

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of GRACIOUS MARCIE' LLE
JOHNSON, JOSHUA VERNEL JOHNSON, and
MILLENIA LUCELLE JOHNSON, Minors.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CLYDE LYNN JOHNSON, a/k/a CLYDE LYNN
JOHNSON, SR.,

Respondent-Appellant.

and

VALERIA JOHNSON, a/k/a VALERIE
JOHNSON,

Respondent.

In the Matter of GRACIOUS MARCIE' LLE
JOHNSON, JOSHUA VERNEL JOHNSON, and
MILLENIA LUCELLE JOHNSON, Minors.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY

Petitioner-Appellee,

v

VALERIA JOHNSON, a/k/a VALERIE
JOHNSON,

UNPUBLISHED
April 25, 2006

No. 264276
Wayne Circuit Court
Family Division
LC No. 97-355419-NA

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Respondent-Appellant.

and

CLYDE LYNN JOHNSON, a/k/a CLYDE LYNN
JOHNSON, SR.,

Respondent.

Before: Markey, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal by right from the trial court order terminating their parental rights to the minor children under MCL 712A.19b(3)(b)(i), (c)(i), (g) and (j). We affirm.

Respondent father was convicted in 1997 of first-degree criminal sexual conduct involving penetration of an older sibling of the three children involved in this appeal. He was sentenced to incarceration for four to ten years and was released in January 2001 after serving four years. In April 2003, this matter came to the attention of petitioner (“the agency”) because respondent father was again living with the family. The agency was also concerned about the stability and suitability of the family’s housing. The court took jurisdiction over the children, and respondent mother was provided with a service plan that required, among other things, that she obtain a residence separate from respondent father, obtain an independent source of income, and engage in therapy. Reunification of the children with respondent father was not a goal and petitioner did not provide referrals or pay for services for him.

The trial court did not clearly err by finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The trial court was warranted in terminating respondent father’s parental rights on the grounds that he sexually abused a sibling of the children and that there was a reasonable likelihood that the children would suffer from similar abuse if returned to him. MCL 712A.19b(3)(b)(i). Given respondent father’s history of sexual abuse of two of his older children and his failure to consistently acknowledge those acts, much less demonstrate any insight into them, the trial court did not clearly err by finding clear and convincing evidence a reasonable likelihood existed that the three younger children at issue here would suffer from abuse in the foreseeable future if returned to him.

Respondent father asserts that termination was improper because the agency did not provide him services directed toward reunification. In general, when a child is removed from the custody of the parents, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child’s removal by adopting a service plan. MCL 712A.18f(1), (2), (4). However, services are not required in all situations. *In re Terry*, 240 Mich App 14, 26, n 4;

610 NW2d 563 (2000). Pursuant to MCL 712A.19a(2)(a) and MCL 722.638(1)(a)(2), efforts toward reunification are not required where the parent has subjected the child or a sibling of the child to criminal sexual conduct involving penetration. Thus, petitioner was not required to provide reunification services to respondent father and its failure to do so warrants no relief.

The record further reveals that the conditions of adjudication concerning each parent continued to exist at the time of the termination trial, and there appeared no reasonable likelihood that those conditions would be rectified within a reasonable time considering the ages of the children. MCL 712A.19b(3)(c)(i). Respondent father's status as a sexual offender against a sibling of the children remained unrectified, as demonstrated by his continued failure to even acknowledge the acts. Under these circumstances, the trial court was justified in concluding that the conditions of adjudication would not be rectified within a reasonable time, and did not clearly err by terminating respondent father's parental rights.

Respondent mother also remained in nearly the same position at the time of the termination trial as at time of adjudication. Although respondent mother's service plan required her to obtain housing separate from respondent father and to obtain an independent source of income, she lived with him throughout the two-year pendency of this case, continued to do so at the time of the termination trial, and remained unemployed. Respondent mother's therapist indicated that her dependency on respondent father was a roadblock to her progress. Moreover respondent mother appeared to deny both the extent and the import of respondent father's conduct. She could not remember an incident of improper conduct that she had previously reported, and she further stated that respondent father should be able to determine whether he should have contact with his children. Because respondent mother had not resolved her dependency on respondent father and continued to live with him, and not only lacked employment to enable her to obtain independence but also appeared to lack a clear understanding of the need for independence, the evidence supported the trial court's conclusion that the conditions of adjudication continued to exist and that there was no reasonable likelihood that they would be rectified within a reasonable time. MCL 712A.19b(3)(c)(i).

The same evidence supported the trial court's finding that respondents failed to provide proper care and custody for the children and would not be able to do so within a reasonable time considering the ages of the children, MCL 712A.19b(3)(g), and that there was a reasonable likelihood that the children would be harmed if returned to the care of either respondent. MCL 712A.19b(3)(j). Respondent father's conduct with siblings of these children is evidence that he would treat his other children similarly. *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001); *In re Laflure*, 48 Mich App 377, 392; 210 NW2d 482 (1973). Respondent mother's failure to establish a separate residence, obtain employment, or to appreciate the need to protect the children from respondent father, all establish that she is unlikely to protect them from him in the future, and they are therefore likely to be harmed if returned to her care.

Finally, the trial court did not clearly err by finding that termination was not clearly contrary to the best interests of the children. MCL 712A.19b(5). Although there is a bond between respondent mother and the children, she has demonstrated no ability to protect them from respondent father. Respondent father, in turn, has sexually abused two of his older children, yet denies those acts and demonstrated no insight into his behavior. We additionally

note that these children were in foster care twice before the instant proceedings and for two years in the current matter. Permanency is now in their best interests.

We affirm.

/s/ Jane E. Markey

/s/ Bill Schuette

/s/ Stephen L. Borrello