STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of AUSTIN T. SEVENSKI, CHRISTIAN L. SEVENSKI, and CAITLIN N. SEVENSKI, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LEWIS ANDREW SEVENSKI,

Respondent-Appellant.

UNPUBLISHED
February 13, 2007

No. 271593
Charlevoix Circuit Court
Family Division
LC No. 05-005845-NA

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

PER CURIAM.

Respondent appeals as of right from an order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i) and (j). The children's mother voluntarily relinquished her parental rights and is not participating in this appeal. We affirm.

Respondent first argues that the trial court erred when it allowed his wife (and the children's mother) to testify against him regarding domestic abuse and threats that he allegedly made against the children. He claims that the spousal privilege found in MCL 600.2162(1) prevented such testimony absent a waiver on his part. We disagree. MCL 600.2162(3)(d) provides that the spousal privileges and confidential communication privilege do not apply "[i]n a cause of action that grows out of a personal wrong or injury done by one to the other." Respondent was not entitled to prevent his wife's testimony against him on grounds of spousal privilege, since she was testifying about a personal wrong done to her. Additionally, MCL 722.631 specifically abrogates all privileges except attorney-client and priest-penitent privileges in a child protective proceeding. See *In re Strickland*, 148 Mich App 659, 666-667; 384 NW2d 833 (1986).

The trial court did not err in finding that the 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). Because of respondent's failure to address the two primary issues in the case, substance abuse and domestic violence/anger management, termination pursuant to subsections (3)(c)(i) and (j) was appropriate. The conditions leading to adjudication continued to exist and the children would have likely been harmed if returned to their father's care.

We also find no error in the trial court's handling of the cross-examination of Protective Services worker Adam Robarge. Robarge admitted that the initial petition contained allegations made in a PPO that the mother obtained against respondent, but which was later dissolved. Contrary to respondent's assertions on appeal, the trial court did not deny respondent the right to cross-examine Robarge, but simply advised respondent's counsel that it was not going to infer that, because the PPO was expunged, the allegations therein were false. The court indicated that it was not interested in retrying the initial adjudication or plea, but would focus on what respondent had done since the court assumed jurisdiction. Further, the trial court did not give undue weight in its written opinion to the testimony of psychologist Tim Strauss, but instead considered the testimony of all of the witnesses at the termination trial. Respondent complains that Strauss conducted respondent's psychological evaluation before he "was able to benefit from services and show improvement in skills." However, the evidence showed that respondent did not fully participate in services or benefit from the services in which he did participate. Further, respondent's trial attorney had the opportunity to call witnesses, but did not call respondent's therapist to testify. Respondent may not harbor error as an appellate parachute by objecting to a course of action on appeal that was deemed proper in the lower court. *Marshall Lasser, PC v George*, 252 Mich App 104, 109; 651 NW2d 158 (2002). Therefore, respondent's appellate complaint about petitioner not calling this witness lacks merit.

The trial court was required to terminate respondent's parental rights unless it appeared from the record that termination was clearly not in the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The children were afraid of respondent and did not want to see him. Respondent's inability to deal with the anger that was the root cause of that fear demonstrated his lack of desire for reunification. Respondent requested more time to demonstrate an ability to stay clean and attend therapy. He was given a year and warned more than once that he needed to make progress or was in jeopardy of losing the children. The children were entitled to permanence and stability.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Michael R. Smolenski
/s/ Christopher M. Murray