STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of TYLER RYAN CUTRIGHT,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CASEY RYAN CUTRIGHT,

Respondent-Appellant,

and

SHIRLEY LYNN EVOLA,

Respondent.

UNPUBLISHED
May 1, 2008

No. 281111
Wayne Circuit Court
Family Division
LC No. 06-454349-NA

Before: Bandstra, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Respondent father appeals as of right from the trial court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (g), and (j).[1] We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On appeal, respondent first argues that the requisite statutory grounds for termination were not established. We disagree.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). If a statutory ground for termination is established, the trial court must terminate parental rights unless there exists clear

[1] The parental rights of respondent mother were also terminated but she is not a party to this appeal.

evidence, on the whole record, that termination is not in the child's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 353; 612 NW2d 407 (2000). The trial court's decision terminating parental rights is reviewed for clear error. MCR 3.977(J); *Trejo, supra* at 355-357; *Sours, supra* at 632-633. 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 JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003); *In re Miller* 433 Mich 331, 337; 445 NW2d 161 (1989). "[R]egard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *Id*.; MCR 2.613(C).

The trial court did not clearly err in terminating respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i). At the time of the adjudication, respondent was unable to care for Tyler because he was involved in a serious relationship with Evola. Evola had at least twelve Child Protective Service referrals, her parental rights had previously been terminated to her son Brandon, and she had released parental rights to her son Michael because she was unable to care for him. Evola also tested positive for opiates at Tyler's birth and there was concern that she abused drugs. Respondent did not sufficiently demonstrate that he was no longer involved with Evola who, at the time of the permanent custody hearing, was not capable of taking care of Tyler and posed a risk of harm to him.

Respondent also failed to address his emotional issues. Respondent's need for therapy or anger management was first evident in his rude, hostile and threatening treatment of the caseworker who assessed his home for suitability in April 2006. Later, psychological evaluations of respondent confirmed his continuing need for therapy. Because respondent stopped attending therapy and failed to complete counseling, he never resolved his emotional, immaturity, and anger issues.

Additionally, at the time of the adjudication, respondent demonstrated a lack of common sense during his interactions with Tyler. He failed to show improved judgment by the time of the permanent custody hearing. Also, at the time of the adjudication, respondent was without suitable housing. Although respondent was no longer living in a cramped trailer with his mother and Evola, he moved to another trailer that had been condemned. Since there is no reasonable likelihood that these aforementioned conditions would be rectified within a reasonable time, termination pursuant to MCL 712A.19b(3)(c)(i) was appropriate.

Respondent argues that he was not given a full opportunity to demonstrate his parenting ability. Thus, he claimed termination of his parental rights under MCL 712A.19b(3)(g) and (j) was clearly erroneous. We disagree. Evidence clearly established that in light of respondent's conduct, a reasonable likelihood existed that Tyler would suffer harm if returned to respondent's home. Respondent could not offer Tyler a safe home environment. He lived in a condemned trailer that had cat feces and garbage on the floor. Two of the rooms were in shambles and there was no running water in the bathroom, except for the toilet. The room designated as Tyler's was under construction and had no walls.

Respondent's Clinic for Child Study evaluation and his psychological evaluation also revealed that he was unable to provide proper care of Tyler and that Tyler would be at risk of harm in respondent's care. Respondent had borderline intellectual functioning, was immature, and experienced difficulties in a wide range of situations that required age appropriate reasoning. Respondent needed instruction to prevent injury to Tyler. His compromised intellectual

functioning and lack of common sense suggested that without constant monitoring and supportive services, Tyler would not likely be provided sufficient safety and nurturing or consistent, minimally adequate parenting.

