

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JOSEPH WILHELM and GARY
BRENT WILHELM, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ELIZABETH WILHELM,

Respondent-Appellant.

UNPUBLISHED

August 9, 2005

No. 260578

Oakland Circuit Court

Family Division

LC No. 04-697255-NA

Before: Zahra, P.J., and Gage and Murray, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(b), (g), and (j). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent first contends on appeal that the trial court erred by finding that reasonable efforts were made toward reunification of the family. Because the instant case proceeded under an original petition for termination of parental rights, reunification efforts were not required. See MCL 712A.19b(4); MCR 3.977(E).¹ Respondent also complains of the agency's failure to offer services during the course of investigations concerning thirteen referrals regarding respondent from 2000 through 2003. However, those previous FIA matters, all predating the removal of the children and the filing of the petition in the instant case, are not before this Court on review.

¹ In fact, the trial court found that reasonable efforts were not relevant in this matter, citing the hearing referee's comment at preliminary hearing that reasonable efforts were not required. The record reveals that the referee initially addressed reasonable efforts to prevent the removal of the children from the home, finding that such efforts were not required because of the nature of the allegations. See MCR 3.965(D)(1), (2)(a). This is a different issue from the reasonableness of services directed toward reunifying a family. Where the trial court reached the right result for the wrong reason, its decision will be affirmed. *In re Powers*, 208 Mich App 582, 591; 528 NW2d 799 (1995).

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 JK*, 468 Mich 202, 209; 661 NW2d 216 (2003). The evidence clearly established that respondent had the opportunity to prevent sexual abuse of the minor child Joseph and failed to do so, and that there was a reasonable likelihood that the children would be abused or injured if returned to her. MCL 712A.19b(3)(b)(ii). The evidence indicated that respondent allowed the minor child Joseph to have contact with her live-in boyfriend Jessie Burns, as well as his brother Thomas Burns, after being informed that both had sexually abused Joseph. Several years earlier respondent allowed Joseph to have contact with his fictive cousins after he told her that they had sexually abused him. Where respondent has continually placed her children at risk of sexual abuse and exhibited gross lack of judgment or awareness necessary to protect them, the trial court did not clearly err by finding a reasonable likelihood that the children would be abused if returned to her custody. *Id.* The same evidence supports the conclusion that respondent failed to provide proper care and custody for the children and there is no reasonable likelihood that she will be able to do so in the reasonable future. MCL 712A.19b(3)(g). Furthermore, there is a reasonable likelihood that the children will be harmed if returned to her care. MCL 712A.19b(3)(j).

We are not persuaded by respondent's argument on appeal that the FIA "stamp of approval" on respondent's living arrangement with Jessie Burns over the course of thirteen previous investigations gave her reason to believe that her children were safe. Although the agency advised respondent in 2000 not to allow Jessie Burns to be alone with the children, it never required him to move out of the home. Whatever the agency's actions, we believe that the mere fact of thirteen previous referrals, many alleging physical abuse by Jessie Burns, should have led respondent to question the safety of the children around him. The obvious need for concern was only heightened by the fact that respondent knew that Joseph had been sexually victimized by his cousins, and knew as well that Jessie Burns was a registered sex offender. Yet respondent testified at the best interests hearing that the allegations in the previous referrals never once caused her to question whether those things really happened. Significantly, until the August 2004 referral that gave rise to this case, the agency, *unlike respondent*, had no evidence that Jessie Burns had sexually assaulted the children. Respondent, however, was advised of the sexual assaults committed by Jessie and Thomas Burns two months before the August 2004 referral, yet she continued to allow Jessie Burns to live with her, and allowed Joseph to again have contact with Thomas Burns. Thus, even if one believes that respondent's own years of failure to protect her children might be mitigated by the FIA's contemporaneous failure to protect the children, the defense fails when one considers that respondent, unlike the agency, had actual knowledge that the abuse was occurring.

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). Respondent has continually failed to protect the children from the risk of sexual assault, and Joseph has suffered repeated sexual abuse by multiple individuals over several years. Psychologist Sylvie Bourget testified at the best interests hearing that both children might have an adjustment period if respondent's parental rights were terminated, but she felt it would be better for them in the long run if respondent did not continue to function as their parent. She felt it would be more harmful to them if respondent's parental rights were not terminated, because they would remain at substantial risk of being abused. Ms. Bourget further opined that respondent does not have the internal resources to effect change that would insure that she would be capable of protecting her

children from harm in the future. Therefore, the trial court did not clearly err by finding that termination was in the best interests of the children.

Affirmed.

/s/ Brian K. Zahra

/s/ Hilda R. Gage

/s/ Christopher M. Murray