STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of CRYSTAL RENEE NICHOLS and CAITLYN MARIE NICHOLS, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

RICHARD JOHN MALANE, JR.,

Respondent-Appellant.

UNPUBLISHED
January 17, 2008

No. 278256
Oakland Circuit Court
Family Division
LC No. 06-726975-NA

Before: Talbot, P.J., and Zahra and Meter, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating his parental rights to the two minor children under MCL 712A.19b(3)(b)(i), (g), and (j). We affirm.

The initial petition in this case sought termination of the parental rights of respondent, as well as those of the children's mother, who is not a party on appeal. The petition alleged severe and repeated physical abuse of one of the children by respondent, in addition to a long history of domestic violence between the parents. The mother pleaded to various allegations in the petition, and jurisdiction over the children was thus established. Petitioner amended its petition concerning the mother to seek temporary custody only, and she was provided with a service plan following a dispositional hearing.

Respondent also pleaded to certain allegations in the petition, admitting a long history of domestic violence against the children's mother as well as repeated physical abuse of one of the children involving smothering, kicking in the stomach, and picking her up by the clothing and slamming her on the floor. Respondent admitted threatening to kill the mother and the children, ripping a phone cord from the wall, and choking the mother on more than one occasion in the presence of the children. He admitted that he was convicted in January 2007 of home invasion and domestic violence. He was incarcerated for those offenses. Following the first dispositional hearing concerning respondent, the trial court found that several statutory bases for termination were established by clear and convincing evidence, specifically, MCL 712A.19b(3)(b)(i), (g), and (j), and that termination of respondent's parental rights was not contrary to the best interests of the children. See MCL 712A.19b(5). An order terminating respondent's parental rights was then entered.

Respondent concedes on appeal that the evidence was sufficient to establish at least one statutory basis for the termination of his parental rights. He contends, however, that the trial court clearly erred in finding that termination of his parental rights was not clearly contrary to the best interests of the children. We disagree.

First, as petitioner notes, Michigan law is clear that the parental rights of only one parent may be terminated. *In re Ramsey*, 229 Mich App 310, 316-317; 581 NW2d 291 (1998); *In re Marin*, 198 Mich App 560, 566, 568; 499 NW2d 400 (1993). Thus, it was permissible for the lower court to terminate the parental rights of respondent while the mother was supplied with a treatment plan and the children remained temporary court wards. Respondent argues that no "legitimate purpose" was served by terminating his parental rights because those of the children's mother have not been terminated. Because proceedings regarding the mother continued, and the children presumably remained in care after the termination of respondent's parental rights, he is correct in implying that the termination of his rights did not necessarily serve to secure immediate permanency for the children. However, while permanency is an important goal that may be served by termination, ultimately the purpose of these proceedings is the protection of the children. The establishment of at least one statutory basis for termination, which respondent concedes, by definition supplies a legitimate reason to terminate his parental rights. "Once a ground for termination is established, the 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." *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000) (emphasis added).

Moreover, the trial court did not clearly err in finding that termination of respondent's parental rights was not clearly contrary to the best interests of the children. *Id*. at 356-357; MCR 3.977(J). Respondent's admissions established a long history of violence against the children and their mother. These incidents were severe. Respondent has also threatened in the presence of the children to kill their mother, and on another occasion, he threatened to get a gun and kill the children and their mother. Respondent has a history of alcohol abuse going back to the age of 15, and he reported during his psychological evaluation that he can sometimes become stable for a period of time but cannot maintain stability. Evidence indicated that he is chronically angry. Respondent admitted acting wrongfully but did not view his behavior as abusive.

Mr. Yeacker, the clinical psychologist who evaluated respondent, noted that respondent's view of violence is different from that of other people and certainly from that of the legal system. Although Mr. Yeacker testified that it would be possible for respondent to gain insight and to change, it was also clear that this would be a lengthy process. First, respondent was incarcerated at the time of termination with an earliest release date seven-and-one-half months in the future. After his release, long-term and serious interventions would be needed. Mr. Yeacker testified that he did not know of any programs that would be adequately thorough. With appropriate intervention beginning after his release, respondent "maybe" after a year would begin to "get a handle on his substance abuse" and "[m]aybe" after two years would start to understand the risk of violence, but only with "all those significant interventions." Mr. Yeacker felt that respondent was at very high risk of repeating his behaviors. The children expressed to Mr. Yeacker that they did not want to see respondent, they did not want to live with him, and they did not want him to be a parent or caregiver to them. Mr. Yeacker opined that termination of respondent's parental rights would not be "an upheaval that the children could not get over."

Clearly, respondent presents a serious risk to the children for a substantial time into the future. Under all the circumstances, the trial court did not clearly err in finding that termination of respondent's parental rights was not clearly contrary to the best interests of the children.

Respondent next asserts that termination was improper because the agency did not provide rehabilitative services for him. The failure of the agency to offer services to respondent warrants no relief on appeal. MCL 712A.19b(4) and MCR 3.977(E) expressly provide for the termination of parental rights at an initial dispositional hearing. Furthermore, while some circumstances require the agency to request termination in the initial petition, MCL 722.638(1), (2), the agency's discretion to do so is not limited to those circumstances. MCL 722.638(3) expressly contemplates that the department may "consider[] petitioning for termination of parental rights at the initial dispositional hearing as authorized under . . . MCL 712A.19b, even though the facts of the case do not require departmental action under subsection (1) . . . ." The instant case does involve serious abuse such that an initial request for termination may well have been required. See MCL 722.638(1)(a)(iii), (2). In any event, it is clear that there was nothing improper in the request. Respondent's parental rights were properly terminated at the initial dispositional hearing in accordance with MCL 712A.19b(4) and MCR 3.977(E).

In general, when a child is removed from the custody of the parents, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan. MCL 712A.18f(1), (2), (4). However, services are not required in all situations. *In re Terry*, 240 Mich App 14, 26, n 4; 610 NW2d 563 (2000). MCL 712A.18f(1)(b) requires the petitioner to justify its decision not to provide services to a family. Because the permanency plan for respondent was termination due to his long history of violence, services directed toward reunification were not required.

Respondent's claim that services should have been offered before the inception of this case does not warrant relief on appeal. The record does indicate that the family came to the attention of the Department of Human Services in 1999, and in fact respondent was convicted of assaulting the children's mother and Crystal around that time. However, for reasons that are not clear on the record provided, the referral was not substantiated. The matter came to the attention of the agency again in 2006, and the record does not indicate what if any interventions were offered.[1] While ideally efforts to assist the family would have been offered when the family came to the attention of the agency in 1999, we are not persuaded that the actions of the agency before the commencement of this matter fall within the Court's current review. The single case offered by respondent in support of this issue is *In re Newman*, 189 Mich App 61, 66-69; 472 NW2d 38 (1991), where the court considered the adequacy of services provided *after the removal of the children* in evaluating the respondents' challenge to the sufficiency of the evidence for termination of their parental rights. We find no basis for relief on appeal.

[1] It may have been significant to petitioner that, around that time, the children's mother reported that she was "kicking [respondent] out of the home" and Crystal indicated that he had in fact moved out.

Affirmed.

/s/ Michael J. Talbot
/s/ Brian K. Zahra
/s/ Patrick M. Meter