

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JAMES FOSTER II, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JAMES DANIEL FOSTER,

Respondent-Appellant,

and

LISA FOSTER,

Respondent.

In the Matter of JAMES FOSTER II, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LISA FOSTER,

Respondent-Appellant,

and

JAMES DANIEL FOSTER,

Respondent.

UNPUBLISHED
February 8, 2005

No. 256023
Kent Circuit Court
Family Division
LC No. 01-051606-NA

No. 256024
Kent Circuit Court
Family Division
LC No. 01-051606-NA

Before: Zahra, P.J., and Neff and Cooper, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right the trial court's order terminating their parental rights to the minor child under 712A.19b(3)(i) and (j).¹ We affirm.

The only issue that respondent father raises on appeal is the failure of the agencies involved to offer services for reunification. Under the plain meaning of MCL 712A.18f(3)(d), reunification services are not required if placement elsewhere is the initial goal, as it was in this case because of the prior termination of respondents' parental rights to older children. The fact that the appeal of the prior termination was pending when termination in this case was initially sought did not require reunification services because termination of respondent's parental rights to this child was also initially sought under MCL 712A.19b(3)(j) on the basis of the risk of harm to the child. This is a statutory ground for which termination is allowed at the initial disposition. MCR 3.977(E). Thus, this case did not actually present the factual situation for which respondent argues services are required.²

The only issue respondent mother raises on appeal is the sufficiency of the evidence to support termination. It is arguable that termination was inappropriate under MCL 712A.19b(3)(i) because her parental rights to her older children were not clearly terminated on the basis of "serious and chronic neglect or physical or sexual abuse" as required by that statute, except to the extent that she failed to protect the older children from sexual and physical abuse by her husband. Even if termination was error under MCL 712A.19b(3)(i) in the instant case, however, the error was harmless because termination was proper under MCL 712A.19b(3)(j). *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

There was evidence that respondent mother had taken parenting classes and had learned from them, that she was able to provide physically and financially for the child, and that her visits with the child were appropriate. There was also considerable evidence that she could not provide emotional safety for the child, however. The evidence indicated that she denied any abuse of her older children, thought of them as liars, and was not available to them. The evidence showed she was invested in continuing her relationship with her husband, who had abused the children, and was controlled by him. She denied their domestic violence problems. She testified that she had done sufficient counseling, a position contrary to that of the caseworker, who believed respondent mother needed to work in counseling on abuse and domestic violence, as well as some parenting issues. Respondent mother complied only

¹ Although the parties do not mention it, a reading of the trial court's opinion suggests that the court may also have terminated respondents' parental rights under MCL 712A.19b(3)(l), although the transcript contains an incorrect citation. Our holding makes it unnecessary to consider this question, however, as only one statutory ground is necessary for termination. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

² Moreover, the issue is moot because this Court has affirmed the prior termination of respondents' parental rights. *In re Robinson*, unpublished per curiam opinion of the Court of Appeals, issued November 9, 2004 (Docket Nos. 253786 and 253854).

minimally with her treatment plan in the previous case. There was considerable testimony that she would not protect the child from future abuse, since she had not done so in the past for her older children, or report abuse if it occurred. Given this, the trial court did not clearly err in finding that MCL 712A.19b(3)(j) was established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Furthermore, the evidence did not show that termination of respondent mother's parental rights was clearly contrary to the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Evidence that respondent mother could provide for the child physically and financially and evidence of bonding, as well as testimony that she could provide love and affection, was outweighed by the evidence of the risk of harm to the child, particularly the risks to the child's emotional and physical safety from respondent mother's inability to protect the child and concern about whether she would report abuse. Thus, the trial court did not err in terminating respondent mother's parental rights to the child.

Affirmed.

/s/ Brian K. Zahra
/s/ Janet T. Neff
/s/ Jessica R. Cooper