

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of PATRICK WILLIAM
VILLNEFF, ALEXANDRIA MICHELLE
VILLNEFF, JALEN DEREK HOWARD,
DIAMOND DOREEN HOWARD,
CHRISTOPHER CHARLES HOWARD, JR., and
JOHNATHAN JASON HOWARD, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MELISSA SUE VILLNEFF,

Respondent-Appellant,

and

CHRISTOPHER CHARLES HOWARD,

Respondent.

In the Matter of PATRICK WILLIAM VILLNEFF,
ALEXANDRIA MICHELLE VILLNEFF, JALEN
DEREK HOWARD, DIAMOND DOREEN
HOWARD, CHRISTOPHER CHARLES
HOWARD, JR., and JOHNATHAN JASON
HOWARD, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CHRISTOPHER CHARLES HOWARD,

UNPUBLISHED

July 21, 2005

No. 258067

Wayne Circuit Court

Family Division

LC No. 96-337760-NA

No. 258808

Wayne Circuit Court

Family Division

LC No. 96-337760-NA

Respondent-Appellant,

and

MELISSA SUE VILLNEFF,

Respondent.

Before: Sawyer, P.J., and Markey and Murray, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the trial court's order terminating their parental rights to the minor children¹ pursuant to MCL 712A.19b(3)(g) and (j). We affirm in part, reverse in part, and remand this case for further proceedings.

In this somewhat procedurally complex case, the Family Independence Agency (FIA) filed an original petition on September 23, 2003, requesting temporary custody with regard to respondent Villneff and permanent custody with regard to respondent Howard. Attached to the petition were the specific allegations for original permanent custody, along with statutory allegations for permanent custody. According to the allegations, grounds for termination were sought pursuant to MCL 712A.19b(3)(a)(i) and (ii), (b)(i) and (ii), (g), (h), (i), (j), and (k). On September 24, 2003, a preliminary hearing was held, authorizing the petition. Respondents each waived the reading of the petition as well as the issue of whether there was probable cause. On September 25, 2003, an order was entered, determining that there was probable cause that one or more of the allegations in the petition were true and that there was probable cause that the parent residing in the children's home abused them. The order further indicated that respondent Howard had prior terminations, and that respondent Villneff could not adequately provide suitable housing although she had been provided past services. The petition was thus authorized by order, and the children were placed with FIA for placement and supervision.

Although the petition initially requested the termination of parental rights to Howard, counsel for the FIA indicated that the FIA intended to proceed on the petition with a modification requesting temporary wardship. No amended petition or supplemental petition had been filed. At a December 5, 2003, pretrial hearing, however, the FIA indicated that it was not only seeking jurisdiction of the children, but also the termination of Howard's parental rights. At that time, the trial court determined it was necessary to hold trial for the determination of whether there was jurisdiction over the children.

¹ Respondent Christopher Howard's parental rights were terminated with respect to Alexandria, Jalen, Diamond, Christopher, and Johnathan. Patrick's father was deceased at the time the petition was filed. Respondent Melissa Villneff is the mother of all the children.

On February 17, 2004, the trial court held a bench trial regarding the issue of jurisdiction. At the bench trial, counsel for the FIA indicated that respondents were willing to make admissions to the substance of the petition regarding the issue of jurisdiction, and that the FIA was not, at that time, seeking to terminate Howard's parental rights on grounds that he did not come forward as the father to another child. Counsel further indicated that the FIA was going to offer respondents a treatment plan to address necessary issues. The trial then proceeded solely on the issue of jurisdiction. The parties made admissions regarding the issue of jurisdiction, and following respondents' statements, counsel for each party was satisfied that there were sufficient facts to establish the court's jurisdiction over the children.

At the April 7, 2004, hearing the trial court indicated that it would next determine the disposition of the matter. The court noted that the FIA was no longer proceeding on the issue of temporary wardship, and further stated that the matter was being bound over for trial with respect to the original petition for permanent wardship. The parties then agreed at that time that a hearing regarding the issue of permanent wardship would be held May 20, 2004. Although Villneff's counsel questioned whether the hearing would be treated as a permanent custody trial, upon the trial court's indication that the hearing was indeed being held to determine permanent custody, neither party objected to the hearing.

A two-day bench trial was then held on the issue of permanent custody. Following the bench trial, the trial court entered a September 8, 2004, order terminating respondents' parental rights to the minor children. It is undisputed by the parties that the trial court terminated respondents' parental rights pursuant to MCL 712A.19b(3)(g) and (j).²

Respondent Villneff first avers that the trial court erred in terminating her parental rights.³ This Court reviews decisions terminating parental rights for clear error. *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000).

Villneff makes reference in her brief on appeal to the jurisdictional statute. Although Villneff's arguments do not clearly delineate the specific grounds for challenging the trial court's jurisdiction, it is evident that the trial court clearly erred in terminating Villneff's parental rights. As previously stated, the trial court operated under the original petition, which did not seek

² Although the lower court record contains a document purporting to be an opinion in this matter, the document was not signed by the lower court judge or stamped by the clerk's office, nor did the lower court docket sheet contain any indication that an opinion was entered.

