STATE OF MICHIGAN

COURT OF APPEALS

	UNPUBLISHED January 10, 2012
In the Matter of WILLIAMS/ROGERS, Minors.	No. 304296 Ingham Circuit Court Family Division LC Nos. 10-001773-NA 10-001774-NA 10-001775-NA 10-001776-NA 10-001777-NA
In the Matter of WILLIAMS/ROGERS, Minor.	No. 304297 Ingham Circuit Court Family Division LC No. 10-001774-NA

Before: MURPHY, C.J., and FITZGERALD and METER, JJ.

PER CURIAM.

In Docket No. 304296, respondent S. Williams appeals as of right from the trial court's orders terminating her parental rights to five children under MCL 712A.19b(3)(g) and (j). In Docket No. 304297, respondent J. Lilly appeals as of right from the trial court's order terminating his parental rights to one child under the same statutory grounds. We affirm in both appeals.

I. DOCKET NO. 304296

The trial court did not clearly err in finding that both statutory grounds for termination were established by clear and convincing evidence with respect to respondent Williams. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 355-357; 612 NW2d 407 (2000). The evidence showed that respondent Williams has a history of abusing children and exposing them to domestic violence. She received substantial services during a prior child-protective proceeding in 2009. Despite these services, in October 2010 she exposed the children to another abusive domestic partner (the father of the two younger children), who injured two of the children by placing hot sauce and vinegar in their eyes. Respondent Williams did not seek medical treatment for the injured children, and instead left the children in the custody of her abusive partner while she

contacted her sister. When a Child Protective Services worker and the police arrived to investigate, they discovered numerous unsanitary and hazardous conditions in the home, including large knives within reach of the children. The trial court did not clearly err in finding that respondent Williams failed to provide proper care and custody for her children, or in finding that there was no reasonable expectation that she would be able to do so within a reasonable time, considering that she had already received extensive services in the past and had not benefitted from those services. Further, considering the injuries to two of the children, see *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001) (discussing the doctrine of anticipatory neglect), the exposure of all the children to domestic violence, and the unsafe conditions in the home, the trial court did not clearly err in finding that the children were reasonably likely to be harmed if returned to respondent Williams's home. Accordingly, we affirm the trial court's determination that termination was warranted under §§ 19b(3)(g) and (j).[1]

II. DOCKET NO. 304297

Respondent Lilly contends that the trial court could not terminate his parental rights based solely on incarceration. We agree that a mere present inability to personally care for a child as a result of incarceration is not a basis for termination. *In re Mason*, 486 Mich 142, 160; 782 NW2d 747 (2010). Here, however, the trial court did not terminate respondent Lilly's parental rights merely because he was incarcerated. It also considered his past history of domestic violence and poor prognosis for rehabilitation within a reasonable time.

Respondent Lilly additionally argues that the trial court erred in terminating his parental rights without affording him an opportunity to participate in reunification services.[2] However, petitioner was not required to offer respondent Lilly services when its permanency plan for the children was termination of parental rights. See, generally, *In re Terry*, 240 Mich App 14, 26 n 4; 610 NW2d 563 (2000). Petitioner was legally permitted to seek termination at the initial dispositional hearing, see MCL 712A.19b(4) and MCR 3.977(E), and that authorization is not restricted to enumerated circumstances. Respondent Lilly's criminal and assaultive history, including his violent assault of respondent Williams and his incarceration, justified petitioner's decision. Accordingly, the trial court properly could proceed to termination without first offering respondent Lilly the opportunity to participate in services.

The trial court did not clearly err in finding that §§ 19b(3)(g) and (j) were established by clear and convincing evidence with respect to respondent Lilly. Respondent Lilly had not provided for his child's proper care and custody and, considering his incarceration and the length of time that would be needed even after his release from prison to reestablish a relationship with the child and to determine whether he could benefit from services, the trial court did not clearly err in finding that respondent Lilly would not be able to provide proper care and custody within a

[1] We note that respondent Williams makes no reasoned appellate argument concerning the best-interests issue.

[2] We note that respondent Lilly was unable to participate immediately in reunification services because of his incarceration.

reasonable time. Therefore, termination was proper under § 19b(3)(g). In addition, considering respondent Lilly's assaultive history and domestic violence against the child's mother, the child was reasonably likely to be harmed if placed in his custody.[3] Therefore, termination was also proper under § 19b(3)(j).[4]

Finally, given respondent Lilly's history of domestic violence and the fact that he did not have an established relationship with his child, the trial court did not clearly err in finding that termination of respondent Lilly's parental rights was in the child's best interests. MCL 712A.19b(5); *In re Beck*, 488 Mich 6, 11; 793 NW2d 562 (2010); *Trejo*, 462 Mich at 356-357.

Affirmed.

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter

[3] One of the assaultive incidents involved respondent Lilly punching, strangling, and kicking respondent Williams in the presence of a small child. Respondent Williams lost consciousness during the incident. The trial court opined that "he nearly killed her."

[4] We note that only one statutory ground need be established to justify termination of parental rights. *Trejo*, 462 Mich at 360.