

STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of MATTHEW SCOTT ORANGE,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DEBORAH KAY TROUT,

Respondent-Appellant,

and

MICHAEL CLAYTON ORANGE,

Respondent.

UNPUBLISHED

May 8, 2008

No. 280307

Calhoun Circuit Court

Family Division

LC No. 2006-000277-NA

Before: O’Connell, P.J., and Borrello and Gleicher, JJ.

PER CURIAM.

Respondent-appellant, the mother of the involved minor, appeals as of right a circuit court order terminating her parental rights pursuant to MCL 712A.19b(3)(c)(i) [conditions leading to the adjudication continue to exist, with no likelihood of rectification within a reasonable time given the child’s age], (g) [irrespective of intent, the parent fails to provide proper care and custody and no reasonable likelihood exists that she might do so within a reasonable time given the child’s age], and (j) [a reasonable likelihood exists, based on the parent’s conduct or capacity, that the child will suffer harm if returned to the parent’s home].¹ We decide this case without oral argument under MCR 7.214(E), and we affirm.

I. Facts and Proceedings

¹ Michael Orange was a respondent in the child protective proceeding, but is not a party to this appeal.

On January 26, 2005, the Calhoun Intermediate School District (CISD) received a referral indicating that Matthew had accrued 26 days of absence from kindergarten. Matthew's attendance temporarily improved after school personnel contacted respondent, but new truancy concerns emerged by January 2006. Respondent failed to attend a meeting with the CISD to discuss Matthew's school problems. A CISD investigator determined that Matthew exhibited "severe behavioral problems" and had reportedly smoked crack cocaine with respondent. On January 19, 2006, the CISD filed a petition seeking circuit court jurisdiction over Matthew because of "Abuse/Neglect," and the circuit court authorized the petition.

On February 9, 2006, a Child Protective Services (CPS) worker inspected respondent's home and found "no food, cockroaches and filthy living conditions." Respondent admitted to the CPS worker that she "uses crack on a regular basis." That same day, the circuit court placed Matthew in the temporary custody of the Department of Human Services (DHS).

A second amended complaint filed on February 13, 2006 alleged that respondent had remained uncooperative with CPS workers since May 2005, had not attended any random drug screens, and failed to take Matthew to a scheduled psychological evaluation. At a preliminary hearing conducted on February 23, 2006, respondent's attorney waived probable cause, and a circuit court referee authorized "the filing of a petition based" on the second amended complaint. The referee ordered supervised parenting time and encouraged respondent to participate in services offered by the DHS.

On March 22, 2006, respondent admitted to several allegations in the second amended complaint, including that (1) Matthew had a pending family court truancy case due to excessive school absences; (2) at the time of the February 9, 2006 CPS inspection, respondent's home contained little food, cockroaches, and filth; and (3) she told CPS workers that she used her income to buy crack cocaine, which she used regularly. Respondent's attorney advised the referee that respondent felt "fully willing to cooperate and take whatever steps are necessary that would ensure Matthew's return to her and his best interests." The referee ordered that respondent obtain substance abuse treatment, and participate in counseling and classes to improve her emotional stability and parenting skills.

At a review hearing on June 21, 2006, the referee noted that respondent had missed several scheduled parenting times, and had failed to participate in substance abuse treatment or attend random drug screens. Respondent's counsel informed the referee that respondent intended to begin inpatient substance abuse treatment the next day. Marla Lemae-Flores, a foster care worker, testified at a September 20, 2006 review hearing that respondent did not complete the inpatient program and was "discharged unsuccessfully for using cocaine while in treatment." Lemae-Flores also reported that respondent "had been engaging in stalking like behaviors" intended to encourage Matthew to return home with her. Respondent supplied one random drug screen, which was positive, and then ceased participating in the screens. Respondent did not attend the September 2006 hearing despite having received notice, and failed to contact her attorney. At the conclusion of the hearing, the referee discharged respondent's appointed counsel "based on her lack of interest in this matter."

Respondent appeared at a hearing conducted on November 15, 2006, and requested reappointment of counsel. She told the referee that she would "start complying completely," and

attributed her previous lack of compliance to two broken arms and being “pretty bedridden for a long time.”

A referee conducted a permanency planning hearing on December 20, 2006, and respondent appeared with new appointed counsel. Lemae-Flores testified that respondent tested positive for cocaine on December 12, 2006, otherwise failed to participate in the court-ordered treatment plan, and recommended that the court authorize a termination petition. Respondent’s counsel questioned Lemae-Flores regarding her impatience with respondent, and elicited her concession that successful drug abuse treatment often required multiple attempts. Respondent admitted at the hearing to having a substance abuse problem, and claimed that she missed the September 20, 2006 hearing because she had been confused about its date. Respondent also testified that she felt prepared to reenter inpatient treatment. Her counsel urged the court to afford her another 90 days to comply with the case service plan, and the referee agreed to do so, but noted that “this case very well based upon the mother’s history could have [gone] to termination today.”

