

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DAMONTA DASHAWN
LAMARC WARNER, DESTINY MONAE
NELSON, DAIJA LASIA-NICOLE GENE
MARTIN, LARRY ANDRE WELLONS, and
LA'SKY LA'RHONDA WELLONS, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

KANIQUE WELLONS,

Respondent-Appellant,

and

LARON DESEAN WELLONS,

Respondent.

UNPUBLISHED

June 23, 2009

No. 288648

Oakland Circuit Court

Family Division

LC No. 07-733423-NA

In the Matter of LARRY ANDRE WELLONS and
LA'SKY LA'RHONDA WELLONS, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LARON DESEAN WELLONS,

Respondent-Appellant,

and

No. 288649

Oakland Circuit Court

Family Division

LC No. 07-733423-NA

KANIQUE TASHAWN WELLONS,

Respondent.

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

PER CURIAM.

In these consolidated appeals, respondent-mother Kanique Wellons appeals as of right the order terminating her parental rights to all of the minor children, and respondent-father Laron Wellons appeals as of right the order terminating his parental rights to his two children. These termination orders were entered pursuant to MCL 712A.19b(3)(b)(i) (parent's act caused physical injury or abuse to the child or sibling of child), (b)(ii) (parent's failure to act resulted in physical injury or abuse to the child or sibling of child), (g) (parent failed to provide proper care or custody and is unlikely to be able to do so within a reasonable time), and (j) (there is a reasonable likelihood of harm should the child return to parent's home). We affirm.

We initially address some procedural and due process issues raised by the parties. Respondent-mother entered a plea of no contest to a petition for temporary wardship, at which time she was advised of reunification and treatment plans that would be implemented. However, soon thereafter, and without any dispositional hearings having yet been conducted relative to the temporary wardship petition and adjudication thereon, a supplemental petition for termination was filed in light of new allegations of medical and dental neglect and physical abuse, including an allegation that respondent-father sexually abused one of the children. Because of these circumstances, and specifically the filing of the supplemental petition absent reunification efforts and a dispositional hearing, respondent-mother argues that her plea was not knowingly, understandingly, and voluntarily made. Respondent-mother also argues that she was denied her right to a jury trial given the circumstances and that she was denied due process when there was no disposition relative to the temporary wardship petition. Respondent-father argues that various court rules and statutes required the initial petition to proceed to disposition before the supplemental petition could be pursued and acted on.

With respect to respondent-mother's claims arising out of her plea, we find, on review of the record, that the referee complied with MCR 3.971(B), which governs the advisement of rights, and that the plea was knowingly, understandingly, and voluntarily made, MCR 3.971(C). Further, respondent-mother was not denied her right to a jury trial, given her legally sound plea. The referee informed respondent-mother that her plea would be treated as an admission of "responsibility to at least one of the allegations in the petition and that [the] allegation rose to the level of neglect or abuse." The allegations included claims of physical abuse and neglect, and the supplemental petition for termination also related to physical abuse and neglect allegations, although of a different character. While couched in a discussion of treatment plans, the referee did inform respondent-mother of the possibility that the court could later order petitioner "to start proceedings to terminate [her] parental rights." The referee also indicated in no uncertain terms and without exception that respondent-mother was "giving up the right to have a trial." MCR 3.971(B)(4)(advising a respondent of the consequences of a plea) does not appear to have

required the referee to go as far as informing respondent-mother that reunification and treatment efforts would not take place and that jurisdiction would remain without a right to jury trial on the speculative possibility that a supplemental petition for termination might be filed, alleging new and different instances of abuse and neglect. Assuming that the court rule may have required more information to be dispensed by the referee, respondent-mother's cursory and undeveloped argument, including a complete lack of reasoning why the circumstances made the plea unknowing, involuntary, and not understandable, leads us to decline further examination of the issue. See *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998) (it is insufficient for a respondent to merely announce a position and leave it up to this Court to discover and rationalize the basis for the claims and then search for authority).

Moreover, respondent-mother's arguments necessarily pertain to the adjudicative phase of the proceedings and the court's exercise of jurisdiction, but respondent-mother did not directly appeal the court's continuing exercise of jurisdiction following the filing of the supplemental petition. In *In re AMAC*, 269 Mich App 533, 536; 711 NW2d 426 (2006), this Court explained the bifurcated nature of protective proceedings:

Child protective proceedings have long been divided into two distinct phases: the adjudicative phase and the dispositional phase. The adjudicative phase occurs first and involves a determination whether the trial court may exercise jurisdiction over the child, i.e., whether the child comes within the statutory requirements of MCL 712A.2(b). During the adjudicative phase, a trial may be held to determine whether any of the statutory grounds alleged in the petition have been proven. If a trial is held, the respondent is entitled to a jury determination of the facts, the rules of evidence for a civil proceeding apply, and the standard of proof is a preponderance of the evidence. After the trial, "the verdict must be whether one or more of the statutory grounds alleged in the petition have been proven." That is, the verdict must be whether the child comes within the jurisdiction of the court. If the court acquires jurisdiction over the child, the dispositional phase follows. [Citations omitted.]

The Court also indicated that it only stated that a trial *may* be held in the adjudicative phase because the right to a trial can be waived when a respondent makes a plea of admission or of no contest. *Id.* at 536 n 2.