³ To the extent that Villneff's argument may be construed as a challenge to the trial court's subject matter jurisdiction pursuant to MCL 712A.2(b)(1) and (2), we reject such an argument. As previously indicated, each party consented that sufficient facts were presented at the jurisdictional hearing to support the trial court's jurisdiction over the children. Jurisdiction in cases such as the present one is conferred by statute under MCL 712A.2(b). Given that respondents each made admissions to support the trial court's jurisdiction, that each party indicated their satisfaction that sufficient facts were presented to support the trial court's jurisdiction, and that Villneff has not made any argument on appeal in support of her statement that the trial court lacked subject matter jurisdiction, we conclude that the trial court did in fact have subject matter jurisdiction over the children.

termination of Villneff's parental rights, and no amended or supplemental petition had been submitted to the trial court. Termination of Villneff's parental rights was first addressed at the very short April 7, 2004, hearing, during which the trial court cursorily noted that the Clinic for Child Study gave a poor prognosis for reunification. The trial court then set the case for a termination hearing on May 20, 2004, despite the fact that petitioner did not request termination. Pursuant to MCR 3.977(A)(2), "Parental rights of the respondent over the child may not be terminated unless termination was requested in an original, amended, or supplemental petition"

This Court has previously determined that it is erroneous for the trial court to terminate a respondent's parental rights where the petitioner has failed to place in the record its intent to terminate parental rights until final arguments. *In re Nunn*, 168 Mich App 203; 423 NW2d 619 (1988). As stated in *Nunn*:

[W]e note that not insignificant due process considerations are implicated when a probate court terminates a respondent's parental rights before a proper petition seeking such termination has been filed. A defendant must always be afforded notice of the nature of the proceedings and an opportunity to be heard. Regarding proceedings in the juvenile division of the probate court, the court is required to "proceed in a manner so as to safeguard procedural rights and the proper interests of the child, the child's parents, guardians, or custodian, and the public." Moreover, a complaint or petition must set forth any charges against a parent "with sufficient clarity and specificity to reasonably apprise [the parent] of the matters concerning which court action is sought." [*Id.* at 208-209 (citations omitted).]

Since termination of Villneff's parental rights was not requested in the original petition and no amended or supplemental petition requesting such was filed, the trial court erred in terminating her parental rights. The trial court clearly lacked the authority to enter the termination order pursuant to MCR 3.977(A)(2).⁴

Next, respondent Howard contends that the trial court erred in terminating his parental rights.⁵ We find the trial court did not clearly err in finding that the statutory grounds were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

In the instant case, Howard's parental rights were terminated pursuant to MCL 712A.19b(3)(g) and (j), which provide:

⁴ Although Howard has asserted that the trial court treated the original petition for permanent custody as one for temporary custody, no subsequent petition was filed amending or supplementing the original petition. Thus, the trial court properly operated under the original petition in terminating Howard's parental rights. See MCR 3.977(A)(2).

⁵ Given our prior determination regarding respondent Villneff, we need not address whether the trial court erred in terminating her parental rights pursuant to MCL 712A.19b(3)(g) and (j).

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

Regarding subsection (g), Howard argues that he was given only seven months to work on a treatment plan (although parents in termination cases are typically given one year to work on a treatment plan), and that there was no component of the treatment plan to address the concern that Howard failed to recognize the needs of the children. Howard adds that he was employed, and planned to reside with Villneff in her home following the court proceedings. With respect to subsection (j), Howard argues that there was no evidence that the children would be harmed or that they would suffer any injury if returned to his care.

The six minor children were removed from respondents' custody on September 24, 2003, because of unfit housing and neglect of their proper hygiene and basic care. The evidence clearly showed that respondents had neglected the children. The children suffered harm by way of lice, poor hygiene, rotten teeth, lacerations and scrapes due to lack of supervision, various infections, and unsuitable housing. Burns on Diamond's back and arm were only partially explained by respondents.

At the May 20, 2004, hearing, Dr. Gail Mills testified that Howard's insight into why the children were placed in foster care was limited, noting that he had failed to notice the children's head lice or their other difficulties, and that he minimized the condition of the home. When questioned on the condition of the children, Howard himself indicated he did not see anything wrong with them and that they were "everyday children." Howard stated that he had sporadic knowledge of the children's head lice, which he left to the children's mother to treat. Additionally, Howard had no idea that Diamond suffered from lead poisoning.

Regarding the housing situation plan for the children, Howard testified that the intent was for the children to stay with Villneff in her house. However, Villneff testified that she did not have a current leasing situation on the house because it had been foreclosed upon and city and county taxes were owed. Villneff stated that she was not paying rent, and that she did not know the name of the mortgage company.

Howard further testified that he had approximately \$1,500 in utility arrearages, and that he also owed a substantial amount in child support for Alexandria. While Howard testified that his income in the years 2002 and 2003 was between \$20,000 and \$30,000 and \$30,000 and

\$35,000 respectively, Howard did not supply proof of his income from 2003, and his income tax return from 2002 was \$1,270. Although Howard indicated that the utilities were on in the home, he further stated that the house was not completely furnished, to which Villneff concurred. Further, Villneff testified at the July 20, 2004, hearing that the house was in a state of disrepair, with a non-functioning furnace, a leaky basement, and missing drywall and paneling in at least two rooms of the home, despite the fact that Howard previously testified that the home required only minor repairs, which he had intended to complete within one week of the May 20, 2004, hearing.

Finally, the evidence did not show that termination of respondent's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *Trejo, supra* at 356-357. Thus, the trial court did not err in terminating respondent's parental rights to his children.

We affirm the trial court's order terminating respondent Howard's parental rights; however, we reverse the trial court's order terminating respondent Villneff's parental rights and remand this case for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Jane E. Markey
/s/ Christopher M. Murray