

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of EMILY JOY LAKE, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LYNNAE LAKE,

Respondent-Appellant.

UNPUBLISHED

October 21, 2008

No. 282036

Midland Circuit Court

Family Division

LC No. 99-000410-NA

Before: Hoekstra, P.J., and Cavanagh and Zahra, JJ.

PER CURIAM.

Respondent, proceeding in propria persona, appeals as of right the trial court's order terminating her parental rights to the minor child Emily under MCL 712A.19b(3)(b)(i), (c)(i), (c)(ii), (g), and (j). We affirm.

I

Respondent's children, Mary, Laura, and Emily, were adjudicated temporary court wards in 1999, after respondent entered a plea of admission to allegations that she physically abused her oldest child, Mary. Mary established her independence shortly before her 18th birthday, Laura and Emily were placed in the custody of their father, Robert Lake, and the court terminated its jurisdiction over all three children. Respondent later regained custody of Laura and Emily.

In 2004, the Department of Human Services ("DHS") received a report that respondent had physically abused Laura and Emily. The DHS sent a Protective Services worker, Larry Hycki, to the children's private religious school to interview Laura. In accordance with respondent's prior instructions, school officials notified respondent. Respondent arrived at the school and attempted to forcibly enter a locked conference room where Hycki was interviewing Laura, and yelled at Laura not to cooperate with Hycki. Respondent removed Emily from her classroom and fled the county, and Laura was taken into protective custody and placed with Mary. Respondent's whereabouts were not discovered for more than a year, until summer 2005, when respondent was located in Oregon.

In the meantime, the trial court held an adjudicative bench trial in respondent's absence and found a factual basis for asserting jurisdiction over Laura and Emily. Soon afterward Laura was dismissed from the court's jurisdiction when she reached the age of 18. After respondent and Emily were discovered in Oregon, they were returned to Michigan.

Respondent and the DHS repeatedly clashed over respondent's case service plan. Respondent accused the DHS, its employees, and its contract service providers of being incompetent and dishonest. She resisted working with any service provider under contract with the state, and preferred to choose her own counselors. She maintained that the DHS intended to obstruct her efforts at reunification, no matter what she did. Respondent was not offered visitation with Emily until July 2006, and then under conditions that the DHS believed were necessary for Emily's protection and welfare. In early 2007, the trial court ordered therapeutic joint counseling with Susan Finley to work toward reunification. Respondent found Finley objectionable and refused to actively engage in individual therapy with Finley as a prerequisite to joint therapy with Emily. Respondent also was unwilling to execute releases to allow Finley to share information with the DHS. Joint therapy never took place. The DHS eventually filed a supplemental petition for termination of respondent's parental rights. Following a six-day hearing, the trial court terminated respondent's parental rights to Emily.

II

Respondent first challenges the trial court's adjudication order, arguing that it is invalid because she was not properly served with notice of the adjudication hearing. "Matters affecting the court's exercise of its jurisdiction may be challenged only on direct appeal of the jurisdictional decision, not by collateral attack in a subsequent appeal of an order terminating parental rights." *In re Gazella*, 264 Mich App 668, 679-680; 692 NW2d 708 (2005). Thus, this issue is not properly before the Court.

In any event, there was no error in service. MCL 712A.13 "permits a court to evaluate evidence other than testimony or a motion and affidavit when determining whether notice can be made by substituted service." *In re SZ*, 262 Mich App 560, 568; 686 NW2d 520 (2004). The trial court properly determined that personal service was not practicable because respondent had absconded with Emily and her whereabouts could not be determined. Thus, substituted service by publication was proper. MCR 3.920(B)(4)(b).

III

Respondent next argues that the DHS violated constitutional protections against unreasonable searches and seizures when it entered a private, religious school to interview Laura without her consent. She argues that MCL 722.628(8) is unconstitutional to the extent that it requires private schools to cooperate with DHS investigations. We conclude that this issue affords no basis for relief for several reasons.

