

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of LOVE DORROUGH, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ERIC DORROUGH,

Respondent-Appellant.

UNPUBLISHED

May 12, 2009

No. 288112

Wayne Circuit Court

Family Division

LC No. 98-362952-NA

Before: Borrello, P.J., and Murphy and M.J. Kelly, JJ.

PER CURIAM.

Respondent appeals by leave granted from a supplemental dispositional order entered after a dispositional review hearing in this child protective proceeding. We affirm.

Respondent first argues that the trial court erred in initially assuming jurisdiction over the minor child. Respondent did not appeal the trial court's initial dispositional order to which the court exercised jurisdiction over the child. Because the initial dispositional order was appealable by right, MCR 3.993(A)(1), and respondent did not pursue an appeal from that order, he cannot now collaterally attack that order on appeal from a subsequent order. *In re Bechard*, 211 Mich App 155, 159; 535 NW2d 220 (1995); *In re Powers*, 208 Mich App 582, 587; 528 NW2d 799 (1995). Similarly, respondent may not collaterally attack the initial dispositional order on the ground that it was entered without a service plan having been made available to him.

We note, however, that there is no merit to either of these issues. With respect to jurisdiction, the evidence before the court showed that the child's mother admittedly was not in a position to provide care and custody, and intended to release her parental rights to the child. Further, respondent had not yet established paternity and was incarcerated. Because the only parent available was neither fit to provide nor interested in providing custody, the child was without proper custody or guardianship and the court properly exercised jurisdiction over the child. MCL 712A.2(b)(1) and (2); *In re AMB*, 248 Mich App 144, 167; 640 NW2d 262 (2001). The record also shows that a service plan, including a parent/agency agreement, was available to the court and the parties, and that the court reviewed the documents before entering the initial dispositional order, but the court declined to adopt the service plan until respondent established paternity. A service agreement was thereafter made available after paternity was established.

Respondent lastly argues that the trial court erred in amending the service plan to include sex offender treatment. He argues that he was denied due process because the petition did not charge him with being a sex offender and he was not given an opportunity to defend against such an allegation. Constitutional issues are generally reviewed de novo on appeal. *Co Rd Ass'n of Michigan v Governor*, 474 Mich 11, 14; 705 NW2d 680 (2005).

Parents have fundamental due process rights in child protective proceedings. *In re CR*, 250 Mich App 185, 204; 646 NW2d 506 (2002). “Due process in civil cases generally requires notice of the nature of the proceedings, and an opportunity to be heard in a meaningful time and manner, and an impartial decisionmaker.” *In re Juvenile Commitment Costs*, 240 Mich App 420, 440; 613 NW2d 348 (2000). A respondent is thus entitled to notice of the charges against him. *In re Slis*, 144 Mich App 678, 683; 375 NW2d 788 (1985). Here, although respondent was only a putative father when the petition and amended petition were filed, he had notice of the charges against him, i.e., that he was not available to provide proper care and custody for the child because he was incarcerated. Further, due to his criminal history and the fact that he had another child who had been a temporary court ward, his ability to provide proper care and custody was questionable. The agency did not seek permanent or temporary wardship on the ground that respondent was a sex offender. Rather, evidence that he was suspected of being a sex offender was discovered during an investigation into his criminal background and was thus included in the service plan.

When the court enters an order of disposition, it “may enter such orders as it considers necessary in the interest of the child.” MCR 3.973(F)(2). At dispositional review hearings, the court may modify any part of the service plan. MCR 3.975(G)(4). The word “may” “is permissive and therefore indicative of discretion, *In re Forfeiture of Bail Bond*, 276 Mich App 482, 492; 740 NW2d 734 (2007), and thus the court’s decision regarding modification of the service plan is reviewed for an abuse of discretion. An abuse of discretion “occurs when the decision results in an outcome falling outside the principled range of outcomes.” *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006). As amended, the petition indicated that respondent’s parental fitness was questionable due in part to his extensive criminal history. That history included ten charges of first-degree criminal sexual conduct, which were ultimately dismissed as part of a plea agreement. The commission of any further such offenses would adversely affect respondent’s ability to plan for the child and thus it was not unreasonable for the court to order treatment to prevent the commission of any further such offenses. Accordingly, the trial court’s order did not amount to an abuse of discretion.

Affirmed.

/s/ Stephen L. Borrello
/s/ William B. Murphy
/s/ Michael J. Kelly