

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MADISON FLORES, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CISCO FLORES,

Respondent-Appellant,

and

SHANNON PHIPPS,

Respondent.

In the Matter of MADISON FLORES, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

SHANNON PHIPPS,

Respondent-Appellant,

and

CISCO FLORES,

Respondent.

UNPUBLISHED

May 4, 2006

No. 266155

Jackson Circuit Court

Family Division

LC No. 03-006736-NA

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Before: White, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the trial court order terminating their parental rights to the minor child pursuant to MCL 712A.19b(3)(j) and (m). We affirm. These appeals are being decided without oral argument pursuant to MCR 7.214(E).

Between 2002 and 2004, protective services received 15 referrals alleging domestic violence between respondents. In December 2003, petitioner filed a petition to place respondent-mother's son, Kennedy Vosburg, and both respondents' child, Chandler Flores, into the court's temporary custody. Respondents failed to substantially comply with services to which petitioner referred them, particularly domestic violence counseling. On December 28, 2004, respondents were involved in a domestic violence dispute in a parking lot. Respondent-mother subsequently obtained a personal protection order (PPO) against respondent-father. Petitioner filed a petition seeking termination of respondents' parental rights to Kennedy and Chandler in January 2005. On February 28, 2005, respondents released their parental rights to both children.

Madison, the subject of the instant case, was born on July 5, 2005. The next day, petitioner filed a petition seeking termination of both respondents' parental rights to the child, alleging that respondents had a history of domestic violence, that they had failed to complete services offered by petitioner in the proceedings involving Kennedy and Chandler, and that they had released their parental rights to Kennedy and Chandler. Respondent-father was seen at the hospital at the time of Madison's birth, in violation of the PPO. On August 15, 2005, respondent-father was at respondent-mother's apartment, contrary to the PPO, and, when questioned by authorities, respondent-mother denied that he was there. Respondent-father was subsequently arrested for violating the PPO. Respondent-mother failed to renew her request for the PPO when it expired. Petitioner subsequently allowed respondents to visit Madison at the same time at petitioner's offices, in a supervised setting.

At the September 12, 2005, adjudication on the petition, the court concluded that it had jurisdiction over Madison under § 2(b), finding that a preponderance of the evidence showed that Madison's home with respondents, by reason of respondents' neglect, was an unfit place for her to live. The court focused on the fact that respondents had not participated in any services since having released their parental rights to Kennedy and Chandler.

At the October 10, 2005, termination trial on the petition, the court terminated respondents' parental rights under MCL 712A.19b(3)(j) and (m) and found that termination was not contrary to Madison's best interests.

On appeal, respondent-father challenges that court's jurisdiction in the instant matter. Although the court's exercise of jurisdiction may be challenged only on direct appeal of the jurisdiction decision, not by collateral attack in a subsequent appeal of an order terminating parental right, a challenge to the subject-matter jurisdiction may be collaterally attacked. *In re Gazella*, 264 Mich App 668, 679-680; 692 NW2d 708 (2005). Because respondent-father challenges the court's subject-matter jurisdiction, he may raise this issue on appeal.

Respondent-father argues that the trial court erroneously relied on facts concerning the prior child custody proceeding, before Madison was even born. However, under the doctrine of anticipatory neglect, a child may come within the trial court's jurisdiction solely on the basis of the parent's treatment of another child. *Id.* at 680. Abuse or neglect of the second child is not a prerequisite to jurisdiction of that child and application of the doctrine of anticipatory neglect. *Id.* at 680-681. In the instant case, in establishing its jurisdiction over Madison, the court relied on the prior child custody proceedings involving respondents' son Chandler and the failure of respondent-father to participate in any treatment to which he was referred by petitioner before Madison's birth. Applying the doctrine of anticipatory neglect, the trial court did not clearly err in finding that it had jurisdiction over Madison under § 2(b).

Respondent-mother argues on appeal that the evidence did not support termination of her parental rights under the two statutory grounds cited by the court, §§ 19b(3)(j) and (m). While she concedes that her release of her parental rights to Kennedy and Chandler established the statutory grounds for termination under § 19b(3)(m), she argues that termination was not in Madison's best interests because she was participating in services. However, the determination of whether the statutory grounds are established and whether termination is contrary to the child's best interests are two separate inquiries. Because only one ground is necessary to support termination and respondent-mother concedes that the evidence supported termination under § 19b(3)(m), the trial court did not clearly err in finding that § 19b(3)(m) supported termination. However, considering the history of domestic violence between respondents, respondent-mother's continued contact with respondent-father, and the testimony by respondent-mother's therapist that respondent-mother was not ready to avoid violent relationships as of the date of the termination trial, the trial court did not clearly err in also relying on § 19b(3)(j) in support of termination of respondent-mother's parental rights.

Both respondents also argue on appeal that termination of their parental rights was contrary to Madison's best interests. The evidence showed that there was a history of domestic violence between respondents, with the last incident on December 28, 2004, just six months before Madison's birth. Since Madison's birth, respondent-father had threatened a protective services worker and been banned from an anger management course because of his behavior. He violated the PPO respondent-mother had against him on several occasions. He failed to participate in domestic violence counseling. Although respondent-mother was participating in individual and group counseling, her counselor testified that she was not ready to avoid violent relationships. In light of this evidence, the trial court did not clearly err when it found that termination of both respondents' parental rights was not contrary to Madison's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Thus, the trial court did not clearly err in terminating respondents' parental rights to Madison.

Affirmed.

/s/ Helene N. White
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot