STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of TAYLOR L. GOODNOW, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TINA GOODNOW,

Respondent-Appellant.

and

RAYMOND A. GOODNOW,

Respondent.

UNPUBLISHED
June 18, 1999

No. 213848
Roscommon Circuit Court
Family Division
LC No. 98-720262 NA

Before: Gribbs, P.J., and Kelly and Hood, JJ.

PER CURIUM.

Respondent-appellant appeals as of right the order of the Roscommon Family Court terminating her parental rights to the minor child, Taylor Goodnow, on July 23, 1998 pursuant to MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g). Respondent Raymond Goodnow, the father, whose parental rights were terminated in an order entered on October 15, 1998, after he signed a release or consent, has not appealed the termination order. We affirm.

On January 27, 1997, the FIA received a referral regarding the filthy living environment of Tina and Raymond Goodnow's home. The matter was later closed after the family cleaned up the house. On May 8, 1998, the FIA received a referral about possible physical abuse of Taylor and that respondent's home was again unclean. On May 12, 1998, a caseworker investigated the home and found it to be an unhealthy environment for a young child.

On May 13, 1998, the FIA filed a petition seeking termination of the parental rights of respondent to the minor child. An emergency preliminary hearing was held on the same day. At the hearing, Kara Mularz, a caseworker, stated respondent had several contacts with the FIA dating back to 1989. Numerous cases for filthy living conditions were opened which led to respondent voluntarily giving up her parental rights to three other children. The children all live with their grandmother who has adopted them.

Mularz testified that when she entered respondent's home, she saw extremely filthy conditions including dirty dishes stacked in the sink and on the stove, animal feces in the floor, clothes piled in the bathtub almost to the ceiling, and bedrooms cluttered to the point of not being able to walk in the rooms. Pursuant to MCR 5.965(C)(2),[1] the court asked respondent for her consent to the court taking custody of the children in the home. Respondent acquiesced.

At the July 10, 1998 trial, a clinical psychologist testified that respondent was in a very difficult period in her life since her husband had just accepted a plea agreement to a criminal sexual conduct offense involving a child under thirteen years of age.[2] The psychologist found it very alarming that respondent was not overtly concerned with being married to a child sex offender and that Taylor was being exposed to such an enormous risk. The psychologist stated that, in his opinion, it would not be in Taylor's best interest to be returned to respondent at that time. Further, he was not optimistic that respondent would be able to reorganize her life to adequately provide for Taylor. Finally, the psychologist testified that because Taylor was beginning to exhibit signs of sexual "self-stimulation" at the age of two and a half years, she would need considerable care within a window of six months to repair any damage the child had suffered. This would require a sweeping change on the part of respondent if she intended to provide the necessary care Taylor required. At that point, respondent informed the court that she wished to enter a plea admitting to ¶¶ 1-3, 6-9, and 11-14 of the petition. The trial court found the plea to be understandingly and voluntarily made.

Thirteen days later, on July 23, 1998, the initial disposition hearing was held. Again, Mularz testified as to the conditions of the house. Mularz recommended termination of respondent's parental rights since she was given ample opportunity to change and the conditions of the home had not changed for the better. At the time of the hearing, Mularz was unaware that respondent had been gainfully employed and indicated that her employment could have a positive impact on her life. Respondent testified that since the prior hearing, she had seen a therapist, cleaned most of the house, and continued to regularly visit Taylor. Respondent further explained that the filthy conditions of her home were the result of the turmoil in her life and that she was in the process of correcting those problems.

After hearing the testimony of witnesses from both parties, the trial court proceeded to make findings of fact in terminating respondent's parental rights. Termination was made pursuant to MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g).[3] The trial court also found termination of respondent's parental rights to be in the best interests of Taylor.

Respondent's first claim on appeal is that the trial court erred in terminating her parental rights at the initial disposition hearing pursuant to MCR 5.974(D) since there was no clear and convincing evidence introduced at the plea hearing which justified the termination. We disagree.

This Court reviews questions of law de novo. *In re Jude*, 228 Mich App 667, 670; 578 NW2d 704 (1998). The trial court's factual findings in parental rights termination proceedings are reviewed under the clearly erroneous standard. MCR 5.974(I); *In re Cornet*, 422 Mich 274, 277; 373 NW2d 536 (1985). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Once the trial court finds statutory grounds for termination by clear and convincing evidence, termination is mandatory, unless the court finds that termination is clearly not in the child's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Hall-Smith*, 222 Mich App 470, 472; 564 NW2d 156 (1997). The trial court's decision regarding termination is reviewed in its entirety for clear error. *Id.*

Pursuant to MCL 712A.19b(4); MSA 27.3178(598.19b)(4), "[i]f a petition to terminate the parental rights to a child is filed, the court may enter an order terminating parental rights under subsection (3) at the initial dispositional hearing." However, as respondent notes, it is typically the case that there is no request to terminate parental rights at the initial disposition phase. Most often the FIA files a supplemental petition requesting termination of parental rights under one of the statutory grounds set forth in MCL 712A.19(b)(3); MSA 27.3178(598.19b)(3).

