

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SIERRA CATHERINE WILLS,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DENNIS WILLS,

Respondent-Appellant,

and

LAURA ANN TAYLOR,

Respondent.

UNPUBLISHED
February 14, 2008

No. 279766
Macomb Circuit Court
Family Division
LC No. 2006-000614-NA

Before: Gleicher, P.J., and O'Connell and Kelly, J.J.

PER CURIAM.

Respondent appeals as of right from an order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(g) and (j).¹ We affirm.

I. Statutory Basis for Termination

Initially, respondent argues that the trial court's findings of fact were insufficient. We disagree. MCR 3.977(H)(1) requires that the court "state on the record or in writing its findings of fact and conclusions of law. Brief, definite, and pertinent findings and conclusions on contested matters are sufficient." A trial court's findings of fact are sufficient if it appears that the court was aware of the issues and resolved them. *People v Lanzo Constr Co*, 272 Mich App 470, 479; 726 NW2d 746 (2006). Upon review of the record, the trial court's findings show that

¹ Respondent Laura Ann Taylor voluntarily released her parental rights and did not file an appeal regarding the termination of her parental rights.

it was aware of the issues, i.e., whether respondent understood the problems that brought the child into care and whether respondent was able to care for the child independently of the mother, and resolved those issues. The court's findings were sufficient to satisfy the requirements of MCR 3.977(H)(1).

Respondent also argues that the trial court erred in finding that a statutory ground for termination existed. We disagree. The trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(g) and (j). The existence of a statutory ground for termination must be proven by clear and convincing evidence. MCR 3.977(F)(1)(b), (G)(3); *In re Miller*, 433 Mich 331, 344-345; 445 NW2d 161 (1989). The trial court's findings of fact are reviewed for clear error, MCR 3.977(J); *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996), and due regard is given to the trial court's special opportunity to judge the credibility of witnesses, *In re Miller*, *supra* at 337.

The trial court found that there was clear and convincing evidence to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(g). The evidence showed that the child has serious special medical needs. Although conflicting evidence was presented with regard to whether respondent had updated the child's immunizations during the nearly eight months she spent in his care, the evidence clearly showed that respondent failed to ensure that the child received the physical therapy and speech therapy she needed.

More significantly, the evidence showed that respondent was unable to fully disassociate himself from the child's mother, who had a history of drug usage and mental instability, and who admittedly was not interested in providing proper care for the child. Respondent also refused to submit to drug screens. Additionally, respondent failed to take responsibility for any of the issues that brought the child into care, and he did not appreciate the consequences of the failure to provide the therapy the child needed, or of allowing continued contact with the child's mother. Instead, he continued to make excuses and blame others for each of these problems. The trial court did not clearly err in finding that termination was warranted under § 19b(3)(g).²

II. The Child's Best Interests

Respondent contends that termination of his parental rights was contrary to the child's best interests.³ We disagree. Once a statutory ground for termination is established, "the court

² Although only one statutory ground is necessary for termination, *In re Trejo*, 462 Mich 341, 360; 612 NW2d 407 (2000), the clear and convincing evidence supporting termination under § 19b(3)(g) also supported the trial court's finding that termination was appropriate under § 19b(3)(j). Considering respondent's failure to ensure that the child received the therapy she needed, and the likelihood that the child would continue to be exposed to the mother, who had substantial mental health and substance abuse problems, there was a reasonable likelihood that the child would be harmed if returned to respondent's home.

³ Respondent again reiterates his contention that the trial court failed to make a sufficient factual finding regarding the child's best interests. However, a review of the record establishes that the trial court was aware of the issue regarding the best interests of the child and resolved this issue.

(continued...)

shall order termination of parental rights . . . unless the court finds that termination . . . is clearly not in the child's best interests." MCL 712A.19b(5). That determination is to be made from the evidence on the whole record and is also reviewed for clear error. *In re Trejo*, 462 Mich 341, 353-356; 612 NW2d 407 (2000).

At the time of termination, the two-year-old child had lived with respondent for only eight months of her life. Although the trial court recognized that respondent loved the child, it found that he failed to appreciate and attempted to either minimize or deny the child's many serious special needs. Respondent did not accept responsibility for causing the child to miss necessary services while in his care. Respondent also failed to appreciate the danger of allowing continued contact with the child's mother. Taken as a whole, the evidence did not clearly show that termination of respondent's parental rights was contrary to the children's best interests.

III. Hearsay

Respondent claims that the trial court abused its discretion in allowing the mother's prior testimony to be introduced, and in admitting the child's medical records. We disagree. A trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion. *Waknin v Chamberlain*, 467 Mich 329, 332; 653 NW2d 176 (2002). Preliminary issues of admissibility, such as the interpretation of a rule of evidence, are reviewed de novo. *Id.* In termination cases, legally admissible evidence is required during the trial or adjudicative phase, during which the court determines whether to assert jurisdiction over the child, but is not required at the dispositional phase. MCR 3.972(C)(1); MCR 3.973(E); *In re Snyder*, 223 Mich App 85, 88-89; 566 NW2d 18 (1997).

A. The Mother's Prior Testimony

The child's mother initially testified at the first trial, but the court subsequently declared a mistrial after respondent's attorney was allowed to withdraw. When the new trial began, the mother was not present. The trial court found that she was unavailable and admitted her prior testimony pursuant to MRE 804(b)(1). Respondent argues that the mother was not unavailable for purposes of this rule. We disagree.

MRE 804(a)(5) provides that a declarant is unavailable if she "is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance . . . by process or other reasonable means, and in a criminal case, due diligence is shown." The prosecutor attempted to effect personal service of a subpoena on the mother, but she could not be located. The court then authorized notice by publication and notice was properly published, but the mother did not appear on the first day of trial. In light of this record, the trial court did not abuse its discretion in admitting the prior testimony after finding that the mother was unavailable within the meaning of MRE 804(a)(5).

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The trial court's findings were sufficient to satisfy the requirements of MCR 3.977(H)(1). See *Lanzo Constr Co, supra* at 479.

Furthermore, any error was harmless because the mother appeared at trial the next day and adopted her prior testimony, vouching for its accuracy. See MCR 2.613(A) (“[a]n error in the admission or the exclusion of evidence . . . is not ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take this action appears to the court inconsistent with substantial justice”); *Craig v Oakwood Hosp*, 471 Mich 67, 76; 684 NW2d 296 (2004).

B. The Child’s Medical Records

The prosecutor offered the child’s medical records at trial under MRE 803(6) (records of regularly conducted business activity), which excepts the following evidence from the general rule in MRE 802 that hearsay evidence is not admissible:

A memorandum, report, record, or data compilation, in any form, of acts, transactions, occurrences, events, conditions, *opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with a rule promulgated by the supreme court or a statute permitting certification, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term “business” as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit. [Emphasis added.]*

The records were admitted through the caseworker, Lindsey Green, who testified that she kept the child’s medical records as part of her regular foster care duties. Although Green did not work for the doctors who prepared the records, she was qualified to testify that she received the records from the child’s doctors in the ordinary course of her business as a foster care worker. Thus, the trial court did not abuse its discretion in admitting the records at trial pursuant to MRE 803(6).

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Peter D. O’Connell
/s/ Kirsten Frank Kelly