STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of FAITH RENEE DIXON, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MICHAEL MALACHI DIXON
and DENISE DEWALT,

Respondents-Appellants.

UNPUBLISHED
November 17, 1998

Nos. 209608; 209866
Oakland Juvenile Court
LC No. 97-062625 NA

Before: Jansen, P.J., and Holbrook, Jr. and MacKenzie, JJ.

PER CURIAM.

In Docket No. 209608, respondent-father appeals as of right from a juvenile court order terminating his parental rights to the minor child under MCL 712A.19b(3)(i); MSA 27.3178(598.19b)(3)(i). In Docket No. 209866, respondent-mother appeals as of right from a juvenile court order terminating her parental rights to the minor child under MCL 712A.19b(3)(g) and (i); MSA 27.3178(598.19b)(3)(g) and (i). We affirm in part, reverse in part, and remand.

Respondent Dixon argues that insufficient evidence was presented to support the termination of his parental rights under § 19b(3)(i). We agree. The petition requested termination of respondent's parental rights at the initial dispositional hearing. MCR 5.974(D) provides:

> The court shall order termination of the parental rights of a respondent at the initial dispositional hearing held pursuant to MCR 5.973(A), and shall order that additional efforts for reunification of the child with the respondent shall not be made, if
>
> (1) the original, or amended, petition contains a request for termination;
>
> (2) the trier of fact found by a preponderance of the evidence that the child comes under the jurisdiction of the court on the basis of MCL 712A.2(b); MSA 27.3178(598.2)(b);

(3) the court finds on the basis of clear and convincing legally admissible evidence introduced at the trial, or at plea proceedings, on the issue of assumption of court jurisdiction, that one or more facts alleged in the petition:

(a) are true,

(b) justify terminating parental rights at the initial dispositional hearing, and

(c) fall under MCL 712A.19b(3); MSA 27.3178(598.19b)(3);

unless the court finds, in accordance with the rules of evidence as provided in subrule (F)(2), that termination of parental right is clearly not in the best interest of the child.

Affording due deference to the juvenile court's evaluation of the evidence, we conclude that the evidence was legally insufficient to terminate respondent Dixon's parental rights at the initial dispositional hearing. Under MCR 5.974(D), the court was required to find, inter alia, that one or more allegations in the petition fall under § 19b(3). Here, with respect to respondent Dixon, the juvenile court relied solely on subsection (i) of § 19b(3), which provides that parental rights may be terminated when

> [p]arental rights to 1 or more siblings of the child have been terminated *due to serious and chronic neglect* or physical or sexual abuse, *and prior attempts to rehabilitate the parents have been unsuccessful*. [Emphasis added.]

Under the foregoing statute, the mere fact that parental rights to one or more siblings have been terminated, standing alone, is insufficient to terminate parental rights. Rather, there must also be clear and convincing evidence that parental rights to a sibling were terminated because of "serious and chronic neglect," and that "prior attempts to rehabilitate . . . have been unsuccessful." The Legislature is presumed to have intended the meaning it plainly expressed. *Institute in Basic Life Principles, Inc v Watersmeet Twp (After Remand)*, 217 Mich App 7, 12; 551 NW2d 199 (1996).

In this case, although petitioner presented evidence that respondent Dixon's parental rights to two of the minor child's siblings were previously terminated, no evidence was presented regarding the circumstances surrounding the prior termination of respondent Dixon's parental rights to the siblings. In fact, the foster care worker testified that she was not familiar with the facts of the previous case. Moreover, petitioner did not present evidence that there had been prior attempts to rehabilitate respondent Dixon which were unsuccessful. Thus, the juvenile court clearly erred in finding that termination of respondent Dixon's parental rights at the initial dispositional hearing was warranted under § 19b(3)(i). We must therefore reverse that portion of the juvenile court's order terminating respondent Dixon's parental rights and remand for further proceedings.

With regard to respondent Dewalt, the juvenile court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Further, respondent Dewalt failed to show that termination of her parental rights was clearly not in the child's best interests. MCL 712A.19b(5);

MSA 27.3178(598.19b)(5); *In re Hall-Smith*, 222 Mich App 470, 472-473; 564 NW2d 156 (1997). Thus, the juvenile court did not err in terminating respondent Dewalt's parental rights to the child.

Affirmed in part, reversed in part and remanded. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Donald E. Holbrook, Jr.
/s/ Barbara B. MacKenzie