

STATE OF MICHIGAN  
COURT OF APPEALS

---

UNPUBLISHED

July 27, 2010

In the Matter of D. K. SPEAR, Minor.

No. 294958  
Roscommon Circuit Court  
Family Division  
LC No. 09-727870-NA

---

Before: FORT HOOD, P.J., and BORRELLO and STEPHENS, JJ.

PER CURIAM.

Respondent appeals as of right from the lower court order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(b)(ii), (g), and (j). We affirm.

In support of her claim that there was insufficient evidence to support termination of her parental rights, respondent simply argues that petitioner was required to offer her services before proceeding to termination. Generally, the Department of Human Services is required to make reasonable efforts to rectify the conditions that caused a child's removal from the parent's home by adopting a service plan and providing necessary services to facilitate reunification. MCL 712A.18f(4); *In re Terry*, 240 Mich App 14, 25-26; 610 NW2d 563 (2000). However, in an appropriate case, a trial court is permitted to terminate parental rights at the initial dispositional hearing. MCR 3.977(E). When termination is requested at the initial dispositional hearing, it is unnecessary to develop and provide a service plan to reunite the family because the goal is termination, not reunification. MCL 712A.18f(3)(d); MCL 712A.19b(4). Petitioner need not provide services if it justifies its decision not to do so. See MCL 712A.18f(1)(b); *In re Terry*, 240 Mich App at 25, n 4.

In this case, the condition that led to Dylan's removal was the death of his sibling, Clayton. Clayton's fatal injuries were incurred when respondent left her children in the care of her boyfriend, Bradley O'Neil, a known drug dealer, convicted felon, and a person with whom respondent had snorted heroin only moments before she left her children in his care. Respondent, herself, had a significant history of drug and alcohol use, and she was continuing to abuse alcohol in the weeks immediately before the dispositional hearing. Respondent lacked insight into how her behavior affected her child and what was required to protect a child from unreasonable risk of harm. Furthermore, respondent's prognosis for improvement was bleak. Considering the foregoing circumstances, petitioner was justified in not providing services toward reunification and, instead, seeking termination of parental rights at the initial dispositional hearing.

Moreover, the trial court did not clearly err when it held that the statutory grounds for termination were established by clear and convincing evidence. Respondent's parental rights were terminated pursuant to MCL 712A.19b(3)(b)(ii), (g), and (j). The evidence established that respondent knew or should have known that her children were at risk of harm in O'Neil's care. She was aware of his prior criminal record and the fact that he was dealing drugs. More significantly, respondent knew that O'Neil was impaired on the evening of April 7, 2009, as she had just snorted a line of heroin with him before she left her children in his care. Because respondent knew, or should have known, that her children were in grave danger, she had an opportunity to prevent the physical injury to Clayton but failed to do so.

There was also ample evidence that Dylan would suffer injury in the foreseeable future if placed in respondent's care. In no meaningful way had respondent addressed her substance abuse issues. Despite completing a substance abuse program, attending counseling sessions, and AA, respondent continued to consume alcohol mere days before the initial dispositional hearing. Further, respondent lacked the ability to appreciate the role a parent plays in the protection of her children. Respondent could not even acknowledge that her lifestyle might affect her children. Because respondent lacked insight into the needs of her children, there was little likelihood that she would change her behavior and put her child's needs ahead of her own. A parent cannot protect a child from a risk of harm when she fails or refuses to even recognize that a risk exists.

There was also evidence from which the court could conclude that respondent would not be able to provide proper care and custody to Dylan within a reasonable time. Both Dr. Simmons and Mary Pratt testified that it would take respondent at least a year to adequately address her substance abuse issues. It would require that respondent invest herself in intensive services and remain sober while doing so. Even having said that, Dr. Simmons was pessimistic about respondent's prognosis and her ability to change. In light of the foregoing evidence, the trial court did not clearly err when it terminated respondent's parental rights pursuant to MCL 712A.19b(3)(b)(ii), (g) and (j).

Respondent also argues that termination of her parental rights was not in the child's best interest.<sup>1</sup> We disagree. The testimony established that respondent lacked insight into her child's needs, had no appreciation for the damage her lifestyle had done and was doing to her child, and had not overcome her severe and longstanding history of substance abuse. Psychologist Wayne Simmons clearly explained that termination of parental rights was in Dylan's best interest. Dr. Simmons opined that there was little likelihood that respondent was going to improve; her prognosis was extremely bleak. Given this credible conclusion, Dr. Simmons explained that if Dylan was going to survive and achieve the desired stability, he would need to detach from his mother completely. It would be damaging to Dylan to yearn for his mother when there was little probability that she would ever be in a position to properly parent her child. Dr. Simmons concluded that termination of parental right would be in Dylan's best interest because it would

---

<sup>1</sup> Once a statutory ground for termination is established by clear and convincing evidence, the trial court shall terminate parental rights if "termination of parental rights is in the child's best interests." MCL 712A.19b(5). The trial court's best interest determination is reviewed for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

permit him to feel settled and reach a healthy level of security and emotional equilibrium. Based upon the foregoing, the trial court did not clearly err when it ruled that termination of respondent's parental rights was in the child's best interests.

Affirmed.

/s/ Karen M. Fort Hood

/s/ Stephen L. Borrello

/s/ Cynthia Diane Stephens