STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of R.F. and M.F., Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

V

BRIAN FRENCH,

Respondent-Appellant,

and

AMY CUMMINGS,

Respondent.

UNPUBLISHED
January 29, 2002

No. 223784
Calhoun Circuit Court
Family Division
LC No. 97-000855-NA

Before: Bandstra, C.J., and Fitzgerald and Gage, JJ.

PER CURIAM.

Respondent-father appeals by delayed leave granted from the trial court's order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (g) and (j). We affirm.

Respondent-father first argues that he was denied due process because the trial court, after hearing testimony that respondent-father had physically abused the children's mother, combined the July 1999 review hearing with a permanency planning hearing. While the trial court acknowledged that respondent-father did not receive the required written notice that a permanency planning hearing would be held, MCR 5.973(C)(3), it is apparent from the record that the parties did not object to the combined hearing and that all parties received actual notice of the subsequent hearing. At that hearing, the trial court afforded respondent-father the opportunity to recall any witnesses and present any evidence that he had been unprepared to present because of the lack of written notice. Under these circumstances, any error in failing to provide written notice was harmless. MCR 5.902(A); MCR 2.613(A).

Respondent-father also argues that he was denied due process when the trial court refused to call the children's mother as a witness at the July 1999 review hearing, in order to dispute the

allegations of physical abuse. We do not agree. The children's mother is a legally incapacitated person. There was evidence that she was afraid of respondent-father and that she was not willing or competent to enter the courtroom or testify. The trial court acknowledged that the children's mother had made conflicting statements with regard to the alleged abuse, some of which were consistent with respondent-father's position, and informed counsel that the mother could be called to testify at a later time if counsel deemed it necessary. The rules of evidence do not apply at a dispositional hearing, MCR 5.973(A)(4)(a), and the trial court is given wide latitude in evidentiary matters at a permanency planning hearing. MCR 5.973(C)(4)(a). We find no error. MCR 5.974(I).

Finally, the trial 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). The record indicates that despite the extensive services offered to him, respondent-father had not improved his ability to parent or to provide the children with an appropriate home. MCL 712A.19b(g). He failed to undertake the first-aid training necessary to enable him to treat the seizures which afflicted both children, or to arrange for appropriate "second person" child care when he could not be present to aid the children's mother in caring for the children. Respondent-father was also observed encouraging the children to verbally abuse and disparage their mother. Moreover, as noted by the trial court, the instant matter involves the second petition for termination brought against respondent-father, and correctly reasoned that, "having been given two chances, there is no reasonable likelihood that the conditions leading to the original adjudication will be rectified within a reasonable time, considering the age of the children." MCL 712A.19b(c)(i).

The evidence was similarly sufficient to support the trial court's finding of a reasonable likelihood that the children would be harmed if returned to respondent-father's home. MCL 712A.19b(j). In addition to the evidence discussed above, petitioner presented evidence that respondent-father had not installed child-safety locks on his cupboards, despite the fact that another child, although not his own, had died of an aspirin overdose in the home. Respondent-father also admitted not knowing what medications his special-needs children were taking, and refused to take responsibility for his failure to find a child care provider or to learn how to give the children their medications.

Further, the evidence did not show that termination of respondent-father's parental rights was clearly not in the children's best interest. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The children had been in a stable home with their grandparents for most or all their lives, and they were thriving in that environment. Moreover, as petitioner argued below, the treatment plan merely required that respondent-father not leave the children alone with their mother, that he find out what medications the children need and be certain that they receive it, that he install child-proof locks in the home, and that he find appropriate daycare. Respondent-father, however, failed to complete any of these tasks. Thus, the trial court did not err in terminating respondent-father's parental rights to the children.

We affirm.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Hilda R. Gage