First, this issue challenges the admissibility of evidence at the adjudicatory hearing and, therefore, constitutes an improper collateral attack on the trial court's jurisdictional decision. *In re Gazella*, *supra* at 679-680.

Second, respondent did not preserve this issue by raising it below, thus limiting review to plain error affecting substantial rights. *People v Pipes*, 475 Mich 267, 274; 715 NW2d 290 (2006). Although the court in *Doe v Heck*, 327 F3d 492, 517 (CA 7, 2003), concluded that “it is patently unconstitutional for governmental officials to search the premises of a private or parochial school and/or seize a child attending that school without a warrant or court order, probable cause, consent, or exigent circumstances,” the record in this case discloses that Hycki had probable cause to interview Laura because of suspected physical abuse. Hycki was investigating a specific report of physical abuse involving a specific individual. Thus, there was no plain error.

Third, constitutional rights are personal, and a person generally does not have standing to raise an objection to the violation of another person’s constitutional rights. *Brinkley v Brinkley*, 277 Mich App 23, 33; 742 NW2d 629 (2007); *In re Investigative Subpoena re Homicide of Lance C Morton*, 258 Mich App 507, 509; 671 NW2d 570 (2003). Respondent lacks standing to assert any alleged violation of the school’s constitutional rights, and, even assuming that respondent could assert Laura’s constitutional rights in her capacity as Laura’s parent, respondent is not attempting to act on Laura’s behalf to vindicate Laura’s rights. Rather, she is seeking to exclude evidence against herself for an alleged violation of Laura’s rights.

Fourth, to the extent that respondent relies on the exclusionary rule to argue that an alleged constitutional violation required that any evidence arising from the interview with Laura be excluded, she has not demonstrated that the rule properly applies in this case. The exclusionary rule is a judicially created remedy designed to protect Fourth Amendment rights. *People v Goldston*, 470 Mich 523, 529; 682 NW2d 479 (2004). The exclusionary rule generally requires that evidence seized in violation of the Fourth Amendment be excluded from a criminal trial. *People v Dagwan*, 269 Mich App 338, 342; 711 NW2d 386 (2005). Respondent has not provided any authority establishing that the exclusionary rule applies by analogy to child protective actions. For these reasons, we reject this claim of error.

IV

Respondent also argues that the referee exceeded her authority by signing several orders on behalf of the trial judge. The trial court considered this issue and indicated that it had signed all orders. The court acknowledged that the referee’s initials appeared next to many of the signatures, but explained that this was “just a cross check on the – on the content of the order.” Thus, there is no merit to this issue.

Respondent also argues that the trial court erroneously gave a “verbal order” permitting Hycki to take Laura into protective custody. MCR 3.963(A) provides that an officer “may without court order remove a child from the child’s surroundings and take the child into protective custody if, after investigation, the officer has reasonable grounds to conclude that the health, safety, or welfare of the child is endangered.” Thus, Hycki and the police officers who assisted him were authorized to take Laura into protective custody after she revealed that respondent had physically abused her and after respondent tried to forcibly intervene and threatened to take Emily out of state. Accordingly, a verbal order from a judge or referee was not required.

V

Next, respondent argues that the DHS violated state and federal law by removing the children from her care without making sufficient efforts to avoid the need for removal. This argument is disingenuous considering that it was respondent's own actions of abandoning Laura and fleeing the state with Emily that gave the DHS no option but to place Laura in care and take Emily into custody when she was found. Furthermore, respondent's argument that the DHS was legally obligated to provide reunification services is based on inapplicable law. She relies on 42 USC 671, a provision in the federal Adoptions and Safe Family Act, but this statute governs state agency eligibility for federal aid for child protective and foster care services. It addresses the DHS's eligibility for aid, but it does not confer any rights on parents in child protection proceedings. Respondent's reliance on MCL 722.6 is also misplaced. This statute concerns out-of-state child support obligations for emancipated minors. It does not apply here.

VI

In a lengthy critique of the DHS, respondent argues, in essence, that the DHS mishandled her case such that the termination order should be found invalid or unfair. She argues that the DHS failed to offer meaningful services to work toward reunification, failed to fairly evaluate her progress, and proceeded as if termination of her parental rights was a foregone conclusion no matter what she did.

