STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of PORCHA RENEE JACKSON, TYRONE MORRICE JACKSON, and TONY LANIER JACKSON, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

V

PAMELA RENAE PERRY,

Respondent-Appellant,

and

TYRONE JACKSON,

Respondent.

UNPUBLISHED
July 27, 2001

No. 228188
Saginaw Circuit Court
Family Division
LC No. 98-025019-NA

Before: Neff, P.J., and O'Connell and R. J. Danhof*, JJ.

PER CURIAM.

Respondent-appellant Pamela Renae Perry ("respondent") appeals as of right from an order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (g) and (j). We affirm.

First, respondent challenges the admission of "all forms of hearsay" during the dispositional phase of these proceedings. She does not, however, indicate the specific testimony the admission of which she believes was objectionable at trial. A party may not leave it to this Court to search for a factual basis to sustain or reject its position. *Great Lakes Division of Nat'l Steel Corp v Ecorse*, 227 Mich App 379, 424; 576 NW2d 667 (1998). Furthermore, while the rules of evidence apply at the adjudicative phase of a child protective proceeding, MCR 5.972(C)(1), they do not apply at the dispositional phase. MCR 5.973(A)(4)(a); *In re Gilliam,*

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* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

241 Mich App 133, 136-137; 613 NW2d 748 (2000). Instead, "[a]ll relevant and material evidence . . . may be received and may be relied on to the extent of its probative value, even though such evidence may not be admissible at trial." MCR 5.973(A)(4)(a); *Gilliam, supra* at 137. Therefore, hearsay evidence is generally admissible during the dispositional phase of a termination proceeding. Hence, even if hearsay evidence was admitted at the termination hearing, the admission of such evidence would not necessarily be erroneous. *Gilliam, supra* at 136-137. It is true, however, that if termination is sought on the basis of one or more circumstances "new or different" from those that led to the original assumption of jurisdiction, "[l]egally admissible evidence must be used to establish the factual basis of parental unfitness sufficient to warrant termination of parental rights." MCR 5.974(E)(1); *Gilliam, supra* at 137. See also *In re Snyder,* 223 Mich App 85, 88-91; 566 NW2d 18 (1997).

Respondent's parental rights were terminated in large part because of her mental illness and her consequent inability to properly care for her children. Because these circumstances were not related to the court's initial assumption of jurisdiction, they were required to be proven by legally admissible evidence. *Gilliam, supra* at 137; *Snyder, supra* at 88-91. However, our review of the record reveals that these matters were proven by legally admissible evidence. The testimony of respondent's two psychiatrists, psychologist, and therapist on the issue of respondent's mental health and its effect on her parenting ability did not constitute hearsay. Their testimony constituted direct testimony on the issue of respondent's mental health by physicians and therapists who directly examined (and, in most cases, treated) respondent for her mental disorder. Therefore, respondent's mental illness and consequent inability to care for the children was proven by legally admissible evidence. The admission of any hearsay evidence on this issue, in light of the direct testimony was nothing more than harmless error.

Next, we reject respondent's claim that the "termination order," dated March 10, 2000, did not comply with the requirements of MCR 5.974(G)(3).

MCR 5.974(G)(3) provides that "[a]n order terminating parental rights under the juvenile code may not be entered unless the court makes findings of fact, states its conclusions of law, and includes the statutory basis for the order." Although the trial court did not make findings of fact or include the statutory basis for termination in the order dated March 10, 2000, it was not required to do so under MCR 5.974(G)(3), because the March 10 order was not the order of termination. The March 10 order merely adjourned the termination hearing for ninety days to give respondent an opportunity to demonstrate that she could properly parent at least two of her three children. The order specifically indicated that "the testimony presented at the termination hearing shall be preserved and the matter shall be held in abeyance for ninety (90) days." The order does not in any way claim to be a termination order; therefore, respondent's claim that the March 10, 2000, order was the order terminating parental rights is without merit. The lengthy termination order that was subsequently entered on June 6, 2000, does include extensive findings of fact and conclusions of law, and clearly states the statutory basis for termination and thus meets the requirements of MCR 5.974(G)(3).

Respondent claims that if the order entered on June 6, 2000, was the termination order, then the trial court erred in refusing to allow her to present any witnesses or cross-examine petitioner's witnesses at the hearings on May 16, 2000, May 18, 2000, and June 5, 2000. We

disagree. A review of the record reveals that respondent's attorney cross-examined petitioner's witnesses during the hearings on May 16 and May 18, and was allowed to call witnesses at these hearings. Additionally, respondent presented her own testimony at the May 16 hearing, and her attorney presented the testimony of two witnesses at the May 18 hearing. Accordingly, respondent's argument to the contrary must fail.

Lastly, the family court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 5.974(I); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The evidence indicated that respondent suffered from a severe mental illness, that she refused to acknowledge she suffered from a mental illness, that she refused to stay on medication to stabilize her mental condition, and that her mental disorder prevented her from properly caring for her children. Further, the evidence did not show that termination of respondent's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *Trejo, supra*. Thus, the family court did not err in terminating respondent's parental rights.

Affirmed.

/s/ Janet T. Neff
/s/ Peter D. O'Connell
/s/ Robert J. Danhof