

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of KA-DASHA MARTIN and
DELVON RAMSEY, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

WALTER D. RAMSEY,

Respondent-Appellant,

and

JOHN DOE,

Respondent.

UNPUBLISHED

March 24, 2009

No. 286425

Wayne Circuit Court

Family Division

LC No. 07-475447

Before: Fort Hood, P.J., and Wilder and Borrello, JJ.

PER CURIAM.

Respondent Walter Ramsey appeals as of right from a circuit court order terminating his parental rights to the minor child under MCL 712A.19b(3)(a)(ii), (g), (h), and (j). Although we agree with appellant that there were substantial evidentiary deficiencies in the proceedings before the circuit court, we affirm on alternative grounds.

On December 14, 2007, a complaint (request for action for child protective proceedings) (form JC-02) was filed with the court that alleged that on December 14, 2007, at 4840 Townsend street, Kimberly Martin (the mother of the minor child, the rights to whom are at issue in this appeal), and her sister, Erica Martin, were stabbed to death inside the home. The petition was signed by Sgt. Richard Knox. Later on the same day (December 14, 2007), a complaint for child protective proceedings (form JC-04b) was filed, alleging as follows: “Mother found stabbed to death at the referral address. Police responded to a run at 13867 Linnhurst Detroit Mi 48205 where bloody clothes were found and a letter written by the alleged assailant. Police then went to [the] referral address[,] where Mother Kimberly Martin and her adult daughter Ericka Martin were found stabbed to death.”

The termination hearing¹ in this matter occurred on May 30, 2008, and the order terminating respondent's parental rights was entered on June 2, 2008. Testimony indicated that the minor child came to the attention of petitioner when it was reported that on December 14, 2007, respondent had stabbed to death the minor child's mother. No independent evidence to establish that respondent had been charged with the killing, however, was introduced. In addition, although the caseworker also testified that it was her understanding that respondent had been incarcerated since December 25, 2007, there was no direct testimony as to the reason for respondent's incarceration. The trial court later permitted the introduction into evidence, as a business record, a form identified in the record as a "JC-01" form,² for the purpose of establishing that the minor child had told a detective investigating the case that he was present at the time his mother was killed.

The caseworker acknowledged that she had made no effort to have personal contact with respondent concerning this case, and also acknowledged that there had been communications with respondent's mother. However, respondent's trial counsel objected to the introduction of any hearsay testimony of the content of the conversations between the caseworker and respondent's mother, and the trial court sustained these objections. At the close of the proofs, the petitioner argued that the evidence established that respondent was awaiting trial for the murder of the child's mother and that termination of his parental rights was warranted. The trial court concluded that the evidence established that termination of respondent's parental rights was warranted under MCL 712A.19b(3)(a)(ii), MCL 712A.19b(3)(g), MCL 712A.19b(3)(h) and MCL 712A.19b(3)(j).

Respondent argues that the trial court erred in finding that the statutory grounds for termination were established by clear and convincing evidence. Although we agree that there were substantial deficiencies in the proofs required to establish grounds for termination clearly and convincingly, we nonetheless find alternative grounds for affirming.

When termination is sought at the original dispositional hearing, the court must find, on the basis of clear and convincing and legally-admissible evidence, introduced at the trial or hearing, that one or more facts alleged in the petition are true, and establish a statutory basis for

¹ Respondent was served with the petition and requested a bench trial before a referee. At the trial, counsel for petitioner merely presented the testimony of the caseworker. However, the caseworker had not provided any services or had any contact with respondent father. Rather, her knowledge of the circumstances surrounding the charged crimes and the arrest of respondent father were premised on information and contacts with the police. Respondent father objected to admission of the testimony based on hearsay. Although counsel for petitioner requested an adjournment to call additional witnesses, the court overruled the objection, concluding that the documents submitted by the police and maintained by child protective services were business records, and allowed them into evidence to support the termination. Despite respondent father's claim of appeal, petitioner did not file a brief.

² State Court Administrative Office (SCAO) form JC-01 applies to delinquency proceedings, while SCAO form JC-02 applies to child protective proceedings. We presume that the reference in the record to form JC-01 is mistaken, since, while this Court is unable to locate form JC-01 in the record, a form JC-02 is in the record.

termination. MCR 3.977(E)(3). The trial court's findings of fact are reviewed for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

Section 19b(3)(a)(ii) requires proof that respondent abandoned the child for 91 or more days without seeking custody. Desertion under § 19b(3)(a) means an intentional or willful act. *In re B & J, Minors*, 279 Mich App 12, 18-19 n 3; 756 NW2d 234 (2008). The evidence, however, showed only indirectly that respondent was incarcerated. The caseworker had no contact with respondent, and the testimony was unclear as to what respondent's mother's contacts with the caseworker concerned.³ We have no choice but to conclude that the evidence failed to prove that at the time the petition was filed on December 20, 2007, respondent had abandoned the child for at least 91 days.

