

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DAMIEN LEE COLWARTE,
TIMOTHY COLWARTE, SHIETELL SHEREE
COLWARTE, and BILAL AHMAD ABDOLLAH
COLWARTE, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DAMIEN LEE COLWARTE, a/k/a DAMIEN
HENRY LEE COLWARTE,

Respondent-Appellant.

UNPUBLISHED

June 3, 2004

No. 248687
Wayne Circuit Court
Family Division
LC No. 02-407490

Before: Markey, P.J., and Wilder and Meter, JJ.

MEMORANDUM.

Respondent appeals by right from the trial court order terminating his parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g), (h), (j), and (k)(ii). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(A) and (E).

The trial court did not clearly err in determining that the statutory grounds for termination were established by clear and convincing evidence. MCR 5.974(I), now MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Respondent was imprisoned in 2001 for one to fifteen years for sexually abusing his stepdaughter, the children's half-sister. The evidence showed that he had failed to provide proper care or custody for the children before his imprisonment, and that his incarceration and need for services upon release would deprive them of a normal home life in excess of two years, and prevented him from rectifying the conditions leading to adjudication. *In re Perry*, 193 Mich App 648, 650; 484 NW2d 768 (1992). The doctrine of anticipatory neglect acknowledges that the children would be at risk in respondent's care because he had sexually abused their half sister. *In re Powers*, 208 Mich App 582, 588-593; 528 NW2d 799 (1995).

Further, the trial court did not clearly err in applying MCL 712A.19b(5) because the evidence did not show that termination of respondent's parental rights was clearly not in the children's best interests. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). There was

a bond between respondent and his children, and termination of respondent's parental rights did not achieve immediate permanency for the children because the agency was still treating their mother. However, it was a step toward permanency.

Respondent's right to due process was not violated because he was not served with a copy of the petition until after the adjudication, *In re CR*, 250 Mich App 185, 205; 646 NW2d 506 (2001), or because he was not present at any hearing but the termination hearing. *In re Vasquez*, 199 Mich App 44, 48-49; 501 NW2d 231 (1993); MCR 5.973(A)(3)(b) and (c), now MCR 3.973(D)(2) and (3). His right to due process was not violated by the agency's failure to provide him with a treatment plan because the agency was unable to provide services in prison. Respondent did participate in the limited services available in prison, and lack of a treatment plan did not hinder his efforts at rehabilitation.

We affirm.

/s/ Jane E. Markey
/s/ Kurtis T. Wilder
/s/ Patrick M. Meter