

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MARISSA SMITH and EMMA
SMITH, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ROSEANNA L. SMITH,

Respondent-Appellant,

and

ROBERT CAGLE,

Respondent.

In the Matter of MARISSA SMITH and EMMA
SMITH, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ROBERT CAGLE,

Respondent-Appellant,

and

ROSEANNA L. SMITH,

Respondent.

UNPUBLISHED

July 21, 2009

No. 288525

Wayne Circuit Court

Family Division

LC No. 02-412255-NA

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Before: Davis, P.J., and Murphy and Fort Hood, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the termination of their parental rights. We affirm.

The trial court terminated both parties' parental rights under MCL 712A.19b(3)(g) and (j), and also respondent mother's rights under MCL 712A.19b(3)(i). These statutes provide as follows:

: (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.

* * *

(i) Parental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.

(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.

We review the trial court's findings in a termination of parental rights case for clear error, but we afford particular deference to the trial court's better ability to evaluate the credibility of witnesses. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Respondent mother failed to take simple measures to abate known lead hazards in the home, despite being given instruction on how to do so. Respondent mother continued to maintain a relationship with respondent father, and the trial court was justified in concluding that respondent father was dangerous to the children. At the outset of the case, respondent mother told a protective services worker that she saw respondent father rub Marissa's bottom on his penis, causing an erection. Respondent mother also admitted that respondent father beat her, caused her to engage in prostitution, and took the money obtained through prostitution. Respondent mother did at one point insist that respondent father was no longer staying with her, she thereafter stated that respondent father beat her, forced her to prostitute, and stole bus tickets from her; furthermore, both of them always attended visits together. Respondent mother received extensive services, including therapy and parenting classes, but she only followed through on some of them and demonstrated no benefit therefrom. The evidence is sufficient to show that respondent mother maintained a hazardous home environment, maintained a destructive and dangerous relationship with respondent father, and was highly unlikely to be able to provide proper care and custody for the children within a reasonable time considering their ages. This same evidence establishes that the children would likely be harmed if returned to her care.

Termination of respondent mother's parental rights was also appropriate on the ground that her rights to other children were terminated for serious and chronic neglect and previous efforts to rehabilitate her were unsuccessful. The conditions of adjudication in the prior proceedings included respondent mother's homelessness, domestic violence, prostitution, and her having the infant Austin in an environment that was unsafe, unsuitable, and foul smelling, with no crib and open pill bottles. Respondent mother failed to complete and benefit from her treatment plan in that matter, and parental rights were eventually terminated on several statutory grounds, including that the conditions of adjudication continued to exist. This record is amply sufficient to establish that respondent mother's parental rights to other children were terminated for severe and chronic neglect, and that previous efforts to rehabilitate her were unsuccessful.

Respondent mother also challenges the trial court's finding concerning the best interests of the children.¹ Where respondent mother was unable to unequivocally separate herself from an individual whom she admitted has sexually abused Marissa, forced respondent mother to engage in prostitution, and subjected her to domestic violence, it is clear that she will be unable to adequately protect the children from abuse and neglect as well as exposure to dangerous and criminal activity. Respondent mother also appeared wholly unable to address the special needs of Marissa, inconsistently testifying first that the child has serious special needs but that she does not know what they are or how to address them; also testifying that she does not believe that Marissa has any problems. Therefore, the evidence clearly established that termination of respondent mother's parental rights was in the best interests of these children.

Respondent mother finally claims error in the delay of trial in this matter, noting that it did not commence until one year after the removal of the children. Pursuant to MCR 3.972(A), trial was required to commence no more than 63 days after the removal of the children, with enumerated exceptions, one being on "stipulation of the parties with good cause." The initial cause for adjournment was to allow petitioner to investigate the paternity of the children and provide notice to respondent father, who had been named in a Friend of the Court matter pertaining to Marissa, and whose paternity status was unclear. The matter was reconvened approximately two weeks later, at which time respondent father, then a putative father, appeared in court. At that time the trial court entered an order for DNA testing to determine respondent father's paternity of Marissa. For reasons that appear primarily attributable to the petitioner, but clearly are not attributable to respondent mother, testing did not occur until on or about May 18, 2007. At the first hearing after testing (June 29, 2007), respondent father was appointed an attorney who requested that another pretrial be set to allow him to review the amended petition and converse with his client. This adjournment was granted. A continued pretrial took place on August 10, 2007, and trial commenced on October 5, 2007.

Because parents are legally entitled to notice of child protective proceedings, MCR 3.921(B)(1)(d), determination of paternity would seem to constitute "good cause" for adjournment pursuant to MCR 3.972(A)(1). "Good cause" under this rule means a legally sufficient and substantial reason. See *In re Utrera*, 281 Mich App 1, 11; 761 NW2d 253 (2008). However, we cannot conclude that the significant length of the delay in this case – seven and a half months – was "as short a period of time as necessary." MCR 3.923(G)(3). Nevertheless,

¹ The trial court applied an outdated version of MCL 712A.19b(5), but this error is harmless because the record clearly establishes that the requirements of the current version are met.

this error was not preserved below, and we decline to reverse because this error did not affect respondent mother's substantial rights. See *Utrera, supra* at 8-9. Where termination was clearly supported by the evidence, there is no basis to conclude that the delay affected the outcome of the proceedings. While the delay was improper, we conclude that it did not seriously affect the fairness, integrity, or reputation of the judicial proceedings.

Respondent father has not challenged the factual sufficiency of the evidence for termination of his parental rights² and does not assert that termination was not in the best interests of the children. Instead, he contends that the trial court erred by terminating his parental rights because he had been provided no services directed toward reunification. However, such services are not required in all situations. *In re Terry*, 240 Mich App 14, 26, n 4; 610 NW2d 563 (2000). Also, a service plan need not be directed at reunification. MCL 712A.18f(3)(d). "Services need not be provided where reunification is not intended." *In re LE, supra* at 21. Because termination was the goal from the time respondent father became the legal father of the children, services directed toward reunification were not required.³

We finally reject respondent father's contention that his attorney was ineffective for failing to object to a finding by the trial court that petitioner had provided reasonable efforts for case plan services to respondent father. Respondent father has not identified any such findings in the record, we cannot find any, and in fact, the record only shows that the parties below correctly agreed that no such finding was necessary because termination was sought at the initial disposition. MCR 3.977(E). We find nothing in the record suggesting that respondent father's counsel performed "below an objective standard of reasonableness." *In re CR*, 250 Mich App 185, 198; 646 NW2d 506 (2002).

Affirmed.

Alton T. Davis
William B. Murphy
Karen M. Fort Hood

² Respondent father does refer to MCL 712A.19b(3)(c)(ii) in his brief, apparently in support of his argument that services directed toward reunification were required. However, termination was neither sought nor granted under this statutory subsection, which is irreconcilably inconsistent with a request for termination at the initial disposition as in this case.

³ Furthermore, until paternity testing was completed, petitioner was only a putative father, to whom petitioner would not have an obligation to provide services in any event. *In re LE*, 278 Mich App 1, 18-19; 747 NW2d 883 (2008).