STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of DUSTY TAYLOR, JR., Minor.

DEPARTMENT OF HUMAN SERVICES, f/k/a FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DUSTY TAYLOR, SR.,

Respondent-Appellant.

UNPUBLISHED
January 17, 2006

No. 263906
Montcalm Circuit Court
Family Division
LC No. 2004-000168-NA

In the Matter of DUSTY TAYLOR, JR., Minor.

DEPARTMENT OF HUMAN SERVICES, f/k/a FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MANDY GIBSON,

Respondent-Appellant.

No. 263907
Montcalm Circuit Court
Family Division
LC No. 2004-000168-NA

Before: Bandstra, P.J., and Fitzgerald and White, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the trial court order terminating their parental rights to the minor child under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

Three-month-old Dusty was removed from respondents' care when no suitable person was named to care for him after respondent mother was found passed out from intoxication and the intoxicated respondent father was absent from the home following a domestic dispute.

Jurisdiction was assumed over the child pursuant to respondent mother's admissions of substance abuse, domestic violence in respondents' relationship, lack of proper care of Dusty, and four prior minor in possession convictions. Respondent father chose not to appear at the adjudication for fear of arrest on an outstanding Friend of the Court warrant for failure to support another child, and a separate adjudication was not held regarding him. Respondents were provided with parent agency agreements, with which they minimally complied. Respondent father was incarcerated for nearly four of the nine months of this proceeding.

Petitioner filed a petition for permanent custody only eight months after Dusty's removal, before having a permanency planning hearing. A primary theme running through respondents' arguments on appeal is objection to such swift termination, particularly with regard to respondent father, who was released from jail only four months before the termination hearing. Respondents both argue on appeal that they were working on their parent agency agreements and needed more time, and that clear and convincing evidence did not support termination of their parental rights. In addition, respondent father challenges MCL 712A.19b(3)(g) as unconstitutionally vague, asserts that the trial court did not possess jurisdiction over him because it did not conduct an adjudication with regard to him, argues that his parent agency agreement was illusory because the agency was intent on termination regardless of his compliance and did not render him adequate assistance, and argues that the trial court reversibly erred by failing to make specific best interests findings.

The trial court did not clearly err in determining that the statutory grounds for termination of parental rights were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337, 344-345; 445 NW2d 161 (1989). The evidence, and respondents' testimony in particular, clearly showed that respondents were not proactive in attempting to become suitable parents for Dusty. The issue before the trial court was whether respondents could become able to provide proper care or custody and rectify the conditions leading to adjudication within a reasonable time. Respondents' lack of proactive effort clearly indicated that they would not be able to do so. Although termination was swift, allowing respondents an additional three-months for a permanency planning hearing and a later termination hearing would not change the fact that respondents were passive, dependent, and had psychological issues that would take a great deal of time to remedy. Given nine months' time, respondents had not yet even begun to invest in addressing these issues. Contrary to respondent mother's assertion, the trial court did not promise that she would have a minimum of one year to rectify the conditions leading to adjudication, but noted that she must make significant progress within twelve months, or less, or petitioner would request permanency.

Respondent father next argues that MCL 712A.19b(3)(g) is unconstitutionally vague. "A statute may be challenged for vagueness on three grounds: (1) it does not provide fair notice of the conduct proscribed; (2) it confers on the trier of fact unstructured and unlimited discretion to determine whether an offense has been committed; and (3) its coverage is overbroad and impinges on First Amendment freedoms." *In re Gentry*, 142 Mich App 701, 707; 369 NW2d 889 (1985), citing *People v Howell*, 396 Mich 16, 20; 238 NW2d 148 (1976). Respondent argues the second and third grounds, claiming that the terms "proper care and custody" and "reasonable" are overbroad, and that the trial court used its own interpretation of "reasonable time" in terminating respondent's parental rights. He does not argue that he did not have fair notice of the conduct proscribed.

This Court has previously determined that the terms "proper care and custody" and "reasonable," as used in the previous version of the statute, are not unconstitutionally vague. *Gentry, supra* at 707, 709-712. Additionally, to challenge a statute based on overbreadth, the statute must be overbroad in relation to respondent's conduct. *Gentry, supra* at 708-709. Respondent father's conduct clearly fit within the statutory prohibition against failure to provide proper care and custody, and he does not have standing to argue that the statute was overbroad in relation to his conduct. It clearly applied to him. With regard to the trial court's interpretation of "reasonable," decisions of this Court and the Michigan Supreme Court have sufficiently limited the trial court's discretion in finding what is a "reasonable expectation" and a "reasonable time" so as to render the statute definite enough to withstand a vagueness challenge. *Gentry, supra* at 709.

Next, respondent father asserts that the trial court did not possess jurisdiction over him because it did not conduct an adjudication with regard to him. Although respondent father's brief on appeal frames his argument in terms of subject matter jurisdiction, the subject matter of a child protective proceeding is the child, *In re Gillespie*, 197 Mich App 440, 442; 496 NW2d 309 (1992), and the trial court in this case properly assumed jurisdiction over Dusty pursuant to respondent mother's admissions. In substance, respondent father's argument is one of lack of personal jurisdiction, which he did not assert in the trial court and may not collaterally attack in the appeal from the order terminating his parental rights. *In re Hatcher*, 443 Mich 426, 444; 505 NW2d 834 (1993). However, it was apparent in this case that the trial court properly possessed jurisdiction over respondent father once he was properly served with the summons and petition. MCL 712A.12. The trial court's personal jurisdiction over respondent father was not dependent on his appearance at the adjudication. *In re CR*, 250 Mich App 185, 205; 646 NW2d 506 (2001).

Respondent father also argues that petitioner did not fulfill its part of the parent agency agreement, and that the agreement was illusory because the agency was intent on termination regardless of his compliance and progress. The evidence showed that the agency provided respondent father with many referrals and services, as well as cash assistance, and that it continued to service respondent father even after he moved to another county. The agency had more time to focus attention on respondent mother because respondent father was incarcerated for part of the proceeding. In the four months following his release from jail, respondent father did not meaningfully and productively engage in the services offered. His parent agency agreement was not illusory. He failed to utilize it and benefit from it.

Lastly, although respondent father argues that the trial court failed to make best interests findings related to MCL 712A.19b(5), the evidence showed that the trial court made best interests findings. In addressing Dusty's best interests the trial court did not use the phrase "clearly not in the child's best interests" or cite MCL 712A.19b(5). However, it was apparent from the trial court's finding that it was aware of the proper standard of proof and correctly applied the law to the facts. Findings are sufficient if it appears that the trial court was aware of

the issues in the case and correctly applied the law. *People v Armstrong*, 175 Mich App 181, 185-186; 437 NW2d 343 (1989); *DeVoe v C A Hull, Inc*, 169 Mich App 569, 576; 426 NW2d 709 (1988).

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Helene N. White