Section 19b(3)(g) requires proof that respondent failed to provide proper care or custody of the child and is not reasonably likely to be able to provide proper care and custody within a reasonable time. The caseworker testified that there was no history of neglect or abuse by respondent, at least before the murders. In addition, there was no admissible direct evidence in the record that respondent had been charged with the murder, and no admissible direct evidence as to the anticipated length of respondent's incarceration. Again, we are left with no choice but to conclude that the record does not establish by clear and convincing evidence that respondent was unlikely to be able to provide proper care and custody within a reasonable time considering the child's age.⁴

Section 19b(3)(h) requires proof that respondent "is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years" and that respondent is not reasonably likely to be able to provide proper care and custody within a reasonable time. The testimony presented was that at the time the petition was filed, respondent was not incarcerated. Although the caseworker testified that it was her understanding that respondent was incarcerated at the time of the termination hearing, no *admissible evidence* was presented concerning how long he might remain incarcerated. *In re Utrera*, 281 Mich App 1, 21; ___ NW2d ___ (2008).

³ The contacts with respondent's mother might have been regarding respondent's alleged desire to have his mother care for the minor child. In that case, there would be no abandonment, because, although incarcerated, respondent would not have had the intent to abandon.

⁴ Here, again, we take pains to note that while it may have been plain to all concerned that respondent had been charged with the murder of his child's mother, the *record* fails to establish this fact with clear and convincing *evidence*. Although the trial court apparently relied upon form JC-02 rather than the testimony of witnesses to conclude that petitioner had established grounds for termination, hearsay is not permissible to prove the statutory bases for termination of parental rights. *In re Utrera*, 281 Mich App 1, 21; ___ NW2d ___ (2008) ("the trial court abused its discretion in allowing the admission of extensive hearsay statements, detailed above, to prove the statutory bases for termination of respondent's parental rights"). *In re Utrera* held that the abuse of discretion, in admitting the hearsay, was harmless, because there was sufficient admissible evidence to establish, by clear and convincing evidence, the statutory bases for termination. *Id.*

The termination hearing in this matter occurred on May 30, 2008, and the order terminating respondent's parental rights was entered on June 2, 2008. Testimony indicated that the minor child came to the attention of petitioner when it was reported that on December 14, 2007, respondent had stabbed to death the minor child's mother. The caseworker also testified that it was her understanding that respondent had been incarcerated since December 25, 2007. The trial court later permitted the introduction into evidence, as a business record, a form identified as a "JC-01," for the purpose of establishing that the minor child had told a detective investigating the case that he was present at the time his mother was murdered.

Respondent's trial counsel objected to the introduction of any hearsay testimony of the content of the conversations between the caseworker and respondent's mother, and the trial court sustained these objections. At the close of the proofs, the petitioner argued that the evidence established that respondent was awaiting trial for the homicide of the child's mother, and that the evidence established that termination of respondent's parental rights was warranted under MCL 712A.19b(3)(a)(ii), MCL 712A.19b(3)(g), MCL 712A.19b(3)(h) and MCL 712A.19b(3)(j).

Section 19b(3)(a)(ii) requires proof that respondent abandoned the child for 91 or more days, without seeking custody. Desertion under § 19b(3)(a) means an intentional or willful act. *In re B & J, Minors*, 279 Mich App 12, 18-19 n 3; 756 NW2d 234 (2008). The evidence shows that respondent was incarcerated. The caseworker had no contact with respondent. At the time the petition was filed on December 20, 2007, respondent had abandoned the child for at least 91 days.

Section 19b(3)(g) requires proof that respondent failed to provide proper care or custody of the child, and is not reasonably likely to be able to provide proper care and custody, within a reasonable time. And § 19b(3)(h) requires proof that respondent "is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years" and that respondent is not reasonably likely to be able to provide proper care and custody within a reasonable time. Here, the caseworker testified that it was her understanding that respondent was incarcerated at the time of the termination hearing. The parties appeared to assume that respondent was incarcerated for the requisite time period. Accordingly, the parties failed to put on proofs of the length of the incarceration. We caution the parties that what is clear to everyone at a trial does not suffice; there must be *proofs* of *all* required elements.

Finally, section 19b(3)(j) requires proof that the child is reasonably likely to be harmed if returned to the parent's home. As indicated previously, there was no history of neglect or abuse by respondent before the charged homicide, and no admissible evidence was presented from which the trial court could find that respondent's actions involving the alleged, charged offense would likely result in harm if the child was returned to respondent's home.⁵ Thus, there was insufficient proof that the minor child was reasonably likely to be harmed if returned to respondent's home.

