

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ALEXANDRU CHIVESCU,
Minor.

OAKLAND COUNTY PROSECUTOR,

Petitioner-Appellee,

and

DEPARTMENT OF HUMAN SERVICES,

Petitioner,

v

VIVIANA SANDOR,

Respondent-Appellant.

UNPUBLISHED

September 23, 2008

No. 283903

Oakland Circuit Court

Family Division

LC No. 02-665714-NA

Before: Borrello, P.J., and Murray and Fort Hood, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(g) and (j). For the reasons set forth in this opinion, we affirm.

This matter came to the attention of the Department of Human Services around October 2007 when police were called to the residence of respondent and the minor child, and an officer made a referral to DHS because the officer was concerned that the respondent was suffering from mental illness to such an extent that the child might be at immediate risk. A petition was thereafter filed alleging that the minor had been placed in foster care from 2004 through 2005 and that he was extremely afraid of his mother because she was violent and he was afraid that he would have no place to live because his mother had not paid the household bills and she was off her medications and “acting crazy.” The minor disclosed a variety of issues relative to the mother’s mental health all of which caused him grave concern for his safety and well-being. When a protective services worker attempted to interview respondent, the worker concluded that respondent was not competent to be interviewed and was unable to care for the minor child

because of her mental state. The petition also alleged that the child's father, who lives in Romania, does not have any contact with the minor.

The instant case is somewhat unusual because the prosecuting attorney sought termination of respondent's parental rights at the initial disposition, a course of action in which the Department of Human Services did not join and which it did not support. Respondent argues that the agency was precluded from complying with its duty to address barriers to reunification because the prosecutor sought termination in an initial petition. In general, when a child is removed from the custody of the parents, the agency is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan. MCL 712A.18f(1), (2), (4). However, our court rules and statutes are also clear that termination may be sought at the initial dispositional hearing, MCL 712A.19b(4); MCR 3.977(E), and the prosecuting attorney is a person authorized to file a petition seeking termination of parental rights, "without regard to whether the prosecuting attorney is representing or acting as a legal consultant to the agency or any other party." MCR 3.977(A)(2)(f); See also *In re Jagers*, 224 Mich App 359, 362; 568 NW2d 837 (1997). Thus there was nothing improper in the prosecutor's filing of a petition seeking termination, even though the agency did not agree with that course of action. Furthermore, under the circumstances of this case, the prosecutor's action did not undermine the agency's duty to make reasonable efforts toward the reunification of families. The child had been removed from respondent's care three times before these proceedings, each time because respondent was unable to care for him due to her mental instability. Respondent was provided with service plans addressing barriers to reunification twice, in 2002 and again in 2005. Respondent has thus had repeated opportunities and agency assistance to address the barriers to reunification.

Respondent next challenges the sufficiency of the evidence for the termination of her parental rights. The trial court did not clearly err by finding that statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The evidence clearly indicated that respondent failed to provide proper care and custody for the minor child by failing to provide food and clothing for him, and by behaving so erratically that the child, who was 16 years old at the time of termination, would stay at the library rather than come home and would barricade himself in his room at night. The trial court did not clearly err by finding that there was no reasonable likelihood that respondent would be able to provide proper care and custody for the minor child within a reasonable time considering his age. MCL 712A.19b(3)(g). The evidence indicates that, when medicated, respondent is able to provide proper care and custody. She has at least twice complied with medication and become stable for some period of time in order to have the child returned to her care. Unfortunately, history has demonstrated that respondent is unable or unwilling to remain on medication. In her own testimony respondent conspicuously denied or minimized the role of her mental illness in each of the three prior removals. The events of this case have demonstrated that proper care and custody for the child requires not just temporary but uninterrupted and ongoing medication compliance. Given the repetitive cycle of medication noncompliance shown by the evidence, the trial court did not clearly err by finding that respondent would not be able to provide proper care and custody for the child within a reasonable time considering the age of the child. *Id.*

In the context of her argument concerning the sufficiency of the evidence, respondent asserts that the trial court erred by excluding evidence of her post-petition conduct, which would have demonstrated that she was now stable and medication-compliant. We agree that the trial court incorrectly excluded evidence of post-petition events. This Court in *In re Laflure*, 48 Mich App 377; 210 NW2d 482 (1973), advised that the probate court considering the fitness of a parent “must be aware of the total circumstances of the case before it.” *Id.* at 391. The circuit court, which under past procedure conducted review of a termination decision by trial de novo, was further entitled to consider all events occurring up until the date of its review, since such evidence was relevant to the issue of the parent’s fitness. *Id.* at 382, 391-392. This same principle dictates that the trial court should accept evidence of events occurring up until the date of its decision. It is preferable as a matter of policy that a decision so serious as termination of parental rights should be based on a full picture of the existing situation rather than one artificially circumscribed by the date on which a termination petition was filed.

However, the trial court’s error was harmless in this case. MCR 2.613(A). The proffered evidence would have shown that respondent was currently compliant with her medication; but the real issue was clearly her ability to maintain stability and medication compliance. Thus, even if the improperly excluded evidence had been considered in the trial court’s determination of the existence of a statutory basis for termination, it would not have altered the outcome of this case.

The same evidence showing that there was no reasonable likelihood that respondent would be able to provide proper care and custody for the child within a reasonable time, MCL 712A.19b(3)(g), equally demonstrates that there is a reasonable likelihood that the child would be harmed if returned to her care. MCL 712A.19b(3)(j). Therefore, the trial court did not clearly err by terminating the parental rights of respondent under MCL 712A.19b(3)(j).

Finally, the trial court did not clearly err by finding that termination of respondent’s parental rights was not clearly contrary to the best interests of the child. MCL 712A.19b(5). The psychologist who evaluated both respondent and the minor child before the best interests hearing testified that termination would not be particularly harmful for the child, and that his best interests called for a long-term plan that did not include respondent. This conclusion was based on respondent’s issues as well as the minor’s indication of an irreparable relationship with her. The psychologist testified that another repetition of the past pattern could be very traumatic for the child, and he might view it as a failure of the court to protect him. The record supplied ample basis for the court to conclude that termination was not contrary to the best interests of the child.

Affirmed.

/s/ Stephen L. Borrello
/s/ Christopher M. Murray
/s/ Karen M. Fort Hood