

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
July 19, 2011

In the Matter of A. J. MAY, Minor.

No. 300795
Calhoun Circuit Court
Family Division
LC No. 2010-001753-NA

Before: SAAD, P.J., and JANSEN and DONOFRIO, JJ.

PER CURIAM.

Respondent appeals the trial court's order that terminated his parental rights to the minor child under MCL 712A.19b(3)(g), (h) and (n). For the reasons set forth below, we affirm.

Contrary to respondent's assertion, the trial court did not err when it assumed jurisdiction over the minor child and terminated respondent's parental rights without first requiring the Department of Human Services (DHS) to provide reunification services. DHS was not involved in this child protective proceeding because the proceeding was initiated by petitioner, the minor child's guardian and maternal grandmother. Petitioner obtained the minor child's guardianship under MCL 700.5204 of the Estates and Protected Individual's Code (EPIC) pursuant to both parents' consent. Later, she wanted to discontinue the guardianship and adopt the child, and she initiated a child protective proceeding under the Juvenile Code, MCL 712A.1, *et seq.*, requesting termination of both parents' rights at the initial disposition. MCL 712A.19b(4); MCR 3.977(A)(2)(c) and (E). The child's mother indicated her intent to consent to a ground for termination of her parental rights and release the child for adoption, but respondent contested termination of his parental rights.

Respondent argues that the trial court neglected its statutory duty in failing to require the DHS to prepare a case service plan and reunification services before terminating his parental rights. The question respondent presents is procedural and he argues in essence that lack of DHS reunification efforts violated his constitutional right to procedural due process and resulted in insufficient evidence to terminate his parental rights. Respondent preserved the issue for appeal, and we review preserved constitutional issues for harmless error beyond a reasonable doubt. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999).

In a child protective proceeding, MCL 712A.13a(8) provides,

If the court orders placement of the juvenile outside the juvenile's home, the court shall inform the parties of the following:

(a) That the agency has the responsibility to prepare an initial services plan within 30 days of the juvenile's placement.

MCL 712.18f outlines the required contents of the case services plan if the child is removed and not returned home, and requirements for the trial court's periodic review. Here, the minor child was not removed or placed outside his home because his home consistently remained with petitioner under the guardianship. If any court-ordered action took place resembling a "placement" or "removal," it was during the guardianship proceeding under EPIC when the trial court granted petitioner the child's full guardianship and exclusive legal authority for his care and maintenance. No removal took place under the Juvenile Code, MCL 712A.1, *et seq.*, and therefore § 13a(8)(a) and § 18f triggering the DHS's obligation prepare a case services plan or otherwise become involved, were inapplicable.

Respondent nevertheless argues that the trial court's assumption of jurisdiction over the child was an effective removal or placement of the juvenile out of the juvenile's home under MCL 712A.13a(8), requiring a case services plan. In interpreting this statute, our primary goal is to give effect to the intent of the Legislature, and the words of the statute provide the most reliable evidence of the Legislature's intent. If the statutory language is clear and unambiguous, judicial construction is neither required nor permitted. *Petersen v Magna Corp*, 484 Mich 300, 307; 773 NW2d 564 (2009). In Juvenile Code sections referencing removal, the Legislature speaks of a juvenile being "removed from the control of his or her parents," MCL 712A.1(3), "placement of the juvenile outside the juvenile's home," MCL 712A.13a(8), and advising against "placing a child in the custody of the child's parent, guardian, or custodian, . . ." MCL 712A.18f. By its words, the Legislature intended "removal" or "placement" in the Juvenile Code to mean the child is moved to a new location or there is a change in the person having control or custody of the child. On the basis of the unambiguous statute, it is not warranted and we are not permitted to expand the statutory construction to find that assumption of jurisdiction is an "effective removal" or placement. The facts clearly showed that, for several years, respondent did not have control or custody of the child or provide a home from which the child could be removed and, therefore, no removal occurred within the meaning of the Juvenile Code. Given no requirement for services, the trial court committed no procedural error and did not violate respondent's right to due process.

Respondent further argues that the lack of DHS services resulted in insufficient evidence to terminate his parental rights. The trial court did not clearly err in finding that the statutory grounds for termination of respondents' parental rights were established by clear and convincing evidence. MCR 3.977(K); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Respondent's parental rights were terminated under MCL 712A.19b(3)(g), (h) and (n). Subsection 19b(3)(h) incorporates the elements of § 19b(3)(g) and adds that respondent's imprisonment will deprive the child of a normal home life for more than two years. The two-year period of incarceration referenced in § 19b(3)(h) begins at the time of the termination hearing, and includes both the time respondent is incarcerated and the time required for respondent to provide a normal home for the child. *In re Perry*, 193 Mich App 648, 650; 484 NW2d 768 (1992).

