

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MALEEK MARKELL BLAIR,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

RAQUEL BLAIR, a/k/a RAQUEL MARY
HAWKINS,

Respondent-Appellant,

and

BRIAN DUCKETT,

Respondent.

UNPUBLISHED
November 25, 2008

No. 284755
Macomb Circuit Court
Family Division
LC No. 2007-000442-NA

Before: Murphy, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Respondent Raquel Blair appeals as of right from a circuit court order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(l). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Respondent had six other children who became temporary court wards in September 2005. Respondent failed to complete services to assist with reunification and her parental rights to three of those children were terminated in October 2006. Maleek was born seven months later and petitioner filed a petition for wardship that requested termination at the initial dispositional hearing. After acquiring jurisdiction over the child, the court held a dispositional hearing at which it terminated respondent's parental rights.

Respondent first argues that the filing of the petition and the termination of her parental rights violated her due process rights because petitioner failed to comply with MCL 722.638. This issue has not been properly preserved for appeal because respondent did not raise it below. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Therefore, the issue is reviewed for plain error. *Id.*

MCL 722.638 requires the Department of Human Services (DHS) to initiate child protective proceedings if the parent, guardian, custodian, or another adult in the household murdered, seriously physically battered, sexually assaulted, or abandoned the child or a sibling, MCL 722.638(1)(a), or if the department determines that there is a risk of harm to the child and the parent's rights to another child were voluntarily or involuntarily terminated following the initiation of child protective proceedings, MCL 722.638(1)(b). The DHS is required to request termination at the initial dispositional hearing "if a parent is a suspected perpetrator or is suspected of placing the child at an unreasonable risk of harm due to the parent's failure to take reasonable steps to intervene to eliminate that risk[.]" MCL 722.638(2). If the DHS is not required to request termination at the initial dispositional hearing, but is nonetheless considering including such a request in the petition, it must first "hold a conference among the appropriate agency personnel to agree upon the course of action." MCL 722.638(3). This statute has been upheld against equal protection and due process challenges. *In re AH*, 245 Mich App 77; 627 NW2d 33 (2001).

Respondent nevertheless argues that her due process rights were violated because petitioner did not comply with the statute, where it failed to investigate whether there was a current risk of harm to the child, instead proceeding simply on the basis of past behavior and terminations. We conclude that respondent has failed to establish plain error. Although the record indicates that the Macomb County foster care worker who testified at the dispositional hearing did not investigate respondent's current circumstances before the petition was filed, that worker was not involved in the filing of the petition. The petition was filed in Wayne County and later transferred to Macomb County and respondent has not shown that the Children's Protective Services workers in Wayne County failed to make the requisite assessment of risk of harm before filing the petition. Indeed, the Wayne County petition indicates that a team decision making meeting was held by the agency six days after the child's birth and that respondent did not demonstrate the ability to protect and properly care for the child.

Respondent next argues that the trial court erred in terminating her parental rights. We disagree. It is undisputed that legally admissible evidence established a basis for termination under § 19b(3)(l). MCR 3.977(E). The trial court's factual findings were amply supported by the evidence and the evidence on the whole record did not show that termination was clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 354; 612 NW2d 407 (2000).¹ Respondent had been diagnosed by a qualified psychologist with mental health issues requiring treatment to stabilize her thoughts, moods, and behavior, problems which had placed the child's siblings at risk of harm, and it was undisputed that respondent did not complete mental health treatment during the pendency of the prior case or obtain such treatment at any time after October 2006. In addition, the child had no appreciable bond to respondent, having been removed from her care within a few days of his birth. Therefore, the trial court did

¹ Pursuant to an amendment of MCL 712A.19b(5) by the Legislature in 2008 PA 199, a trial court must now find, in addition to a statutory ground for termination, "that termination of parental rights is in the child's best interests." This amendment was made effective July 11, 2008, which is after the date of termination in the case at bar.

not clearly err in terminating respondent's parental rights to the child. *In re Trejo, supra* at 356-357.

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Michael R. Smolenski