STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of DEVIN TYLER MADDOX, NICHOLAS AUSTIN MADDOX, MARISSA NICHOLE MADDOX, MICHAEL JAMES MADDOX, DESTANY MADDOX, and BRIAN JAMES MADDOX, Minors.

DEPARTMENT OF HUMAN SERVICES, f/k/a FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DANIELLE MADDOX,

Respondent-Appellant,

and

DARRELL DUFF, DARRELL MARTAZE McINNES, and MICHAEL RAYMOND ELKINS,

Respondents.

UNPUBLISHED
November 22, 2005

No. 262009
Wayne Circuit Court
Family Division
LC No. 03-415289-NA

In the Matter of DESTANY ANGEL MADDOX, Minor.

DEPARTMENT OF HUMAN SERVICES, f/k/a FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DARRELL MARTAZE McINNES,

Respondent-Appellant,

and

No. 262010
Wayne Circuit Court
Family Division
LC No. 03-415289-NA

DANIELLE MADDOX, DARRELL DUFF, and
MICHAEL RAYMOND ELKINS,

Respondents.

Before: Murphy, P.J., and Sawyer and Meter, JJ.

PER CURIAM.

In these consolidated appeals, respondent Danielle Maddox appeals as of right from the trial court's order terminating her parental rights to all of the children under MCL 712A.19b(3)(c)(i), (g), and (j), and respondent Darrell Martaze McInnes appeals as of right from the same order terminating his parental rights to Destany under MCL 712A.19b(3)(h). We affirm.

Both respondents challenge the sufficiency of the evidence for termination of their parental rights. The trial court did not clearly err by finding that at least one statutory ground for termination of respondent Maddox's parental rights was established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The conditions leading to the initial adjudication concerning the five older children were respondent Maddox's failure to maintain an adequate home for the children, her failure to supervise them and to ensure school attendance, and her substance abuse. The condition of adjudication concerning Destany, who was born during these proceedings and tested positive at birth for cocaine and marijuana, was respondent Maddox's substance abuse. The evidence abundantly supported the trial court's conclusion that respondent Maddox has not successfully addressed her substance abuse problem. She had never completed a substance abuse program and was discharged in December 2004 from a substance abuse program because of missed appointments. She undertook therapy twice during these proceedings and on each occasion attended only two therapy sessions. She admitted smoking marijuana while pregnant with her youngest child, Makayla, born March 12, 2005. The evidence also indicated that respondent Maddox continued to lack a residence suitable for the children, because the home in which she lived with her uncle was too small for the children and was not offered as a residence for them. She admitted that she is currently not stable enough to care for the children and does not know when she will be able to do so. Given these circumstances, the trial court did not clearly err by finding no reasonable likelihood that the conditions leading to the adjudication would be rectified within a reasonable time. MCL 712A.19b(3)(c)(i). The same evidence supports the trial court's finding that the grounds set forth in MCL 712A.19b(3)(g) and (j) were established by clear and convincing evidence with respect to respondent Maddox.

Respondent Maddox argues, however, that termination is not proper because the agency delayed in offering or failed to offer adequate services. However, our review of the record indicates that petitioner did offer reasonable services directed toward reunification but that respondent Maddox did not sufficiently take advantage of them.

With respect to respondent McInnes, we affirm the order terminating his parental rights because termination was proper under MCL 712A.19b(3)(g).[1] Respondent McInnes testified that he did not support Destany during the time that he was not incarcerated, although he was working, because he did not know how to do so. He never contacted the agency or came forward with a plan for her. This record supplies clear and convincing evidence that respondent McInnes failed to provide proper care and custody for the minor child. The record also supports the conclusion that he would not be able to provide proper care and custody for Destany within a reasonable time. At the time of the termination trial, his earliest possible release date was fourteen months in the future. His history of domestic violence and repeated absconding from parole suggests that he will require rehabilitative services after his release before reunification could be considered. Thus, termination of respondent McInnes's parental rights under MCL 712A.19b(3)(g) was warranted by the record.

