Strong Families parenting classes, and had participated in counseling. He was also participating in the RAP (Replacing Abusive Patterns) program with facilitator Bernard Foy, Jr., had maintained better employment, and had shown progress in setting and achieving goals. Freeman noted that Heppler had just become eligible for health care, but was unsure whether he had yet applied for it. Although Heppler had indicated that he would use daycare for DPE while he worked, he had yet to find daycare. Freeman, who had visited Heppler's new home, found it to be fairly clean and neat, though some repairs were necessary. In particular, Freeman thought that Heppler should repair the wet basement because DPE had asthma and allergies. In her opinion, if Heppler made the repairs, the home would be suitable for the child. With respect to Heppler's relationship with DPE, Heppler had attended visitation consistently, and those visits had been fairly good. Heppler usually checked the baby's diaper and tried to feed the baby from a bottle. Heppler seemed aware of safety and would hold the baby during visits.

Nevertheless, Freeman testified, she could not recommend that the family court return DPE to Heppler at that point because doing so would pose a substantial risk of harm to the baby's life, physical health, or mental well being. Although Freeman believed that Heppler loved DPE, had bonded with the baby, and had done everything that was asked of him, Heppler seemed unable to take care of DPE's special health needs on his own. Further, Heppler's job as a truck driver took him out of state and he did not have a plan to care for DPE in the event that he might not be able to make it home as expected. While Freeman thought Heppler might be able to develop such a plan, she noted that Heppler's mother provided the only family support for him, and she was planning to move to Florida. Heppler's ongoing relationship with Edwards, his inability to stand up to Edwards about matters related to DPE's care, his unresolved anger problem, and the potential that he might become involved in another violent relationship also concerned Freeman. In Freeman's opinion, Heppler would need too much time and too much education, considering DPE's age and the time DPE had been in foster care, to make the changes necessary to take good care of the baby. As a result, she recommended terminating Heppler's parental rights was in DPE's best interests.

In December 2000, the FIA petitioned the family court to terminate Heppler's parental rights under MCL 712A.19b(3)(g) and (j). The termination hearing began in March 2001, at which time Freeman again testified that termination was in the DPE's best interests. Foy, the facilitator who had been helping Heppler to improve his anger management skills, informed the family court of Heppler's progress in the weekly group sessions in which he participated. The family court requested updated reports from Dr. William Schirado, Heppler's psychologist, and J.J. Jeager-Heiden, his counselor. The family court also asked Heppler to submit to testing with Dr. Schirado to determine if he was developmentally disabled. The family court adjourned the hearing for two months so Heppler could obtain that evaluation.

In March 2001, Dr. Schirado evaluated Heppler, determining that Heppler functioned intellectually in the high borderline to low average range. As for his recommendation, Dr. Schirado stated:

> If [Heppler] demonstrates reasonably independent completion and ongoing involvement, the prognosis for appropriate parenting would be fair, with the qualification that *he will likely require long-term and significant assistance and support in order to maintain focus upon the child and the child's changing developmental needs*. If involvement or completion has been questionable in terms of quality or independence, the *prognosis would be guarded*. He continues at least at *moderate risk for reestablishing dysfunctional adult relationships*.[1]

The family court admitted Dr. Schirado's report into evidence when the termination hearing resumed in May 2001. At that hearing, Freeman, Heppler's sister, mother, aunt, and counselor, as well as Edwards and DPE's foster parent, testified. In general, Heppler's family spoke in favor of him retaining his parental rights to DPE, offering to provide assistance to him if he needed. They attempted to minimize the extent to which he had shown violent tendencies in the past and to suggest that they had no fears regarding his behavior in the future. They made statements to this positive effect despite testimony from the baby's foster mother that Heppler and Edwards were still living with each other and they had mentioned plotting to kill her (the foster mother), the baby, and Heppler's mother. DPE's foster mother emphasized to the family court the amount of effort necessary to care for DPE and arrange all his medical care, questioning whether Heppler had a realistic understanding of the situation. Though Freeman acknowledged that Heppler had improved his home, she continued to recommend terminating Heppler's parental rights. On August 9, 2001, the family court issued its opinion and order terminating Heppler's parental rights to DPE.

II. Termination Of Parental Rights

A. Standard Of Review And Legal Standard

Appellate courts review a family court's decision to terminate parental rights for clear error.[2] This standard of review dovetails with the legal standard, which requires the family court to find clear and convincing evidence on the record proving that at least one statutory ground for termination exists before it terminates parental rights.[3] Once there is clear and convincing evidence of at least one statutory ground for termination, the family court "must issue an order terminating parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests."[4]

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[1] Emphasis added.

[2] *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCR 5.974(I).

[3] MCL 712A.19b(3); see *In re IEM*, 233 Mich App 438, 450-451; 592 NW2d 751 (1999).

[4] *Trejo*, *supra* at 354; MCL 712A.19b(5).

B. Likelihood Of Harm

The family court concluded that the evidence provided a basis on which to terminate Heppler's parental rights pursuant to MCL 712A.19b(3)(j). That subsection permits a family court to terminate parental rights if "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent." Heppler accurately contends that the record does not reveal that he ever actually harmed DPE. However, as the statute requires, there is ample evidence of a reasonable likelihood that he will do so if the family court ever returned DPE to his care. The record reveals that Heppler has a life-long history of anger control problems. Most often, his inability to maintain self-control resulted in physical and verbal abuse inflicted on those closest to him, such as his mother and girlfriend. Although Heppler completed a twenty-four-week course to learn skills to replace abusive patterns, there was no evidence that he would be able to implement these skills while parenting his special needs child, as Dr. Schirado noted. Indeed, while this case was pending, though Heppler had reported responding appropriately to disputes at work, there was contrary and disturbing evidence suggesting that he had physically abused his own mother. Nor can we ignore the testimony of the baby's foster mother that Heppler and Edwards had plotted to kill DPE. On the basis of this record, it is impossible to conclude that the family court clearly erred in finding that termination was proper under MCL 712A.19b(3)(j). Given that the family court properly terminated Heppler's parental rights on this basis, we need not decide whether the record supported the family court's decision to terminate his parental rights pursuant to MCL 712A.19b(3)(g).[5]

Affirmed.

/s/ William C. Whitbeck
/s/ Richard A. Bandstra
/s/ Michael J. Talbot

[5] See *IEM*, *supra*.