

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
January 18, 2011

In the Matter of C. POLLEY, Minor.

No. 298823
St. Clair Circuit Court
Family Division
LC No. 10-000085-NA

Before: O'CONNELL, P.J., and SAAD and BECKERING, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(g) and (j). We reverse and remand for further proceedings.

Respondent and the child's mother never married, and they separated in approximately July 2008, when the child was about six months old. At the time they separated, respondent was not listed on the child's birth certificate. Respondent continued to maintain some contact with the child's mother until approximately January 2009. Respondent then left Michigan to work in Florida. In June 2009, respondent returned to Michigan and resumed contact with the child. As of August 2009, the child's mother refused to allow respondent to see the child. In approximately October 2009, respondent began an action to enforce his parental rights, but that proceeding was held in abeyance while this matter was pending.

In March 2010, the child received a serious head injury while in the care of the mother's boyfriend. Medical personnel attributed the child's injury to abuse, and the mother's boyfriend was later charged with child abuse. Petitioner thereafter filed a petition requesting that the trial court exercise jurisdiction over the child and that it terminate respondent's and the mother's parental rights at the initial dispositional hearing. Although termination was requested under numerous different statutory grounds, the court declined to terminate the mother's parental rights and instead ordered that she be presented with a case service plan and provided with services toward reunification. However, the trial court found that termination of respondent's parental rights was justified under MCL 712A.19b(3)(g) and (j).

On appeal, respondent argues that the trial court erred in finding that the statutory grounds for termination were established by clear and convincing evidence and in finding that termination was justified without requiring petitioner to make reasonable efforts toward reunification. We agree.

A petitioner is required to establish a statutory ground for termination by clear and convincing evidence. MCL 712A.19b(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). This Court reviews the trial court's factual findings, as well as its ultimate decision whether a statutory ground for termination has been proven, for clear error. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

The Department of Human Services (DHS) is generally required to make reasonable efforts to rectify the conditions that caused a child's removal from the parent's home through the adoption of a case service plan. See MCL 712A.18f; see also MCL 712A.19(7) and MCL 712A.19b(5); *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008). Where reasonable efforts toward reunification are required, but the DHS fails to provide services necessary for the child's safe return to his or her home, termination of parental rights is improper. *In re Mason*, 486 Mich at 158-159.

Petitioner contends that it was not required to offer reunification services to respondent because he was only a putative father. We disagree. The record discloses that respondent's paternity was established when respondent and the child's mother executed an affidavit of parentage in mid-March 2010. Consistent therewith, petitioner alleged in its amended petition that respondent was the child's legal father, and petitioner's own witnesses at the termination hearing testified that respondent was the child's legal father. Respondent's status as the child's legal father was not a contested issue at the termination hearing. Thus, we reject petitioner's claim that its decision not to offer services to respondent can be justified on the ground that respondent was only a putative father. See, *In re Rood*, 483 Mich 73, 77 n 1; 763 NW2d 587 (2009) (opinion of Corrigan, J.).

Petitioner alleged in its petition that reasonable efforts to preserve and reunite the family were not necessary because it would be detrimental to the child's health and safety, given the seriousness of the child's injuries. Petitioner established that the child was seriously injured, but failed to establish that reunification with respondent would be detrimental to the child's health and safety. Respondent was never implicated in the abuse that led to the child's injuries, nor was there any basis to conclude that respondent failed to intervene to eliminate a known risk of harm to the child. There was no evidence that respondent was aware, or should have been aware, that the mother's boyfriend presented a risk of harm to the child.

Further, respondent's past criminal history was not a valid ground for petitioner to refuse reunification services. In *In re Mason*, 486 Mich at 152, the Court explained:

The state is not relieved of its duties to engage an absent parent merely because that parent is incarcerated. In this case, once again, the DHS's efforts focused exclusively on the custodial mother and essentially ignored the father. "Reasonable efforts to reunify the child and family must be made in *all* cases" except those involving aggravated circumstances not present in this case. MCL 712A.19a(2) (emphasis added). Here, because the DHS and the court failed to adhere to court rules and statutes, respondent was not afforded a meaningful and adequate opportunity to participate. Therefore, termination of his parental rights was premature.

In this case, respondent was not incarcerated, but he had been absent from the child's life for a period of months. The trial court clearly erred by relying on respondent's past criminal history as justification for terminating respondent's parental rights at the initial dispositional hearing without providing him with services toward reunification. As our Supreme Court observed in *In re Mason*, 486 Mich at 165, "just as incarceration alone does not constitute grounds for termination, a criminal history alone does not justify termination." Further, in *In re Rood*, 483 Mich at 122, the Court stated that

unless the noncustodial parent is statutorily disqualified from becoming his child's custodian, the state must notify the noncustodial parent of his right to be evaluated as a potential placement and of his statutory right to receive services if appropriate.

See also *id.* at 121-122 n 63 (all parents must be included in the development of a case service plan).

Moreover, the special statutory circumstances that excuse reunification efforts were not present in this case. See MCL 712A.19a(2) or MCL 722.638. Although respondent had a criminal history and a history of alcoholism, there was no evidence that he had been convicted of a crime specified in the statutory sections, or had harmed the child or another child. In addition, the evidence indicated that respondent had been sober for some months at the time of the hearing. Petitioner argued that respondent's absence from the child's life allowed the mother's boyfriend to assume a role in the child's life, thereby contributing to the circumstances that allowed the child to be abused. However, there was no evidence that respondent's absence created the unreasonable risk of harm that caused the abuse, or that respondent had reason to believe that the mother's boyfriend presented an unreasonable risk of harm to the child.

Petitioner failed to justify its decision not to make reasonable efforts to reunite respondent with his child before requesting termination of his parental rights. Because services were not provided, it was premature for the trial court to terminate respondent's parental rights.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Peter D. O'Connell
/s/ Henry William Saad
/s/ Jane M. Beckering