MCR 5.974(D) specifies the procedure for terminating parental rights at the initial dispositional hearing:

> **Termination of Parental Rights at the Initial Disposition.** The court shall order termination of the parental rights of a respondent at the initial dispositional hearing held pursuant to MCR 5.973(A), and shall order that additional efforts for reunification of the child with the respondent shall not be made, if
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> (1) the original, or amended, petition contains a request for termination;
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> (2) the trier of fact found by a preponderance of the evidence that the child comes under the jurisdiction of the court on the basis of MCL 712A.2(b); MSA 27.3178(598.2)(b);
>
> (3) the court finds on the basis of clear and convincing legally admissible evidence introduced at the trial, or at plea proceedings, on the issue of assumption of court jurisdiction, that one or more facts alleged in the petition:
>
> (a) are true,
>
> (b) justify terminating parental rights at the initial dispositional hearing, and
>
> (c) fall under MCL 712A.19b(3); MSA 27.3178(598.19b)(3);
>
> unless the court finds, in accordance with the rules of evidence as provided in subrule (F)(2), that termination of parental rights is clearly not in the best interest of the child.

Interpretation of a court rule is subject to the same scrutiny as that of statutory interpretation. *Smith v Henry Ford Hosp*, 219 Mich App 555, 559; 557 NW2d 154 (1996). If the plain and ordinary meaning of the language is clear, judicial construction is normally neither necessary nor permitted. *Lorencz v Ford Motor Co*, 439 Mich 370, 376; 483 NW2d 844 (1992); *Heinz v Chicago Rd Investment Co*, 216 Mich App 289, 295; 549 NW2d 47 (1996).

The first requirement is that the original, or amended, petition contain a request for termination. A review of the record indicates that a request for termination was made in the petition filed on May 13, 1998. Respondent claims the trial court dismissed the request for termination at the trial and plea hearing. We disagree. The original request for termination as stated in the petition was still in effect. The parties only agreed that the "Binsfield legislation" did not apply.

Next, it must be shown by a preponderance of the evidence that the child comes within the jurisdiction of the court based on MCL 712A.2(b); MSA 27.3178(598.2)(b). Respondent does not challenge this requirement.

Finally, it must be shown by clear and convincing legally admissible evidence introduced at the trial or plea proceedings that one or more facts alleged in the petition are true, justify terminating parental rights, and fall under MCL 712A.19(b)(3); MSA 27.3178(598.19b)(3) unless it is shown that termination is not in the best interests of the child. Respondent claims the trial court erred in terminating her parental rights because it failed to make a finding at the initial dispositional hearing that there was clear and convincing legally admissible evidence introduced at the trial or plea proceeding justifying the termination. We disagree.

As noted above, respondent's parental rights were terminated pursuant to MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g). As such, respondent's admissions to ¶¶ 1-3, 6-9, and 11-14 of the petition at the trial/plea proceeding establish clear and convincing legally admissible evidence justifying termination. Respondent admitted to being evicted in the past for filthy home conditions; to not allowing a DSS worker into her home for inspection of the home after she was commanded to clean and make safe the home; to keeping the home in complete disarray with rotten food in the refrigerator and dirty diapers, animal waste and garbage in the home; to keeping piles of unwashed dishes in the sink and on the stove with moldy food lying about the home; and to keeping the home in a state of mosquito and house fly infestation resulting in the child suffering over fifty insect bites all over her body.

The exhibits admitted at the initial disposition hearing include photographs taken of the home, evidencing of the grotesque conditions which bolster the admissions made by respondent. The trial court had ample evidence, by way of respondent's admissions alone, to establish that respondent failed to provide proper care and custody of her child with no reasonable expectation that she will be able to provide such care in the future. In fact, the clinical psychologist who testified at trial indicated that he thought it was not in the child's best interest to be returned to respondent at that time. Further, the psychologist explained that this child had at the most a six month window of opportunity to experience a stable and nurturing environment within which any emotional and psychological damage she suffered could be reversed. The psychologist believed respondent to be the cause of much of this child's

emotional and psychological problems and that, in his opinion, respondent would not be able to reorganize her life in time to aid this child.

