

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of AMINA KHADEJAH FLOYD,
KARLIEMA ONINA FLOYD, DARYL HAKIM
SHAHID, SHAMONE DEMEIR FLOYD-SHAHID,
and DELWANN SHAKEIL SHAHID, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DARYL SHAHID,

Respondent-Appellant,

and

RHONDA ANN FLOYD and RAHMAAN
SHAMSUD-DIN,

Respondents.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

RAHMAAN SHAMSUD-DIN,

Respondent-Appellant,

UNPUBLISHED

February 6, 1998

No. 201122

Wayne Juvenile Court

LC No. 90-285079

No. 201320

Wayne Juvenile Court

LC No. 90-285079

and

DARYL SHAHID and RHONDA ANN FLOYD,

Respondents.

Before: Michael J. Kelly, P.J., and Hood and Gribbs, JJ.

PER CURIAM.

Respondents-appellants filed separate appeals as of right, consolidated for our review, challenging the juvenile court orders that terminated their parental rights to their respective children under MCL 712A.19b(3)(c)(i), (g) and (j); MSA 27.3178(598.19b)(3)(c)(i), (g) and (j).¹ We affirm.

I

A

In Docket No. 201122, respondent Shahid argues that his due process rights were violated because the juvenile court based its decision on his failure to provide an independent plan for the children even though this was not a factual allegation contained in either of the petitions. Each of the petitions alleged the same three facts to support its request to terminate Shahid's parental rights: (1) he did not provide a current criminal history check, (2) he did not visit consistently his son Daryl, and (3) he acted as an "enabler" for Rhonda Floyd's drug addiction. The question is whether these factual allegations were adequate to place Shahid on notice that his failure to plan separately for the children, independent from Floyd, would be a basis from which the juvenile court could determine that he could not provide proper care for the children. *In re Hatcher*, 443 Mich 426, 434; 505 NW2d 834 (1993).

We believe the allegation that Shahid was an "enabler" for Floyd's drug addiction was adequate to alert him to petitioner's argument that his failure to respond to his wife's drug addiction and safeguard his children's welfare should result in the termination of his parental rights. The claim that Shahid failed to establish a separate plan for his children independent from Floyd is reasonably related to the claim that he "enable[d]" his wife's drug addiction and thereby failed to protect his children. Shahid could not have been surprised that petitioner elicited evidence about his failure to intervene and take the children from Floyd. The claim that Shahid was an enabler reasonably informed him of the argument regarding his failure of omission, i.e., the accusation that he was derelict in failing to prevent Floyd from endangering the welfare of the children. There was no error.

B

Shahid also argues that the petitions' allegations were unsupported by evidence presented at the termination hearing and, consequently, the juvenile court clearly erred in terminating his parental rights. The juvenile court determined that Shahid forfeited the right to care for his children because he failed to

establish a separate plan of care independent of Floyd. Although not specified in its decision, the juvenile court apparently relied on the statutory ground for termination that Shahid had failed to provide proper care or custody and there was no reasonable likelihood that he would be able to provide proper care for the children within a reasonable time considering their ages. MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g).

We agree with Shahid's contention that no evidence on the record supported the juvenile court's finding that Shahid "continued to live with [Floyd] through December 1996." Nevertheless, the juvenile court rightly noted that Shahid returned Shamone and Delwann to Floyd's care even though he knew she had previously left them alone on three separate occasions and she was again using drugs. Thus, despite his knowledge, he returned the children to her care and endangered their welfare. Although Floyd was the children's legal mother, she had not demanded to care for them. In fact, there was testimony that on one occasion she refused to take the children back from Shahid. Moreover, Shahid's decision to return the children to Floyd came two years after the court had taken custody of his son Daryl from him and Floyd because of the deplorable living conditions of their home.

Although there is evidence that Shahid returned the children to Floyd because he needed someone to care for them while he worked, Shahid was advised in November 1995 that he would have to separate from Floyd in order to obtain Daryl's return. Shahid contended that he had separated from her in June or July 1996, but there is no dispute that he continued to rely on her for the care of the children and never obtained a divorce. Shahid endangered Shamone and Delwann by returning them to Floyd in the summer of 1996 when he knew that she could not care for them because she was using drugs, and this occurred two years after Daryl's welfare had been jeopardized for the same reason in 1994. We cannot conclude that the juvenile court clearly erred in finding clear and convincing evidence that Shahid could not give proper care and there was no reasonable expectation that he could do so within a reasonable time considering the age of the children. For these same reasons, the juvenile court did not err in determining that it was in the children's best interests to terminate his parental rights. See *In re Hall-Smith*, 222 Mich App 470, 472-473; 564 NW2d 156 (1997).

II

In Docket No. 201320, the factual predicate for the juvenile court's decision to terminate respondent Shamsud-Din's parental rights rested on the same basic point. The court found that Shamsud-Din "has a drug habit [over] which he has not got[ten] control" and, despite opportunities to address this problem, he had not done so. Reviewing the record, we find more than ample evidence to uphold this finding. The evidence strongly indicated that Shamsud-Din's ongoing drug abuse crippled his ability to care properly for his daughters, Amina and Karliema, and that there was no reasonable likelihood he would be fit to care for his children within a reasonable time considering their ages. Moreover, Shamsud-Din did not offer any reason to find that termination was not in the children's best interests. See *In re Hall-Smith*, *supra*.

Affirmed.

/s/ Michael J. Kelly

/s/ Harold Hood

/s/ Roman S. Gibbs

¹ The mother of all five children, Rhonda Floyd, whose rights were also terminated, has not appealed.