⁵ Again, we feel constrained to note that what might be obvious to all concerned from matters not of the record cannot serve as the basis for the trial court's decision. Only those matters properly of record may be relied on by the trial court.

Although there were deficiencies in the evidence presented in this case, as described above, there is an independent basis to affirm. We take judicial notice of defendant's murder conviction and sentence.

Judicial notice is a substitute for actual proofs put on by parties. *Winekoff v Pospisil*, 384 Mich 260, 268; 181 NW2d 897 (1970).

Judicial notice is based upon very obvious reasons of convenience and expediency; and the wisdom of dispensing with proof of matters within the common knowledge of everyone has never been questioned. This is the principle upon which the doctrine of judicial notice rests; convenience and expediency, and the saving of the time, trouble and expense which would be lost in establishing in the ordinary way facts which do not admit of contradiction. [*Id.* quoting 1 Jones, Blue Book of Evidence (Bancroft-Whitney edition of 1913), p 509, § 105a (104).]

A judicially noticed fact is one not subject to reasonable dispute because it is "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." MRE 201(b)(2). Judicial notice may be taken at any stage of a proceeding, whether requested or not. MRE 201(c), (e). "A court takes judicial notice of its own files and records." *Prawdzik v Heidema Brothers, Inc*, 352 Mich 102, 112; 89 NW2d 523 (1958); see also *Hawkeye Casualty Co v Frisbee*, 316 Mich 540, 549; 25 NW2d 521 (1947) (the Supreme Court took judicial notice of its own records, by examining a related case, to supply the alleged defects in the matter then pending before the Court). When a court takes judicial notice of facts contained in its own records, the original record need not be introduced. *In re Stowe*, 162 Mich App 27, 33; 412 NW2d 655 (1987).

Documents that are part of lower court records *in this or other cases* are within this Court's purview under principles of judicial notice, based on the one court of justice concept found in Michigan's constitution. Const 1963, art 6, § 1; *People v Snow*, 386 Mich 586, 591; 194 NW2d 314 (1972). In *Snow*, the Supreme Court held that over 200 sentences were subject to judicial notice. The over 200 cases were compiled in an affidavit. The Court held that "[t]he results in the 234 cases cited in the affidavit could have been judicially noticed under the 'one court of justice' doctrine." *Id.*

Additionally, MCL 600.2106 address court orders, and provides:

A copy of any order, judgment or decree, of any court of record in this state, duly authenticated by the certificate of the judge, clerk or register of such court, under the seal thereof, shall be admissible in evidence in any court in this state, and shall be prima facie evidence of the jurisdiction of said court over the parties to such proceedings and of all facts recited therein, and of the regularity of all proceedings prior to, and including the making of such order, judgment or decree.

Further, MCR 7.216(A) grants this Court discretion to exercise powers of amendment of the trial court, and to draw inferences of fact. MCR 7.216(A)(1), (6).

Review of the records of this Court reveals that respondent father was convicted of two counts of second-degree murder following a jury trial.⁶ He was sentenced to 31 to 60 years in prison.⁷ In light of these convictions, albeit post-termination, we find that there exists an alternative ground to affirm the trial court's conclusion that respondent father would not be able to provide proper care and custody for the child within a reasonable time, MCL 712A.19b(3)(g), and that respondent will be imprisoned for such a period of time that the minor child would be deprived of a normal home for a period exceeding two years, MCL 712A.19b(3)(h). Additionally, the trial court did not err in concluding that termination was clearly in the child's best interests under the circumstances. MCL 712A.19b(5).

In reaching this conclusion, we emphasize that we do not condone the lack of preparation, and the paucity of proofs, put on by the petitioner in the lower court, and on appeal. More, we recognize that parents have, *qua* parents, inherent, natural rights,⁸ under state law, to the companionship, care, custody, and management of their children, and that these state-law rights are protected, by both federal and state constitutional law, from deprivation without due process of the law. *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003). However, in light of the factual circumstances surrounding the removal of the children here, and their presence at the home during the brutal murders, judicial notice of the record in respondent father's criminal prosecution demonstrates that the termination of his parental rights was correct, and that there is clear and convincing evidence for the termination.

Affirmed.

/s/ Karen M. Fort Hood

/s/ Kurtis T. Wilder

/s/ Stephen L. Borrello

⁶ See Court of Appeals Docket No. 289710.

⁷ See the judgment of sentence contained in Docket No. 289710.

⁸ See generally *In re LE*, 278 Mich App 1, 23-24; 747 NW2d 883, 897 (2008) ("Even though Davis, as a mere putative father, did not yet have a legal duty to care for LE, *he did have, as her biological father, a clear moral duty to do so . . .*" (emphasis added)), which may be considered relevant, insofar as natural rights may be analogous to moral duties.