

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of CAYDEN GENE WAYE, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MELODY ROSE VANLUVEN,

Respondent-Appellant,

and

DAMOND GENE WAYE, JR.,

Respondent.

UNPUBLISHED

May 4, 2010

No. 293083

Branch Circuit Court

Family Division

LC No. 09-004091-NA

Before: Owens, P.J., and Sawyer and O’Connell, JJ.

PER CURIAM.

Respondent Melody VanLoven appeals as of right the order of the trial court terminating her parental rights to her minor child pursuant to MCL 712A.19b(3)(g) and (j).¹ We affirm.

VanLoven contends for the first time on appeal that the trial court erred by failing to *sua sponte* appoint a guardian ad litem to represent her interests because she was under the age of 18 at the time of the trial court proceedings. We disagree. We review VanLoven’s unpreserved claim of error for plain error affecting substantial rights. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

In a child protective proceeding, a trial court may, in its discretion, “appoint a guardian ad litem for a party if the court finds that the welfare of the party requires it.” MCR 3.916(A).

¹ Respondent-father Damond Gene Waye’s parental rights to the child were also terminated in the course of the lower court proceeding. In a separate criminal action, Waye pleaded no contest to attempted first-degree child abuse arising from his treatment of the child. He is not a party to this appeal.

In this case, VanLuven did not request the appointment of a guardian ad litem, she was represented by counsel, and her testimony indicates that she understood the proceedings. Moreover, on appeal VanLuven points to no event or error before the trial court that might have been averted by the appointment of a guardian ad litem. We therefore find no plain error affecting substantial rights related to this unpreserved issue.

VanLuven next contends, also for the first time on appeal, that the trial court failed to properly advise her that her plea and other statements could later be used against her. We disagree. In a child protective proceeding, the trial court is required to advise a respondent of the consequences of her plea, specifically, that a plea can be used in a proceeding to terminate parental rights. MCR 3.971(B)(4); *In re Hudson*, 483 Mich 928; 763 NW2d 618 (2009). With respect to respondent's claim, she has not identified any plea or statement made at the preliminary hearing that was later used against her. Thus, she has not demonstrated plain error. *In re Utrera*, 281 Mich App at 8. Further, a review of the record demonstrates that at the later adjudication, the trial court began by advising both respondents of their rights. Moreover, after the trial court advised VanLuven of her rights, she did not actually enter a plea to the allegations of the amended petition. Instead, she merely admitted that she had already pleaded no contest to charges of fourth-degree child abuse in a criminal action arising from the same circumstances that had given rise to the child protective proceedings. In light of the record, we decline to find that relief is warranted on a claimed failure to comply with the directive of MCR 3.971(B)(4).

We also reject VanLuven's unpreserved contention that the trial court's termination of her parental rights was premature because she was not given a reasonable opportunity to overcome the issues that brought the child before the trial court. Once a trial court has assumed jurisdiction over a child in a child protective proceeding, the trial court has the authority to terminate parental rights at the initial dispositional hearing. MCL 712A.19b(4); MCR 3.977(E). Although the agency charged with the care of a child is required to report to the trial court the efforts made to rectify the conditions that led to the removal of the child, MCL 712A.18f; MCR 3.977, services are not mandated in every situation. *In re Terry*, 240 Mich App 14, 25 n 4; 610 NW2d 563 (2000). Where termination is requested at the initial dispositional hearing, the agency need not develop a service plan or provide services if it justifies its decision not to do so. MCL 712A.18f(1)(b); *In re Terry*, 240 Mich App at 25 n 4.

In this case, the trial court terminated VanLuven's parental rights pursuant to MCL 712A.19b(3)(g) and (j), and the record supports the trial court's findings under both subsections. During the first two months of his life, the child was in the care of respondents at all times. During that time, he suffered six broken ribs that were at different stages of healing, indicating more than one injury. He had bruises on his temples and on his back, and human bites on his leg and back. Damond Waye, the child's father, initially denied, but later admitted, having caused the bites on the child. VanLuven testified that she had seen Waye being too rough with the child, and she knew that Waye had admitted to biting the child. Yet VanLuven persisted in her position that she did not know how the child's multiple injuries had occurred, and she testified that she considered Waye to be a good father. She also admitted that when the trial court had returned the child to her shortly after the child protective proceedings began, she twice visited Waye with the child. The record supports the trial court's determination that VanLuven failed to provide care and custody to the child and, considering VanLuven's continuing visits to Waye, there is no reasonable expectation that VanLuven would be able to provide proper care and

custody within a reasonable time. Further, the record supported a finding that a continuing likelihood existed that if the child were returned to VanLuven's care, she would continue to facilitate contact between the child and Wayne, placing the child at risk of being harmed by Wayne.

VanLuven argues that the trial court should have permitted her additional time to improve her parenting, particularly given that she was only 17 years old. However, the record indicates that VanLuven did not lack parenting skills. Rather, VanLuven's parental rights were terminated because although she knew how to care for the child, she was either unwilling or unable to protect him. VanLuven was aware of Wayne's treatment of the child, yet she made no move to end her relationship with Wayne, and she had continued the relationship despite the trial court's instructions to the contrary. Based on the record, the trial court's decision to terminate VanLuven's parental rights at the initial dispositional hearing without the agency providing services was not plain error.

For the same reasons, we reject VanLuven's contention that the trial court clearly erred in determining that termination was in the best interests of the child. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 354, 356-357; 612 NW2d 407 (2000).

Affirmed.

/s/ Donald S. Owens
/s/ David H. Sawyer
/s/ Peter D. O'Connell