Respondent McInnes argues, however, that termination under statutory subsection (g) was improper because he was not able to establish paternity of Destany until the day of the termination trial and was never offered services directed toward reunification. The fact that all of the children involved in this case were born during the marriage of respondent mother to Brian Maddox gave rise to the presumption that they were the children of the marriage, and respondent McInnes therefore lacked legal standing for the majority of the proceedings. See *In re KH*, 469 Mich 621, 635-636; 677 NW2d 800 (2004). This presumption could only be rebutted by respondent mother or Mr. Maddox, the legal father, *Id.* at 635, and Mr. Maddox did so by securing paternity testing that indicated that he was not Destany's father. These results were presented to the court on June 9, 2004.[2] On November 5, 2004, the first day of the termination trial, respondent McInnes filed an affidavit establishing his paternity of Destany; he had signed the affidavit on September 22, 2004.

In *In re CR*, 250 Mich App 185, 205; 646 NW2d 506 (2002), this Court noted that "[t]he family court's jurisdiction is tied to the children, making it possible, under the proper circumstances, to terminate the parental rights even of a parent who, for one reason or another, has not participated in the protective proceedings." We conclude that the fact that respondent McInnes did not participate in these proceedings until the termination trial does not invalidate the order terminating his parental rights. Respondent McInnes makes a related argument that his parental rights should not have been terminated based on a failure to provide proper care

[1] It is not entirely clear whether the trial court terminated respondent McInnes' parental rights under statutory subsection (g). However, this statutory subsection may be applied to respondent without deprivation of due process because its elements are contained MCL 712A.19b(3)(h), which was specifically alleged against respondent father in the termination petition. See *In re Perry*, 193 Mich App 648, 651; 484 NW2d 768 (1992). Moreover, respondent McInnes concedes in his appellate brief that the trial court relied on subsection (g) in terminating his parental rights.

[2] The lower court at some point before the termination trial made a determination that Mr. Maddox was not the father of Destany, and the order to that effect was admitted at the termination hearing. However, the order itself does not appear in the record, and the date of its entry is not stated.

because, as a putative father, he had no legal standing or right to care for the child. Respondent McInnes indeed lacked standing until his paternity was established, as we have noted. *In re KH, supra* at 635-636. However, as a practical matter, respondent McInnes, even while a putative father, could have offered support or a plan for the care of the child; but he did not attempt to do so. If respondent's position were adopted, it would contravene the fundamental purpose of child protective proceedings by excluding from consideration a parent's conduct, no matter how neglectful or egregious, until paternity was established. In other circumstances, specifically in the application of the anticipatory neglect doctrine, the court considers conduct that may have occurred even before the birth of the child in question. See *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001). Moreover, as we have also noted, because the court's jurisdiction is tied to the child, it is possible to terminate the parental rights of a parent who has not participated in the proceedings. *In re CR, supra* at 205. Because the record supplies clear and convincing evidence establishing the grounds set forth in statutory subsection (g), no basis for reversal is apparent.

Our disposition leaves it unnecessary to consider whether the trial court erred in terminating respondent McInnes's parental rights under other statutory subsections. See *In re Trejo*, 462 Mich 341, 351; 612 NW2d 407 (2000) (explaining that only one statutory basis for termination need be established to justify the termination of parental rights).

Finally, both respondents assert that the trial court clearly erred by finding that termination of their parental rights was not clearly contrary to the best interests of the children. MCL 712A.19b(5). Given clear evidence that respondent Maddox is not in a position to care for the children and has not begun to address the barriers to reunification, the trial court did not clearly err by finding that termination of her parental rights was not contrary to their best interests. Respondent McInnes has no relationship with Destany, who was approximately seventeen months old at the time of termination, because he has seen her only once in her lifetime. He will continue to be incarcerated at least until May 2006, and, given his history of domestic violence and repeated absconding, would not be in a position to care for the minor child for some time thereafter. In these circumstances, the trial court committed no error in finding that termination of respondent McInnes's parental rights was not clearly contrary to the best interests of the child.

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Patrick M. Meter