At a permanency planning hearing conducted on April 11, 2007, Lemae-Flores testified that respondent again attempted an inpatient substance abuse program, but failed to complete it. Respondent provided one negative drug screen during 2007, but did not appear for any other scheduled screens. Lemae-Flores described respondent’s efforts to comply with substance abuse treatment as “halfhearted at best.” On cross-examination by respondent’s counsel, Lemae-Flores admitted to having reviewed just before the hearing commenced two negative drug screen reports provided by respondent’s personal physician. Respondent testified that she was receiving drug detoxification treatment from her personal physician, and admitted that she discontinued the most recent inpatient program before completing it because, “I felt that I was ready to go home. I felt I was good enough to go home and start trying to get everything else situated to try to get my son back, to try to see my son.” Respondent’s counsel again requested additional time for her to comply with the parent-agency agreement. But the referee refused to afford respondent more time and ordered the DHS to file a termination petition.

The circuit court commenced a termination hearing on July 5, 2007. Lemae-Flores summarized respondent’s history of two failed efforts at inpatient drug abuse therapy and multiple missed or positive drug screens. On cross-examination, Lemae-Flores admitted that respondent had adequate social security income to care for Matthew, and had lived in the same home for five or six years. The court scheduled continuation of the termination hearing for July 11, 2007, but adjourned it until August 9, 2007 because respondent did not receive proper notice of the July 11, 2007 hearing date. Respondent’s counsel filed a motion to adjourn the August 9, 2007 hearing, alleging that respondent had entered a residential substance abuse treatment program and would not be discharged until November 1, 2007. The circuit court heard counsel’s argument regarding this motion on August 15, 2007, and denied an adjournment on the bases that respondent could participate in the hearing by telephone, and that further delay “would be possibly destructive and impact negatively upon the child.”

At the continued termination hearing on August 16, 2007, respondent testified by telephone that during the first two weeks that she had spent in a Grand Rapids drug treatment facility, she was “doing wonderfully mentally and physically.” Respondent once more admitted to her previous drug addiction, and attributed her previous failures to comply with the parent-agency agreement to injuries she sustained in an accident at her home. She denied having used

cocaine while residing in the first treatment center she had entered, and testified that she left the second treatment program in January 2007 because she wanted to attend her oldest son's federal court sentencing hearing.

The circuit court concluded that clear and convincing evidence supported the termination of respondent's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j). The court also found that "it is in the child's best interest to terminate" respondent's parental rights.

II. Issue Presented and Analysis

Respondent contends that she did not receive the effective assistance of counsel during the course of the termination proceedings, and as a result could not fully participate in the services offered her, leading to the termination of her parental rights.

"An indigent parent involved in a hearing which may terminate his or her parental rights is entitled to appointed counsel." *In re Simon*, 171 Mich App 443, 447; 431 NW2d 71 (1988). The right to appointed counsel in parental rights termination cases includes the right to the effective assistance of counsel. *In re CR*, 250 Mich App 185, 197-198; 646 NW2d 506 (2002). To prevail on a claim of ineffective assistance of counsel, a respondent must demonstrate that her counsel's performance fell below an objective standard of reasonableness, and that the representation so prejudiced her that it denied her a fair trial. *Id.* at 198. The respondent must show that a reasonable probability exists that, but for counsel's ineffectiveness, a different result would have obtained. *Id.*

We reject as unfounded respondent's claim that the attorneys who represented her did so in a "half-hearted" manner, or without preparation or zeal. Our review of the hearing transcripts reveals that although respondent had three different appointed attorneys, each demonstrated familiarity with the facts of this case, aggressively questioned witnesses, and otherwise advocated on respondent's behalf. At the first of the two permanency planning hearings, respondent's attorney persuaded the referee to delay a ruling so that she could once again attempt inpatient drug treatment. At the termination hearing, another attorney argued forcefully, albeit unsuccessfully, for an additional adjournment.

Furthermore, respondent has not demonstrated that her counsel's performance was outcome determinative. Respondent's failure to make any progress toward overcoming her drug addiction during 18 months of proceedings clearly and convincingly demonstrates the unlikelihood that she could remedy her parenting deficiencies within a reasonable time given Matthew's age. Although respondent had entered a third rehabilitation program at the time of the continued termination hearing, the evidence of her previous nonparticipation in drug screens, parenting time, and other services amply supported the circuit court's decision to terminate her parental rights.

Affirmed.

/s/ Peter D. O'Connell
/s/ Stephen L. Borrello
/s/ Elizabeth L. Gleicher