Despite these issues, respondent failed to follow through with therapy to resolve his anger, and he never improved his parenting skills to address these concerns. Respondent was terminated from parenting classes due to noncompliance and lack of attendance. Respondent did not benefit from services or demonstrate an acceptable level of parenting skill. *In re Dahms*, 187 Mich App 644, 647; 468 NW2d 315 (1991). According to the petitioner's witness, respondent's parenting skills were so poor that Tyler needed to be monitored during his entire visit with respondent. As examples, respondent and Evola attempted to give Tyler hot milk from the microwave without first testing the temperature, and tried to send him down a slide on his own when he was only five-and-a-half months old. Thus, termination pursuant to MCL 712A.19b(3)(g) and (j) was appropriate.

The trial court also did not clearly err in determining that termination of parental rights was not against Tyler's best interests. The question whether termination is in the best interest of the child is reviewed for clear error. *Trejo, supra* at 356-357. The trial court correctly found that there was no evidence of a bond between respondent and Tyler. Respondent did not hug and kiss Tyler during visits. When Tyler was fussing, respondent's reaction was inappropriate and demonstrated impatience and an inability to parent a young, needy infant. Given the fact that Tyler was never placed in respondent's care, the length of time Tyler had been in foster care, and respondent's inability to safely and properly care for Tyler, the court did not err in concluding that it would be against Tyler's best interest to terminate respondent's parental rights.

Finally, respondent contends that he was denied a fair trial with an impartial jurist, thus violating his due process rights. We disagree. The basic requirement of due process is that a person be given a meaningful hearing before an impartial decision-maker after having been afforded reasonable notice. *Herman v Chrysler Corp,* 106 Mich App 709, 718; 308 NW2d 616 (1981) (citing *Matthews v Eldridge,* 424 US 319; 96 S Ct 893; 47 L Ed 2d 18 (1976)).

Respondent argues that the trial court's findings regarding domestic violence and statements made by the referee demonstrate a lack of impartiality. Respondent neither objected to the trial court's reliance on his domestic violence history at the time of trial nor filed a motion to disqualify the referee based on his statements. MCR 2.003. Since respondent failed to raise the issue below, it has not been preserved for appellate review. *Rooyakker & Sitz, PLLC v Plante & Moran, PLLC*, 276 Mich App 146, 162; 742 NW2d 409 (2007). Because "[t]he Due Process Clause requires an unbiased and impartial decision maker," *Cain v Dep't of Corrections*, 451 Mich 470, 497; 548 NW2d 210 (1996), this issue should be reviewed (like other unpreserved constitutional issues) for plain error affecting respondent's substantial rights. See *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999).

As a general matter, "the party who challenges a judge on the basis of bias or prejudice must overcome a heavy presumption of judicial impartiality." *Cain, supra*. "[D]isqualification for bias or prejudice is only constitutionally required in the most extreme cases." *Id.* at 498. Such situations include where the judge "(1) has a pecuniary interest in the outcome; (2) 'has been a target of personal abuse or criticism from the party before him'; (3) is 'enmeshed in [other] matters involving petitioner…'; or (4) might have prejudged the case because of prior

participation as an accuser, investigator, fact finder or initial decisionmaker." *Id*., citing *Crampton v Dep't of State*, 395 Mich 347, 351; 235 NW2d 352 (1975).

In this case, the trial court court's findings regarding domestic violence were not biased or erroneous. There were many indications throughout the case of respondent's need for anger management or domestic violence therapy. For example, when the caseworker assessed respondent's home on April 24, 2006, respondent was hostile, rude and verbally abusive, and he made threatening gestures to the caseworker. Respondent acknowledged his anger issues stating that prior to Tyler's birth he sought counseling because he had problems with his father and he did not want to "take them out on anyone." By the time of the permanent custody hearing respondent was incarcerated due to charges stemming from domestic violence against Evola who reported to police that respondent punched her in the chest.

Respondent also argues that statements made by the referee demonstrate his lack of impartiality. However, respondent failed to establish a due process violation rooted in actual or personal bias. Despite respondent's claim that the referee had prejudged the case, the record merely indicates that the referee expressed doubt about respondent's ability to comply with the treatment plan and demonstrate parental fitness. The trial court's impartiality was demonstrated early in the case when it denied petitioner's first request to terminate respondent's parental rights following Tyler's adjudication.

We affirm.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey