STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of AA, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

BRYAN AKINS,

Respondent-Appellant,

and

DEBORAH SIERADZKI,

Respondent.

UNPUBLISHED
February 19, 2002

No. 234836
Genesee Circuit Court
Family Division
LC No. 99-111974-NA

Before: Whitbeck, C.J., and Markey and K. F. Kelly, JJ.

PER CURIAM.

Respondent-appellant Bryan Akins appeals as of right from the family court's order terminating his parental rights to his son, AA, under MCL 712A.19b(3)(c)(i), (g) and (j). We affirm.

I. Basic Facts And Procedural History

In 1999, the Family Independence Agency (FIA) filed a petition generally alleging that Akins and Deborah Sieradzki, AA's mother, had neglected the child and had an unfit home. The petition specifically alleged that Sieradzki was a cocaine user and an alcoholic, was currently homeless, and had worked as a prostitute. The petition also alleged that Akins used cocaine and was an alcoholic, that he was staying with his father, and that he used the money he earned to buy cocaine. According to the FIA, AA did not attend school regularly, he was "streetwise," and he was around alcoholics frequently. Following a preliminary hearing, the family court authorized the petition and placed AA with his aunt.

The family court held an adjudication in October 1999, at which time it took jurisdiction over AA and ordered both parents to comply with the case service plan, which provided that

Akins obtain substance abuse treatment. At the review hearing approximately three months later, the family court noted that both Sieradzki and Akins were complying with their case service plans. The family court gave the caseworker discretion to return AA to his mother's care before the next hearing if she continued to comply. The parents' compliance with the case service plans continued through the April 2000 review hearing, when the family court returned AA to his parents with support from the Families First program.

Unfortunately, this progress was short-lived. In May 2000, FIA foster care worker Keiyauna Stanley learned that AA had called 911, asking to be removed from his parents' home immediately. Additionally, the parents had not maintained contact with Stanley, had stopped participating in the Life Skills program, and were not submitting drug screens. AA's aunt also informed Stanley that Akins and Sieradzki were using drugs again. In June 2000, at Stanley's request, the family court removed AA from his parents' care again, placing him with a relative.

At the review hearing the next month, the family court ordered that Akins and Sieradzki have only supervised visits with AA and allowed the caseworker discretion to extend their visitation. Akins and Sieradzki did not improve their compliance with their respective case service plans by the October 2000 review hearing. For the first time, the family court record indicated that the "father requested appointed attorney."

In November 2000, the FIA filed a petition seeking to terminate both parents' rights to AA. The petition alleged that Akins had failed to follow through with services the family court had ordered, did not have a stable residence or a steady job, and had not shown any progress toward overcoming the problems described in the original petition. Thus, the FIA asserted that the family court could terminate Akins' parental rights under MCL 712A.19b(3)(c)(i), (g) and (j).

In January 2001, the family court held another review hearing, again noting that neither parent had made progress. The family court suspended both parents' visitation at that time. In February 2001, four months after asking to have an attorney appointed to represent him, the family court appointed attorney James Bauer to represent Akins.

The termination hearing took place on May 9 and 10, 2001. At that time Bauer, noting the gap between when Akins requested an attorney in October 2000 and the when family court appointed him to represent Akins, argued that this delay required an adjournment so Akins could comply with the case service plan. The family court denied the motion, reasoning that Akins suffered no prejudice. According to the family court, even had an attorney been appointed to represent Akins sooner, the attorney would have merely advised Akins to follow the court orders.

At the termination hearing, the FIA presented the various workers involved with the family. Linda Kuiper, the protective services worker who filed the initial petition, testified that AA said that Akins used drugs, that he helped Akins get food out of dumpsters at grocery stores, and that he stayed in various places. Kuiper noted that other members of AA's family had informed her about Akins' drug use as well.

Stanley, AA's foster care worker, noted that Akins' own father informed her that Akins had a substance abuse problem. She recalled that when she first received the case in September 1999, Akins failed to return her phone calls, did not respond to her letters, refused services, and

failed to sign the parent-agency agreement she originally developed. Stanley reiterated the problems she had with Akins and Sieradzki when the family court returned AA to their care in 2000, including the circumstances that prompted the child to call for help. Stanley indicated that Akins failed to comply with the parent-agency agreement he eventually signed and that he failed to maintain contact with her, visit AA, submit clean drug screens, and maintain steady employment.[1]

In a court-ordered psychological report, completed in January 2001, the evaluator stated:

> I concur with the recommendations that this man [Akins] needs to participate in all parenting programs offered by FIA. He also needs to establish a goal of sobriety from all substances. He will need to be involved in long-term substance abuse counseling. I believe that this man has a poor prognosis. He certainly has been very deficient in his cooperation and participation in services and in his relationship with his child. Since this man has made very limited progress to rectify the problems that brought this family to the attention of FIA and the test results suggest that he has a poor prognosis for changing, I recommend that his parental rights be terminated. I believe that his child has been separated from the parents for a very significant period of time and beyond the best interest of the child. I believe that neither parent will be able to provide safe and psychologically meaningful care for their child in the near future.

In contrast to the FIA's evidence, Akins testified that he loved AA, had regular contact with him, and was present at AA's birth. Akins stated that he had cared for AA, feeding him and making sure he had clothing. Akins acknowledged his longstanding substance abuse problem involving crack cocaine, but said that he entered a treatment program in December 1999 and had completed it. He had entered another treatment program during the month preceding the termination hearing, which he left because of a dispute concerning the program, but had not used drugs in forty days. Akins denied ever physically abusing AA, but conceded that he used drugs in front of AA, ate food out of dumpsters with the child, and bought drugs with the money he saved by doing this.

After hearing this evidence, the family court found that there was clear and convincing evidence to terminate Akins' parental rights under MCL 712A.19b(3)(c)(i) because the reason leading to the adjudication, Akins' substance abuse, persisted and there was no reasonable likelihood that it would be remedied within a reasonable time period. The family court found that there was clear and convincing evidence to terminate Akins' parental rights under MCL 712A.19b(3)(g), noting that the FIA intervened in this case because AA was receiving inadequate care at home and that this problem continued to exist after he returned home, eventually forcing the child to call for help. Finally, finding that there was clear and convincing evidence to terminate Akins' parental rights pursuant to MCL 712A.19b(3)(j), the family court again cited Akins' drug addiction, the fact that Akins had used drugs in front of the child, and that he had gotten food out of dumpsters with the child. The family court concluded that returning the child to that situation would cause him harm. The family court also determined

[1] While other witnesses testified, their testimony mainly concerned Sieradzki.

that terminating Akins' parental rights was in AA's best interests, reasoning that a child should not be raised by a parent addicted to substances.

On appeal, Akins claims that he was denied his right to counsel. He also challenges the evidence used to support terminating his parental rights under each of these subsections of MCL 712A.19b(3) as insufficient and argues that terminating his parental rights was clearly not in AA's best interests.

II. Right To Counsel

A. Standard Of Review

Whether the family court denied Akins his right to counsel, thereby violating the court rules and meriting reversal, is a question of law subject to review de novo.[2]

B. Legal Basis

A parent who is a respondent in a child protective proceeding has the statutory right to an attorney at every stage in the proceedings.[3] The family court must provide this attorney for the parent if the parent is financially unable to retain one.[4] Though Akins notes that the federal and state constitutions play a role in this right to counsel,[5] he does not analyze his right to counsel under any constitutional provision. Rather, Akins chiefly cites the court rule as legal authority for his claim that his right to have an attorney appointed for him was violated in this case. MCR 5.915(B), which does not substantively differ from MCL 712A.17c(5), provides:

> When it appears to the court, following an examination of the record, through written financial statements, or through other means that the respondent is financially unable to retain an attorney and the respondent desires an attorney, the court shall appoint one to represent the respondent at any hearing conducted pursuant to these rules.[6]

There appears no question in the record that Akins fit the financial requirements of this provision and was, therefore, entitled to an attorney under the court rules. Further, MCR 5.915(B)(1)(a) suggests that this right to an attorney exists at every hearing in the protective proceeding, indicating that the trial court erred in failing to appoint an attorney to represent Akins at the dispositional review hearings between his request for an attorney and when the family court

---

[2] See *In re PAP*, 247 Mich App 148, 152; __ NW2d __ (2001).

[3] See MCL 712A.17c(5); MCR 5.915(B)(1)(a).

[4] See MCL 712A.17c(5); MCR 5.915(B)(1)(a).

[5] See *In re Powers Minors*, 244 Mich App 111, 121; 624 NW2d 472 (2001).

[6] MCR 5.915(B)(1)(b).

appointed Bauer to represent him.[7] Thus, Akins was denied his right to counsel under the court rules.

