

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of PRESTON DAYNE BAXTER,  
DEVON VANCE BAXTER, and BEJAMIN  
STEEL BAXTER, Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

BYRON VAN BAXTER,

Respondent-Appellant.

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UNPUBLISHED  
February 12, 2008

No. 279833  
Genesee Circuit Court  
Family Division  
LC No. 93-096311-NA

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

PER CURIAM.

Respondent appeals as of right from a circuit court order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(b)(i), (g), (j), and (k). We affirm.

Petitioner sought termination of respondent's parental rights at the initial dispositional hearing. The trial court held a single hearing, following which it determined that it had jurisdiction over the children, that there were grounds for termination, and that termination was in the children's best interests. Respondent does not dispute the trial court's assumption of jurisdiction and concedes that there were statutory grounds for termination. His sole claim on appeal is that the trial court erred by terminating his parental rights without holding a separate "best interests" hearing. Respondent did not raise this procedural issue below and, therefore, it has not been preserved for appeal. *Keenan v Dawson*, 275 Mich App 671, 681; 739 NW2d 681 (2007). Accordingly, "review is limited to determining whether a plain error occurred that affected substantial rights." *In re Egbert R Smith Trust*, 274 Mich App 283, 285; 731 NW2d 810 (2007).

Respondent has shown plain error. A trial court may terminate parental rights at the original dispositional hearing if the preponderance of the evidence adduced at trial establishes grounds for the assumption of jurisdiction under MCL 712A.2(b) and the court finds on the basis of clear and convincing legally admissible evidence that one or more facts alleged in the petition are true and establish grounds for termination under MCL 712A.19b(3). MCR 3.977(E). However, the court cannot terminate parental rights at the conclusion of the adjudicatory hearing; it must first conduct a dispositional hearing, either immediately following the adjudicatory

hearing or at some later date after proper notice, to give the respondent “an opportunity to persuade the court that, although a statutory ground for termination is met, termination is not in the best interests of the child.” *In re AMAC*, 269 Mich App 533, 538-539; 711 NW2d 426 (2006). By holding a single hearing rather than a bifurcated one, the trial court erred. However, respondent has not shown that the error affected his substantial rights.

In *In re AMAC*, for example, reversal was required because at the time of the adjudicatory hearing, respondent understood that there would be a subsequent “best interests hearing” and thus, although she had witnesses who would offer testimony relevant to the issue of disposition, they were not called at the adjudicatory hearing. In addition, the trial court neglected to address the best interests factor in its opinion. *Id.* at 535, 539-540. In this case, by contrast, it was understood that the purpose of the hearing was “to terminate father’s parental rights to the three children at the initial disposition”; there was no indication that a separate dispositional hearing would be held. Respondent, who attended the hearing, elicited testimony favorable to himself from petitioner’s witnesses, he had an opportunity to present additional evidence on the issue had he wished to do so, and the trial court did address the best interests factor. Further, respondent has not identified any evidence to be presented that might warrant a finding that despite the horrific abuse that respondent perpetrated on his family, termination was clearly not in the children’s best interests. MCL 712A.19b(5).

Affirmed.

/s/ Michael J. Talbot  
/s/ Mark J. Cavanagh  
/s/ Brian K. Zahra