

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of J. G., a/k/a J. W., Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

SHAMEKA DENEVA WALKER,

Respondent-Appellant,

and

JOHN ERIC GOODIN,

Respondent.

UNPUBLISHED

June 16, 2009

No. 288254

Wayne Circuit Court

Family Division

LC No. 00-389721-NA

Before: Murphy, P.J., and Sawyer and Murray, JJ.

PER CURIAM.

Respondent Shameka Walker appeals as of right from the trial court's order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(g), (i), (j), and (l). We affirm.

The trial court previously terminated respondent's parental rights to six other children in December 2007, and this Court affirmed that decision in *In re Walker*, unpublished opinion per curiam of the Court of Appeals, issued August 21, 2008 (Docket No. 283020). While the prior appeal was pending, respondent gave birth on June 30, 2008, to the child at issue in this case. Respondent did not receive prenatal care during her pregnancy with the child. After the child was born, petitioner filed a petition requesting permanent custody of the child. Following a preliminary hearing on July 3, 2008, the court authorized the petition and the child was placed in foster care. The adjudicative hearing was held on September 12, 2008. In the meantime, respondent did not attempt to contact the caseworker to inquire about the child's status or to request visitation. At the adjudicative hearing, respondent's attorney moved for a continuance, explaining that his attempts to contact respondent, who was present at the hearing, had been unsuccessful. The trial court denied the request. Later, during the testimony of one of petitioner's witnesses, respondent left the courtroom without explanation. Consequently,

respondent was not called to testify. The trial court thereafter issued an opinion and order terminating respondent's parental rights under MCL 712A.19b(3)(g), (i), (j), and (l).

Respondent argues that the trial court abused its discretion in denying her motion for a continuance, and that doing so deprived her of her right to due process. The grant or denial of a motion to adjourn a proceeding is within the discretion of the trial court and, therefore, is reviewed for an abuse of discretion. *In re Krueger Estate*, 176 Mich App 241, 247-248; 438 NW2d 898 (1989). But because respondent did not raise a due process argument below, her constitutional issue is not preserved and our review of that issue is limited to plain error affecting respondent's parental rights. *In re Complaint of McLeodUSA Telecom Services, Inc.*, 277 Mich App 602, 619; 751 NW2d 508 (2008); *In re Hildebrant*, 216 Mich App 384, 389; 548 NW2d 715 (1996).

Under MCR 3.972(A), the trial court was required to hold the adjudicative trial within 63 days after the child's placement in foster care, which occurred on July 3, 2008, unless trial was postponed:

- (1) on stipulation of the parties for good cause;
- (2) because process cannot be completed; or
- (3) because the court finds that the testimony of a presently unavailable witness is needed.

The trial court observed that the trial was already untimely under the court rule and found no reason to further delay the proceeding. Respondent argues that an adjournment was warranted under MCR 3.972(A)(3) because her attorney had not been able to contact her and he indicated that additional time was needed to contact potential witnesses to prepare a defense. However, subsection (3) only applies when the testimony of a presently unavailable witness is needed. In this case, counsel never identified any specific witness whose testimony was needed, nor indicated that any alleged witness was presently unavailable.

Furthermore, MCL 712A.17(1) provides:

The court shall adjourn a hearing or grant a continuance regarding a case under section 2(b) of this chapter only for good cause with factual findings on the record and not solely upon stipulation of counsel or for the convenience of a party. In addition to a factual finding of good cause, the court shall not adjourn the hearing or grant a continuance unless 1 of the following is also true:

- (a) The motion for the adjournment or continuance is made in writing not less than 14 days before the hearing.
- (b) The court grants the adjournment or continuance upon its own motion after taking into consideration the child's best interests. An adjournment or continuance granted under this subdivision shall not last more than 28 days unless the court states on the record the specific reasons why a longer adjournment or continuance is necessary.

Here, respondent failed to establish good cause for a continuance. The basis for the request was that counsel had not been able to contact respondent and, therefore, did not have an opportunity to review the case with her. However, more than two months had elapsed since the child's removal, it was undisputed that respondent had timely received a copy of the petition and notice of the hearing, and there was no indication that respondent made any effort to contact either counsel or the court to inquire about the scheduled trial. Also, a written motion for a continuance was never filed and there was no suggestion that a continuance was necessary for the child's best interests. Under the circumstances, the trial court did not abuse its discretion in denying respondent's request for an adjournment.

We also reject respondent's argument that the trial court's denial of her request for an adjournment deprived her of her constitutional right to due process. US Const, Am XIV; Const 1963, art 1, § 17. The basic requirements of procedural due process are an opportunity to be heard and notice of that opportunity. *Dow v Michigan*, 396 Mich 192, 205-206; 240 NW2d 450 (1976). Here, it is undisputed that respondent timely received notice of the hearing and was permitted to participate in the hearing. Respondent has not established a due process violation.

Respondent also argues that the denial of her request for an adjournment violated her right to the effective assistance of counsel because counsel did not have an opportunity to review the case with her before the trial or to contact any potential witnesses.

To establish ineffective assistance of counsel, respondent must show that (1) counsel's performance fell below an objective standard of reasonableness under prevailing professional norms, and (2) there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. *People v Pickens*, 446 Mich 298, 309; 521 NW2d 797 (1994); *People v Odom*, 276 Mich App 407, 415; 740 NW2d 557 (2007).

Here, respondent does not claim that her attorney's alleged lack of preparation was attributable to any deficiency on his part. Furthermore, respondent has not shown that she was prejudiced by her attorney's alleged lack of preparation. Although she claims that her attorney could have more effectively presented a defense if he had been afforded additional time to prepare, she does not explain how additional preparation time could have affected the case, nor does she identify any additional evidence that could have been presented, or any additional witnesses who could have been called or the substance of their proposed testimony. Thus, her assertion that she received the ineffective assistance of counsel must fail.

Respondent next argues that the trial court clearly erred in finding that there was clear and convincing evidence to terminate her parental rights under MCL 712A.19b(3)(g) and (j). We review the trial court's findings of fact under the clearly erroneous standard. MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999); *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005).

The trial court found that termination was warranted under four separate statutory grounds, MCL 712A.19b(3)(g), (i), (j), and (l). Respondent does not challenge the trial court's decision with respect to §§ 19b(3)(i) and (l). Because it is only necessary to establish one statutory ground for termination by clear and convincing evidence, *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000), respondent's failure to challenge the termination of her parental rights under §§ 19b(3)(i) and (l) alone precludes any argument that a statutory ground for

termination was not established by clear and convincing evidence. In any event, considering respondent's prior history of neglect, and the previous termination of her rights to six of her children, the trial court did not clearly err in finding that §§ 19b(3)(i) and (l) were both established by clear and convincing evidence. See *In re Powers*, 208 Mich App 582, 588; 528 NW2d 799 (1995) (a parent's treatment of one child is probative of how that parent will treat another child).

Finally, in light of respondent's prior history and the absence of any bond between respondent and the child involved here, the trial court did not clearly err in finding that termination of respondent's parental rights was in the child's best interests. MCL 712A.19b(5); *In re Trejo, supra* at 356-357.

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Christopher M. Murray