It may be that the trial court, in determining the question of termination, considered evidence not admitted at the trial/plea proceeding. The trial court did reference exhibits and testimony admitted at the initial disposition hearing when making its findings of fact. However, due to the overwhelmingly baneful nature of the psychologist's testimony and the admissions by respondent, if there was error in this regard it was harmless. Thus, we conclude the trial court did not err in terminating respondent's parental rights at the initial disposition hearing.

Next, respondent claims the trial court erred in terminating her parental rights at the initial disposition hearing because there was no clear and convincing evidence legally admitted showing respondent to have failed to provide care and custody for her child with no reasonable expectation that she will not be able to provide proper care and custody in the future. We disagree. As stated above, this Court finds there to have been ample evidence showing respondent to have failed to provide proper care and custody for her child and that there was a reasonable expectation that respondent would not be able to provide proper care and custody in the future.

Next, respondent claims she was denied her right to effective assistance of counsel when her attorney failed to protect her interests. We disagree. A claim of ineffective assistance of counsel should be raised by a motion for a new trial or an evidentiary hearing. *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973). If a party fails to do so, review may be granted where the alleged deficiencies in representation are sufficiently detailed in the existing record to allow this Court to reach and decide the claim. *People v Sharbnow*, 174 Mich App 94, 106; 435 NW2d 772 (1989). Such a review, as in this case, is limited to the existing record. *People v Armendarez*, 188 Mich App 61, 74; 468 NW2d 893 (1991).

To establish a claim of ineffective assistance of counsel, respondent must show that her counsel's performance was prejudicially deficient and that, under an objective standard of reasonableness, counsel made an error so serious that counsel was not functioning as an attorney as guaranteed under the Sixth Amendment. *People v Pickens*, 446 Mich 298, 303; 521 NW2d 797 (1994). Matters of trial strategy will not be second-guessed by this Court even if the strategy did not work. *People v Murph*, 185 Mich App 476, 479; 463 NW2d 156 (1990).

First, respondent claims her counsel was thoroughly unfamiliar with the facts of this case in as much as she was allowed to admit certain allegations set forth in the FIA's petition. We disagree. Since respondent only admitted to a select portion of the petition, such advise could very clearly be seen to be a matter of trial strategy. Further, a review of the record indicates to this Court that respondent's counsel was adequately familiar with the factual background and the legal ramifications of this case.

Next, respondent claims counsel's failure to object to the introduction of testimony from respondent's psychologist unduly prejudiced her and denied her effective assistance of counsel. We disagree. In the context of a child protective proceeding, the psychologist-patient privilege is abrogated when (1) a report is generated under the act or (2) the communications are offered as evidence of

neglect or abuse in a child protective proceeding. *In re Brock, supra*, 442 Mich at 117-118. Since the psychologist interviewed respondent and the child on a referral from an FIA caseworker, it appears the testimony was legally admissible since the evaluation was performed pursuant to child protection law. *Id.*

Also, respondent claims her counsel was ineffective in failing to object to the termination petition based on the premature nature of the proceedings. Respondent asserts that it was inappropriate for the trial court to hold the initial disposition hearing just thirteen days after the trial/plea proceeding. We disagree. First, while the trial court did recognize the contingency that respondent could *possibly* change her life around within the six month time limit indicated by her psychologist, the court found it most improbable. In light of the overwhelming evidence indicating respondent to be an unfit mother, this Court will not second guess the trial court's determination of when to hold the initial disposition hearing. As such, the actions of respondent's counsel in not seeking to prolong this matter appear to again be a matter of trial strategy.

Affirmed.

/s/ Roman S. Gribbs
/s/ Michael J. Kelly
/s/ Harold Hood

[1] MCR 5.965(C)(2) states:

> The court may place the child with someone other than the parent pending trial or further court order if the court determines that all of the following conditions exist:
>
> (a) custody of the child with the parent presents a substantial risk of harm to the life, physical health, or mental well being of the child;
>
> (b) no provision of service or other arrangement except removal of the child is reasonably available to adequately safeguard the child from the risk as described in subrule (C)(2)(a); and
>
> (c) conditions of child custody away from the parent are adequate to safeguard the health and welfare of the child.

[2] Respondent Raymond Goodnow pleaded nolo contendere to one count of CSC-1, MCL 750.520b; MSA 28.788(2), and was sentenced to 20 to 60 years' imprisonment.

[3] MCL712A.19b(3)(g); MSA27.3178(598.19b)(3)(g) provides:

> The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the age of the child.