This argument is based entirely on respondent's one-sided, self-serving view of the case. There is ample evidence that the DHS made reasonable efforts to provide counseling and other services to respondent, including plans for joint therapy with Emily, but respondent's continual distrust of the system and failure to cooperate frustrated the reunification efforts and prevented her from benefiting from services. We therefore reject this claim of error.

VII

Finally, respondent argues that the trial court clearly erred in finding that the statutory grounds for termination were established by clear and convincing evidence. We review the trial court's findings of fact under the clearly erroneous standard. MCR 3.977(J); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

The trial court terminated respondent's parental rights under MCL 712A.19b(3)(b)(i), (c)(i), (c)(ii), (g), and (j), which allow for termination under the following circumstances:

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(i) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial

dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

There was ample evidence to support termination of respondent's parental rights under these grounds.

The principal issues in these proceedings were respondent's history of domestic violence toward her children, her failure to benefit from past services, and her failure to address and control her tendency for violence. There was clear and convincing evidence that respondent physically abused her oldest daughter Mary in 1999, and abused Laura and Emily in 2004. Investigators found bruises on Mary in 1999, and she entered a plea of admission to that incident. Laura informed Hycki that respondent had abused her and Emily in 2004, and respondent was convicted of domestic violence against Laura. Although respondent challenges the reliability and credibility of this evidence, repeatedly insisted that she entered a false plea of admission under duress, and accused Mary and the DHS of inducing Laura to lie, the trial court was in a superior position to evaluate the weight and credibility of this evidence.

There was clear evidence that respondent would not, and did not, benefit from services. Respondent explained that she was unwilling to cooperate with Angela Dykes's program because she did not want to incriminate herself with respect to her criminal action, but Dykes gave respondent the option of addressing matters other than those that were the subject of the criminal proceeding. Respondent also maintains that she would not admit to domestic violence because she never committed acts of domestic violence, but the trial court was free to believe the clear evidence to the contrary. Respondent refused to cooperate with therapists except those who she

chose herself, who accepted her version of events, and who seemed to share her ideological beliefs concerning the DHS and the foster care system.

Respondent argues that the DHS had no basis for believing that she abused her children, or failed to benefit from services. She contends that the DHS was biased and retaliated against her because she stood up for her rights, but the evidence does not support this view. Respondent failed to make any differentiation among the different workers and programs. Although she accuses caseworker Brenda McClellan of sabotaging visits, McClellan generally provided favorable reports regarding visitation. It was respondent who continuously failed to honestly review her own actions and admit wrongdoing. Respondent's extreme attitude toward the DHS was not objectively rational, and was more revealing of an inability or unwillingness to frankly address the domestic violence problem than a sincere concern for reforming the system.

Respondent clearly evinced a greater interest in her own agenda than her children's welfare when she abandoned Laura and fled with Emily. She separated Emily from her father, sisters, and every aspect of her normal life, and left her vulnerable to several strangers who provided lodging and transportation. Although respondent allegedly believed that Mary was a bad influence, she made no effort to intervene or participate in proceedings to protect Laura's interests.

This evidence supports termination of respondent's parental rights under each of the statutory grounds cited by the trial court. Respondent's incidents of violence, and her failure to benefit from services she received between 1999 and 2007 support a finding that she physically abused her children and that the abuse is likely to recur if Emily is returned to her care. Emily was made a temporary court ward because of respondent's propensity to expose her to violence and other dangerous, volatile situations. Respondent made no progress at remedying these circumstances.

Lastly, the evidence did not clearly show that termination of respondent's parental rights was not in Emily's best interests. MCL 712A.19b(5), *In re Trejo Minors, supra* at 354. On the contrary, Emily told three of her therapists that she did not want to return to respondent, and she feared being abused if she did. The trial court did not clearly err in terminating respondent's parental rights.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh
/s/ Brian K. Zahra