

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ZACHARY WILLIAM
SCHILLER, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

TIMOTHY CAMPBELL,

Respondent-Appellant.

UNPUBLISHED

November 18, 2008

No. 285466

Gogebic Circuit Court

Family Division

LC No. 06-000101-NA

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

PER CURIAM.

Respondent appeals as of right the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(g) and (j). Because we conclude that there were no errors warranting relief, we affirm.

On appeal, respondent first argues that his due process rights were violated because the grounds of his parental unfitness were not alleged in the initial temporary custody petition, counsel was not appointed until after the permanent custody petition was filed, and he was not given notice that his parental rights were in jeopardy.

Respondent asserts that the October 2006 temporary custody petition did not include any allegations against him. Contrary to that assertion, the petition contained general allegations indicating that Zachary's environment was unfit by reason of criminality. These allegations applied to respondent, who at the time was incarcerated and unavailable to parent Zachary.

Although the majority of allegations in the October 2006 petition concerned Zachary's mother, and the court asserted jurisdiction over Zachary based on her plea, the trial court's jurisdiction is tied to the child. And petitioner was not required to sustain the burden of proof at the adjudication with respect to every parent involved in a protective proceeding before the family court could act in its dispositional capacity. *In re CR*, 250 Mich App 185, 205; 646 NW2d 506 (2002). Thus, the court's assertion of jurisdiction over Zachary based on his mother's plea of admission did not violate respondent's due process rights.

Respondent also argues that he was denied due process because he was not appointed counsel until December 11, 2007. Respondent incorrectly argues that his counsel was appointed three weeks after the permanent custody petition was filed. Counsel was appointed to respondent on December 11, 2007, and the permanent custody petition was not filed until February 1, 2008. Respondent, therefore, was appointed counsel before the filing of the permanent custody petition.¹

A respondent has the right to appointed counsel in parental rights termination proceedings. See MCL 712A.17c(5); MCR 3.915(B)(1)(b). However, the right to counsel in termination of parental rights cases requires affirmative action on the part of the respondent to trigger and continue the appointment of counsel. *In re Hall*, 188 Mich App 217, 222; 469 NW2d 56 (1991). In this case, there was no evidence that respondent ever requested the appointment of counsel—despite being given notice several times over a one-year period—prior to December 11, 2007. Because respondent did not request counsel before that time, neither his statutory nor court rule-based rights to counsel were violated.

Further, although there is a constitutional right to counsel in parental rights termination cases, see *In re Powers*, 244 Mich App 111, 121; 624 NW2d 472 (2000), counsel need not be appointed sua sponte for all hearings where termination of parental rights becomes a possibility. *In re Hall*, *supra* at 222. And a hearing held without counsel can be harmless error where testimony was later taken at the permanent custody hearing and counsel was present. *Id.* at 223. In the present case, respondent was properly represented during the dispositional hearing and had the opportunity to present evidence and argue his position before the court. Hence, although the earlier appointment of counsel would have better served respondent's need for representation and more fully protected his constitutional rights, the process afforded him minimally satisfied the requirements of the United States Constitution and any error in failing to appoint an attorney for respondent earlier was harmless.

Respondent also argues that he was not provided proper notice of the termination proceedings and that he was unaware that his parental rights may be terminated. The record contradicts his assertion. At the permanent custody hearing, respondent admitted that he had been advised that if things did not improve his parental rights would be terminated. And the lower court file contains proofs of service showing that respondent was served in the correctional facility with orders, summonses, and petitions after he established paternity. Each of the summonses contains a warning indicating, "You are notified that this hearing may result in a temporary or permanent loss of your rights to the child(ren)."

Finally, respondent contends that petitioner failed to make reasonable efforts to help him reunite with Zachary. However, where services are provided, the petitioner need only offer reasonable services; it is under no duty to provide every conceivable service to work toward reunification. MCL 712A.18f(4). Petitioner is not obligated to help respondent transition from prison to domestic life, as he asserts. And, services are not required in every case. If, however,

¹ Respondent was not entitled to appointment of counsel until he established paternity, which he did on December 4, 2006. See MCR 3.921(C).

petitioner does not offer services, petitioner must justify that decision. MCL 712A.18f(1)(b). In this case, the caseworker explained she was never informed that respondent did not know how to find housing on his own and he never expressed that he was having a problem. Likewise, she never helped him obtain employment because he was aware of Michigan Works and he never asked for assistance with his job search. Because petitioner explained why it did not extend services, there was no error warranting relief.

Respondent also argues that the requisite statutory grounds for termination were not established.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). If a statutory ground for termination is established, the trial court must terminate parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests. MCL 712A.19b(5);² *In re Trejo Minors*, 462 Mich 341, 353; 612 NW2d 407 (2000). The trial court's decision terminating parental rights is reviewed for clear error. MCR 3.977(J); *Trejo, supra* at 356-357. A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

Respondent is unable to provide proper care and custody for Zachary. See MCL 712A.19b(3)(g). Respondent has not been able to obtain and maintain suitable housing and employment. He spent the majority of the proceedings incarcerated and unavailable to parent Zachary. Zachary was placed in relative care in October 2006 and parental rights were not terminated until May 2008. Respondent was, therefore, given ample time to demonstrate his parental fitness. It was respondent's propensity toward crime and his concomitant incarceration that interfered with his ability to properly provide for his child, not, as he now argues, the amount of time he was given to plan. Respondent's disregard of the trial court's orders and unauthorized visits with Zachary demonstrate poor judgment, self-involvement, and a lack of respect for Zachary's best interests.

Termination of parental rights was also proper under MCL 712A.19b(3)(j). Until respondent demonstrates that he can maintain stability, and a life free of criminality and drugs, he poses a risk of harm to Zachary. If respondent is unable to meet Zachary's basic needs for food, clothing, and shelter because he cannot maintain steady employment or independent housing, Zachary risks emotional and physical harm. Likewise, respondent's extensive criminal involvement and drug use poses a risk of physical harm to Zachary because the child would be exposed to a lifestyle of drugs and crime in respondent's care. Respondent used drugs as recently as December 2007 and was in jail awaiting new felony charges during the pendency of

² We note that respondent's parental rights were terminated before the effective date of the amendment of MCL 712A.19b(5). See 2008 PA 199.

the permanent custody hearing. Respondent has not demonstrated an ability to provide a safe, stable life for Zachary.

There were no errors warranting relief.

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Michael R. Smolenski