

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BABY BOY MARZELL
GROVE-SHEALY, SHAMAR TONY GROVE-
PATRICK, and SHAWNTA' COOPER-GROVE,
Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JIQUETTA TRINA GROVE, a/k/a JIQUETTA
TRINI GROVE,

Respondent-Appellant,

and

SEBASTIAN PATRICK,

Respondent.

UNPUBLISHED

March 31, 2009

No. 286790

Wayne Circuit Court

Family Division

LC No. 07-475632

Before: Wilder, P.J., and Meter and Servitto, JJ.

PER CURIAM.

Respondent mother Jiquetta Grove appeals as of right from the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(b)(i), (g), and (j). We affirm.

This Court reviews decisions terminating parental rights for clear error. MCR 3.977(J). Clear error has been defined as a decision that strikes this Court as more than just maybe or probably wrong. *In re Trejo*, 462 Mich 341, 357; 612 NW2d 407 (2000). Additionally, this Court shall give regard to the trial court's special opportunity to judge the credibility of witnesses who appeared before it. MCR 2.613(C).

The trial court did not clearly err in finding that the statutory grounds were established by clear and convincing evidence. Petitioner filed an initial petition to terminate respondent mother's parental rights after a babysitter discovered that respondent mother's four-year-old son had been burned and took him to the hospital. The child had second and third-degree burns from

his waist to his thighs caused by submersion in hot water. Respondent mother initially told police that her five-year-old son ran the bath water and put his younger brother in the tub, but at trial she admitted that she ran the water, failed to check the temperature, and told the four-year-old to get in the tub because he had wet his pants. She testified that she did not hear him crying, and that when he got out of the bathtub she saw two small blisters but did not know what they were from and did not think he needed medical attention. The babysitter, who saw the child shortly thereafter, testified that he was not acting normally and that, when she took off his pants, she saw that he was wrapped in bandages and had blisters, whip marks, and missing skin. She took him to the hospital right away. The trial court did not clearly err in finding that respondent mother's version of events was not credible or in finding that respondent mother's act caused the physical injury to her son.

There was also a reasonable likelihood that her children would suffer from injury or abuse in the foreseeable future if placed in respondent mother's home. Respondent mother was not remorseful and did not fully take responsibility for her actions. The foster care worker testified that respondent mother was apathetic when she saw the children after not seeing them for months. Respondent mother also admitted that she did not take her son for regular, necessary medical care for his special needs, including a shunt leading from his head to his stomach, because she was busy working. She failed to recognize that her son needed medical care after suffering severe burns and did not tell the babysitter about the burns. When asked, respondent mother could not identify any of her son's delays, although she testified that he had delays due to his premature birth. Respondent mother admitted to whipping her son with an extension cord for wetting himself. She acknowledged that the children witnessed domestic violence, including arguing and fighting. Given this evidence, the trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence.

The trial court also did not clearly err in its best interests determination. Given the severe injury to the four-year-old child, respondent mother's medical neglect of his special needs, her refusal to take full responsibility for her actions, and the lack of bond between respondent mother and the children, the trial court did not clearly err in finding that termination was not clearly contrary to the children's best interests. MCL 712A.19b(5);¹ *Trejo, supra* at 344.

Respondent mother also argues that her trial counsel was ineffective. To establish ineffective assistance of counsel, a respondent must show (1) that counsel's failure fell below an objective standard of reasonableness under prevailing professional norms, (2) that there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different, and (3) that the result of the proceedings was fundamentally unfair or unreliable. *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994).

¹ After respondent's parental rights were terminated, the statute was amended by 2008 PA 199, effective July 11, 2008, and now requires that a court affirmatively find that termination is in the child's best interests before it can order termination.

Respondent mother has not established that she was deprived of the effective assistance of counsel. Trial counsel's advice to plead no contest to the allegations of the petition was not unreasonable considering the strength of petitioner's case. Further, it may have been a matter of trial strategy as respondent mother may have fared better at the best interests hearing without the additional witnesses petitioner would have called to support the allegations of child abuse and medical neglect. Next, trial counsel also had no basis to object to petitioner's calling respondent mother as a witness and was not ineffective for failing to do so. MCL 600.2159 allows any party to call an adverse party as a witness in a proceeding, with the exception that a criminal defendant may only testify at his own request. At the time of the best interests hearing, respondent mother had already pleaded guilty to third-degree child abuse and been placed on probation and therefore had no fear that her testimony in this matter would be used against her in criminal proceedings. With regard to respondent mother's argument that trial counsel was ineffective for failing to call witnesses, she does not list the omitted witnesses or give any indication of what their testimony would have been. The decision to call a witness is a matter of trial strategy and may only constitute ineffective assistance of counsel where it deprives the respondent of a substantial defense. *People v Dixon*, 263 Mich App 393, 398; 688 NW2d 308 (2004). Based on respondent mother's testimony, there was no substantial defense and trial counsel was not ineffective for failing to call witnesses. Finally, the minor inconsistencies that respondent mother complains that trial counsel failed to question other witnesses about did not prejudice respondent mother's case. Trial counsel's performance did not fall below an objective standard of reasonableness, and respondent mother was not prejudiced by any of the claimed errors where the case for terminating her parental rights was very strong.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Patrick M. Meter
/s/ Deborah A. Servitto