

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BRADLEY WILLIAM MILLER,
JR., Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

GLORIA L. ALLERTON,

Respondent-Appellant,

and

BRADLEY WILLIAM MILLER, SR.,

Respondent.

UNPUBLISHED

March 10, 2009

No. 287955

St. Joseph Circuit Court

Family Division

LC No. 08-000318-NA

Before: Donofrio, P.J. and K.F. Kelly and Beckering, JJ.

PER CURIAM.

Respondent mother appeals as of right from an order that terminated her parental rights to the minor child pursuant to MCL 712A.19b(3)(g), (j), and (l). We affirm.

Respondent mother first argues that the trial court erred in failing to recuse himself from the case because he had heard her prior termination cases and was biased against her. We disagree. Respondent mother failed to preserve the issue for review because she failed to pursue the disqualification claim in the trial court. *In re Schmeltzer*, 175 Mich App 666, 673; 438 NW2d 866 (1989). As such, her claim is reviewed for plain error. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

A trial judge is presumed to be impartial, and the party who asserts partiality has a heavy burden of overcoming the presumption. *Cain v Dep't of Corrections*, 451 Mich 470, 497; 548 NW2d 210 (1996). A showing of personal prejudice usually requires that the source of the bias be in events or information from outside the judicial proceeding. *Id.* at 495-496. "Opinions formed by a judge on the basis of facts introduced or events occurring during the course of the current proceedings . . . do not constitute bias or partiality unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Schellenberg v Rochester*

Lodge No. 2225 of the Benevolent & Protective Order of Elks, 228 Mich App 20, 39; 577 NW2d 163 (1998).

It is true that respondent mother had a long and extensive history with the judge, dating back to when she was a ward of the court. Still, that did not mean that the judge was biased against her. Respondent mother provides no concrete example of the judge's alleged bias. Throughout the proceedings the judge was at all times respectful and sympathetic to respondent mother. There was absolutely no evidence of personal animus. In addition, the result of the proceedings would have been the same regardless of who presided over the case. Respondent mother had three prior terminations, and those court files were part of the current case. It was clear that respondent mother had not benefited from past services. The prior terminations and respondent mother's continued instability provided a basis for termination. In addition, it was in the child's best interests to terminate respondent mother's parental rights, especially in light of the child's special needs. There is simply no indication that the judge was unfair or impartial, nor was there any reason to believe that the result would have been different had it been assigned to a different judge.

The trial court did not clearly err in finding that the statutory grounds for termination were proven by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). In 2000, respondent mother's parental rights to her two oldest children were terminated by court order after attempts at reunification failed. Also in 2000, respondent mother voluntarily relinquished her parental rights to her newborn third child after termination proceedings were instituted. In both cases, respondent mother received all reunification services the agency could offer. The prior terminations alone provided an adequate basis for termination pursuant to MCL 712A.19b(3)(l). However, as the trial court noted, respondent mother's continued instability also formed a basis for termination pursuant to MCL 712A.19(b)(3)(g) and (j). Respondent mother's own testimony revealed that little had changed since the prior terminations. When respondent mother moved back to Michigan, she stayed with a male "pen pal" in Iron Mountain. She then went to a domestic assault shelter because respondent father was threatening her. While at the shelter, respondent mother met Todd Galbraith over the Internet and moved in with him. While respondent mother was still living with Galbraith, she started writing to Ron Allerton in prison. Allerton, who had served ten years in prison for OUIL causing death, said he needed a place to stay, so Galbraith allowed him to come and stay at his home. Respondent mother married Allerton in November 2007. By the time of the termination hearing, respondent mother and Allerton were in the process of divorcing and she could not afford their apartment. Respondent mother was living at a hotel because she was on a waiting list for subsidized housing. Respondent mother's moving was also a problem in 1999 and 2000. Respondent mother relied on men for housing and never once had independent housing. In addition to problems with housing and men, respondent mother had depression, posttraumatic stress disorder, and borderline personality disorder. Respondent mother lacked the stability she needed to properly parent the minor child.

Having found the statutory grounds for termination proven by clear and convincing evidence, the trial court was obligated to terminate respondent mother's parental rights if it was in the minor child's best interests to do so. MCL 712A.19b(5). The testimony revealed that the minor child was very troubled. He was "out of control" and literally "climbed the walls." He lacked any direction whatsoever. His experienced foster care parents could no longer handle him

and a new placement was being sought, possibly an institution. At one point, the worker requested permission from the court to hospitalize the minor child if his condition worsened. Respondent mother, who was unable to parent three other children in the past, would be unable to this child's special needs. He needed specialized care and had already spent nearly two years in the foster care system in Indiana before moving back to Michigan, where he was removed once again. He was entitled to permanence and stability.

Affirmed.

/s/ Pat M. Donofrio
/s/ Kirsten Frank Kelly
/s/ Jane M. Beckering