

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ASHTYN LEWIS SNIDER,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JON HENRY GRANDY,

Respondent-Appellant.

UNPUBLISHED

August 14, 2008

No. 283286

Ionia Circuit Court

Family Division

LC No. 07-000251-NA

Before: Schuette, P.J., Zahra and Owens, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(g). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The trial court did not clearly err by finding that the statutory ground for termination was established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Respondent failed to provide proper care and custody for the minor child by failing to provide food, clothing, money, or in any manner attempting to provide for the child during his life. Respondent's failure to comply with the parent-agency agreement also supplies evidence of his failure to provide proper care and custody. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). The trial court also did not clearly err by finding that there was no reasonable likelihood that respondent would be able to provide proper care and custody for the child within a reasonable time considering his age. At the time of trial, respondent was incarcerated, with his earliest possible date of release 19 months in the future. Thus, even assuming that respondent were paroled at the earliest possible time, expeditiously secured housing and employment, and successfully addressed the barriers to reunification, which include his sexual offender status as well as issues of emotional stability, it would appear that the earliest possible time when he could provide proper care is likely in excess of two years from the time of the termination hearing. The trial court did not clearly err by concluding that this is not a reasonable time considering the age of the child, who was eight months old at the time of termination.

Respondent argues on appeal that the agency improperly rushed to judgment by filing a supplemental petition for termination of his parental rights at the time of the first dispositional review hearing. However, the filing of a petition for termination at the time of the first dispositional review hearing was not improper. A supplemental petition for termination may be filed “at any time after the initial dispositional review hearing.” MCR 3.977(G)(1)(a). The supplemental petition in this matter was filed on the same date as the first dispositional review hearing, and, respondent suggests in his brief, after the hearing.¹ Thus, the filing of the petition at this time was not improper or erroneous, and does not warrant relief on appeal. To the extent that error is claimed in the trial court’s authorization of the petition, that claim is also without merit. Pursuant to MCR 3.977(G), the court *must* take action on a supplemental petition for termination if the child is in foster care. *Id.* Since authorization of such a petition is not required, it was merely superfluous and supplies no basis for a claim of error.²

Finally, the trial court did not clearly err by finding that termination was not clearly contrary to the best interests of the child. MCL 712A.19b(5). Respondent has no relationship with the child and has never seen him. The child is placed with his maternal grandparents, who are interested in adopting him, and who have already adopted two of his half-siblings.³ Agency reports indicate that the minor child has a healthy bond with the maternal grandparents as well as his half-siblings. Under these circumstances, where the child is in a stable family that wishes to adopt him, and where respondent father will be unable to care for the child for at least 19 months and in all likelihood upwards of two years given the uncertainty of parole as well as the need to complete the parent-agency agreement subsequent to his release, the trial court did not clearly err by finding that termination was not contrary to the best interests of the child.

Affirmed.

/s/ Bill Schuette
/s/ Brian K. Zahra
/s/ Donald S. Owens

¹ Respondent states that, at the December 5, 2007, hearing, the court authorized petitioner to file a petition, and then states that petitioner did file such a petition. Even if the petition was filed in the hours before the dispositional review hearing, we perceive no prejudice to respondent and would find the technical violation of the court rule to be harmless error. MCR 2.613(A).

² Respondent’s statement of the issues suggests that he claims error in the trial court’s requesting a petition for termination. However, the body of his argument refers only to the agency and service providers’ “rush to judgment.” Although the issue is not properly presented on appeal, it would provide no grounds for relief even if properly stated since the filing of the petition was not improper.

³ These are not children of respondent but of the child’s mother. Her rights were previously terminated to the two older children. The mother voluntarily relinquished her parental rights to this minor child during the proceedings in this matter.