

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BRYCE RONNIE BORING,
Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

RONNIE BORING,

Respondent-Appellant.

UNPUBLISHED

March 22, 2005

No. 257524

Monroe Circuit Court

Family Division

LC No. 03-017769-NA

Before: Murray, P.J., and Markey and O’Connell, JJ.

PER CURIAM.

Respondent appeals by right from the order terminating his parental rights to the minor child under MCL 712A.19b(3)(g) and (j). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent first argues that the trial court erred in terminating his parental rights because petitioner failed to make reasonable efforts to reunify him with the child. Generally, when a child is removed from the parent’s custody, the petitioner must adopt a case service plan to insure reasonable efforts to rectify the conditions that caused the child’s removal. MCL 712A.18f(1), (2) & (4). But, services are not required in all situations. *In re Terry*, 240 Mich App 14, 26 n 4; 610 NW2d 563 (2000).

In this case, it is undisputed that petitioner did not offer services to respondent because of his incarceration; however, petitioner’s failure to provide services to respondent does not warrant reversal because petitioner could not provide services to rectify respondent’s incarceration and his resultant unavailability to parent or provide for the young child, the primary reason for terminating his parental rights. Aside from the first three months of the child’s life, respondent has been imprisoned, and, thus, unavailable to parent him. Respondent’s earliest possible release date was almost a year after the termination hearing, and upon his release, according to the caseworker, respondent would be required to address several obstacles to reunify with the child, including completing a substance abuse program and a psychological evaluation, participating in a batterer’s intervention group and individual counseling, maintaining employment and a suitable home and “doing” parenting. Given the child’s young age and the fact that respondent had not been available to parent the child for most of his life, we find no error in the trial court’s

determination that waiting approximately one year at a minimum for the possibility of reunification was an unreasonable amount time, and, thus, any services would have no affect.

The trial court also did not clearly err in determining that the statutory grounds were established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993). Respondent's past unavailability to parent the child and his inability to support the child because of his incarceration established that he had failed to provide proper care or custody for the child. The evidence also established that there was no reasonable likelihood that respondent would be able to provide proper care and custody for the child within a reasonable time considering the child's young age. Respondent had been incarcerated since the child was three months old, had an extensive criminal history that included several convictions for assault and domestic violence, some of which involved the mothers of his children, and had a lengthy history of substance abuse. The evidence showed that, for several years, respondent has been unable to successfully address these issues that clearly affected his ability to care for a child, despite probation, court-ordered substance abuse treatment and repeated incarcerations. Although we note that respondent was attempting to address his substance abuse and anger management issues by attending programs while in prison, we cannot say that the trial court clearly erred in relying on respondent's extensive criminal history and substance abuse and his failure to obtain adequate treatment in the past to conclude that there was no reasonable expectation that he would be able to provide proper care or custody to the child. Moreover, given the child's young age, we find no clear error in the trial court's conclusion that waiting an additional year at a minimum for reunification due to respondent's imprisonment was unreasonable given the child's need for permanency. Furthermore, respondent's repeated incarcerations harmed the child because he could not provide for or emotionally bond with the child. Given respondent's past inability to rehabilitate his substance abuse or his propensity for violent criminal behavior, we cannot say that the trial court clearly erred in finding that the child would likely be harmed if returned to respondent's home.

Given the foregoing, we also find no clear error in the trial court's determination regarding the child's best interest. Therefore, termination of respondent's parental rights was appropriate.

We affirm.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Peter D. O'Connell