The six-year-old child resided with petitioner for all but the first 11 months of his life. Evidence showed that, during the 11 months they resided together, respondent provide some

financial support, but failed to provide physical care for the child. Further evidence showed that respondent committed criminal sexual conduct crimes resulting in incarceration until the child would be between the ages of 7 and 22, he did not initiate or approve of the child's custody with petitioner but disputed it and threatened petitioner, and he agreed to petitioner's guardianship only after the child had resided with petitioner for 3-1/2 years without legal authority for his care and maintenance. Sufficient evidence showed respondent was not the one who had acted to provide him with that proper care or custody. The trial court also correctly found no reasonable expectation that respondent would be able to provide proper care or custody within a reasonable time, and that his imprisonment would deprive the child of a normal home for more than two years after the termination hearing. Respondent's earliest release date was nearly one year after the termination hearing, and it was reasonable to believe he would be released later because any parole would be delayed due to his misconduct in prison and his failure to complete sex offender programming. Regardless, following release, respondent would be prohibited from any physical contact with the child for at least two years because of the sexually deviant nature of his crimes. Thus, respondent could not provide care for the child for a minimum of three years following the termination hearing.

Respondent argues termination was not necessary because he would permit the child to remain in petitioner's custody until he was allowed to have physical contact with the child. However, given respondent's previous objection to the child's residence with petitioner and his threatening statement against her, the child's diagnosis on the autism spectrum and need over the short and long term for a consistent parent to coordinate special services, continuing the guardianship instead of affording the child the permanence of adoption would not result in a normal home life, but would subject him to instability and uncertainty caused by respondent's petitions for change of custody in the future.

With regard to § 19b(3)(n), undisputed evidence showed respondent was convicted under MCL 750.520d, one of the offenses specified in this statutory subsection, for his sexual penetration of a teen between the ages of 13 and 15. In addition, although the details of the offense were not included in the lower court record submitted on appeal, he was convicted of causing a child to engage in a child sexually abusive activity, or in producing child sexually abusive material under MCL 750.145c(2). Respondent argues he was never assessed or provided services during this proceeding, and therefore the evidence was insufficient to establish the second element of this statutory subsection, that termination was in the child's best interests because continuing a parent-child relationship with respondent would be harmful. However, testimony regarding respondent's sexual misconduct as a pre-teen and teen from 1988 to 1993, along with his arrest for the aforementioned crimes as a young adult in 2005, show a long history of sexual deviancy. Assessment was not necessary for the trial court to conclude respondent had significant sex offender issues. The evidence also showed the minor child would be between seven and 22 years old when respondent was released, and his developmental delays caused him to be socially younger than his chronological age. While there is no certainty respondent would sexually abuse his own child or engage him in sexually abusive behavior, the child would be vulnerable due to his age and special needs. How a parent treats one child, even one not his own, is probative of the way he might treat another. *In re Powers*, 208 Mich App 582, 588-593; 528 NW2d 799 (1995), superseded in part on other grounds *In re Jenks*, 281 Mich App 514, 517-518 n 2; 760 NW2d 514 (2008). Given the range in ages of respondent's victims, his demonstrated lack of respect for the moral well being of and his victimization of vulnerable persons, and the

deviant nature of respondent's crimes, the trial court did not err in finding the child would be harmed by having a parent-child relationship with respondent even if respondent might not directly abuse him.

In addition to respondent's sexual deviancy, petitioner testified the minor child would be harmed by a parent-child relationship with respondent because respondent's lack of respect for the legal system and others is inconsistent with the way she was raising the child, and she did not believe respondent would cooperate in the decision-making needed for his well being. The child's autism caused a very particular need for stability and consistency, and he would require coordination of services, a special diet, and superior parenting over the long term. Given that respondent had completely neglected to parent the minor child when he had the opportunity, trusting respondent with parenting a child who had special needs would be detrimental.

Respondent cites *In re Mason*, 486 Mich 142; 782 NW2d 747 (2010), and argues that DHS's failure to provide services resulted in insufficient evidence to terminate his parental rights, and his parental rights were terminated merely because he was incarcerated and had a criminal history. However, as noted, even in the absence of assessment by the DHS and provision of services, the trial court possessed sufficient evidence to terminate respondent's parental rights. The evidence also showed respondent's parental rights were not terminated solely due to incarceration and a criminal history, but because he had not provided the child with proper care or custody when able to do so, and because the evidence showed establishing a parent-child relationship between respondent and the child should never be facilitated because of respondent's sexual deviancy, the child's autism and need for special care and parenting, and the conflict that would ensue between petitioner and respondent if the child was not afforded the permanency of adoption by petitioner.

Affirmed.

/s/ Henry William Saad
/s/ Kathleen Jansen
/s/ Pat M. Donofrio