Nevertheless, not every error in a proceeding requires reversal. In *In re Hall*,[8] this Court applied a harmless error analysis to the denial of counsel issue, holding that there was no error requiring reversal. Two factors appear to have been critical to the *Hall* decision. First, the parent did not articulate what, if any, prejudice flowed from the denial of counsel, nor could this Court identify any prejudice for itself.[9] Second, an attorney did appear to represent the parent at the critical termination hearing.[10] These same factors appear in the context of this case. Though Akins points out that Sieradzki had an attorney earlier in the proceedings than he did,[11] he has not identified what prejudiced he suffered from the denial of counsel. He suggests that an attorney would have been able to help him formulate a more successful plan for reunification with AA. However, he does not explain why an attorney, as opposed to a social worker, addiction counselor, or therapist, would have any relevant insight into making necessary changes in his personal life. Like the *Hall* Court, we see no prejudice apparent from the record. Further, Bauer did represent Akins at the termination hearing, where his parental rights were most at stake. Consequently, as in *Hall*, this was not error requiring reversal.

III. Grounds For Termination

A. Standard Of Review

Appellate courts "review for clear error both the [family] court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest."[12]

B. MCL 712A.19b(3)(g)

Though the family court recited three different statutory grounds for terminating Akins' parental rights, it needed clear and convincing evidence of only one ground to do so.[13] In this case, the record leaves no doubt that there was clear and convincing evidence that Akins had failed to provide proper care and custody for AA in the past, and that he was unlikely to be able to provide proper care and custody for AA within a reasonable amount of time given the child's

[7] Akins claims that he asked for an attorney as early as January 2000, but there is no indication that he actually did so until October 2000. In any event, the precise date is not crucial to deciding this issue.

[8] *In re Hall*, 188 Mich App 217, 222; 469 NW2d 56 (1991).

[9] See *id*. at 223.

[10] See *id*. at 222.

[11] We need not reach the implication from Akins' argument that he was denied equal protection of the law given his failure to brief this issue adequately. See *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).

[12] *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

[13] See *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991).

age.[14] While Akins may blame Sieradzki for the poor conditions in which AA lived before being placed in foster care, he provides no authority or convincing argument for the proposition that he had no responsibility for his child at that time. Further, the food retrieved from the dumpster may not have endangered AA's life – at least on that occasion – but the suggestion that Akins would have his child eat from a dumpster so that he could support his own drug habit is concrete evidence of his past failure to care for the child, as was evidence of the times he used drugs in front of AA. AA also had to call for help when returned briefly to his parents' care, and Akins had only made tentative steps toward recovering from his substance abuse problem, calling into question when he would be able to provide proper care and custody for AA. This was far more than a mere failure to comply with a case service plan without implicating the statutory grounds for termination, as Akins claims.[15] Consequently, we see no clear error in the family court's finding that there was clear and convincing evidence to terminate his parental rights pursuant to MCL 712A.19b(3)(g).

We need not address whether there was clear and convincing evidence to terminate Akins' parental rights under MCL 712A.19b(3)(c)(i) and (j). However, we note that the family court clearly terminated his parental rights under subsection (3)(c)(i), not (3)(c)(ii), relying on Akins' ongoing substance abuse. Therefore, the trial court did not need legally admissible evidence to establish a statutory basis for termination.[16] Additionally, as Akins concedes, he cannot collaterally challenge the family court's jurisdiction over AA at this time.[17]

C. Best Interests

MCL 712A.19b(5) states that a trial court "shall order termination of parental rights" if it finds clear and convincing evidence to terminate. In other words, termination is mandatory once the court finds evidence of at least one statutory ground to terminate.[18] Only if the trial court finds evidence on the record as a whole that termination is *not* in the child's best interests can it refuse to terminate parental rights.[19] Akins contends that his love for his child and his involvement in his child's life made termination clearly contrary to AA's best interests. However, the other evidence on the record plainly indicated that AA had been in foster care for quite some time and needed a stable, nurturing home, which Akins could not provide. This finding was not clearly erroneous.

Affirmed.

/s/ William C. Whitbeck
/s/ Jane E. Markey
/s/ Kirsten Frank Kelly

---

[14] MCL 712A.19b(3)(g).

[15] See *In re Bedwell*, 160 Mich App 168, 176; 408 NW2d 65 (1987).

[16] See *In re Snyder*, 223 Mich App 85, 89-90; 566 NW2d 18 (1997).

[17] See, generally, *In re Bechard*, 211 Mich App 155, 159-160; 535 NW2d 220 (1995).

[18] See *Trejo*, *supra* at 344.

[19] See *id*. at 353-354.