Matters affecting and concerning the court's exercise of its jurisdiction may be challenged only on direct appeal of the jurisdictional decision and not by collateral attack in a subsequent appeal of an order that terminated parental rights. *In re Hatcher*, 443 Mich 426, 436; 505 NW2d 834 (1993); *In re SLH, AJH, & VAH*, 277 Mich App 662, 668 n 11; 747 NW2d 547 (2008); *In re Gazella*, 264 Mich App 668, 679-680; 692 NW2d 708 (2005); *In re Powers*, 208 Mich App 582, 587-588; 528 NW2d 799 (1995). Respondent-mother's arguments regarding the soundness of her plea and her right to jury trial are matters affecting the court's exercise of its

jurisdiction, yet when the supplemental petition for termination was filed, no challenges were raised, nor an appeal filed.¹

Additionally, with respect to both respondents' arguments concerning the lack of any dispositional hearings or rulings on the initial petition prior to the filing of the supplemental petition to terminate and proceedings thereon, the arguments lack merit given the language in MCR 3.973(H)(1) and MCR 3.977(F). MCR 3.973(H)(1) provides:

Proceedings on a supplemental petition seeking termination of parental rights on the basis of allegations of additional child abuse or child neglect . . . of a child who is under the jurisdiction of the court are governed by MCR 3.977.

MCR 3.977(F) provides:

The court may take action on a supplemental petition that seeks to terminate the parental rights of a respondent over a child already within the jurisdiction of the court on the basis of one or more circumstances new or different from the offense that led the court to take jurisdiction.

There is no indication that a dispositional hearing and ruling on an initial petition for temporary wardship had to occur before the supplemental petition for termination could be pursued and acted on by the court.

We next address some evidentiary issues raised by the parties. Respondent-mother argues that the court erred in ruling to admit hearsay statements made by one of the children to Jennifer Hay and Cheryl Lee about alleged sexual abuse. This Court reviews for an abuse of discretion a trial court's ruling concerning the admissibility of evidence; however, preliminary questions of law regarding whether a rule of evidence or statute precludes admissibility are reviewed de novo. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). Contrary to the arguments made by respondent-mother, we find that the trial court did not abuse its discretion or otherwise err in admitting the challenged testimony as substantive evidence at trial, as it was admissible under MCR 3.972(C)(2)(a), where the hearsay concerned sexual abuse against a child under the age of ten, where, under the totality of the circumstances, there was adequate indicia of trustworthiness, and where respondent-mother fails to show any error or prejudice arising from the court's decision not to review the preliminary examination transcript from the criminal case in assessing trustworthiness. *In re Archer*, 277 Mich App 71, 82; 744 NW2d 1 (2007); *In re Brimer*, 191 Mich App 401, 405; 478 NW2d 689 (1991).² Further, due process was not offended.

¹ To the extent that respondent-father makes comparable arguments regarding his plea, they are rejected for all of the same reasons given by us in rejecting respondent-mother's arguments.

² An application of the *Brimer* analysis shows that there were many factors establishing the reliability of the child's hearsay statements: (1) the fact that she implicated her cousin at one point was not inconsistent with trustworthiness because, as the child later explained, she did not want to get respondent-parents into trouble; (2) the child's use of an unsophisticated word like
(continued...)

Respondent-mother next protests the court's refusal to admit evidence about the results of the preliminary examination, i.e., the dismissal of the criminal case. The basis for this ruling was that the results of the preliminary examination were made in the context of a criminal case and involved a different standard of proof and, therefore, were irrelevant to this child protective proceeding. Respondent-mother does not explain how the court abused its discretion in finding this evidence to be irrelevant or how she was prejudiced by the court's refusal to admit such evidence. It is insufficient for a respondent to merely announce a position and leave it up to this Court to discover and rationalize the basis for the claims and then search for authority to sustain or reject that position. *Mudge, supra* at 105.

Next, respondent-mother seeks to introduce on appeal evidence regarding the transmission of chancroids. Respondent-mother fails to explain the relevancy of this point and, because her proof consists of an article downloaded from the Internet that was not admitted into evidence at the trial level, respondent-mother is now prevented from expanding the record on appeal. See *Kent Co Aeronautics Bd v Dep't of State Police*, 239 Mich App 563, 580; 609 NW2d 593 (2000), *aff'd* 463 Mich 652 (2001).

In regard to comparable evidentiary arguments made by respondent-father, they are rejected for the reasons stated above relative to respondent-mother's claims. And, with respect to testimony about statements made by one of the children concerning physical beatings committed against the children, we find that the trial court did not err in admitting the testimony, nor was prejudice established, assuming error, in light of other admissible or unchallenged evidence on the subject.

Finally, we address and reject respondents' arguments that the trial court erred in finding clear and convincing evidence that the statutory grounds for termination were established and that the court erred with respect to the best-interests determination.

A trial court may terminate a parent's parental rights to a child if the court finds that the petitioner has proven one of the statutory grounds for termination by clear and convincing evidence. MCL 712A.19b(3); *In re Trejo Minors*, 462 Mich 341, 350; 612 NW2d 407 (2000). "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). "The clearly erroneous standard shall be used in reviewing the court's findings on appeal from an order terminating parental rights." MCR 3.977(J). The review for clear error applies to both the trial court's decision that a ground for termination of parental rights was proven by clear and convincing evidence and the court's ruling regarding the child's best interests. *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003). The trial court's determination

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"punani" to describe her vaginal area was indicative of trustworthiness because she was eight years old at the time of the disclosures; (3) the fact that she was diagnosed with a sexually-transmitted disease corroborated her sexual abuse allegations; (4) the small tear in her hymen also corroborated the sexual abuse allegations; (5) the child never recanted her story; and (6) she was hesitant to make the accusations because she did not want to get respondent-parents into trouble.

to terminate parental rights is clearly erroneous if, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake had been made on consideration of all the evidence. *Id.* at 209-210.

With respect to respondent-mother, the trial court did not clearly err in finding, by clear and convincing evidence, that grounds for termination existed under MCL 712A.19b(3)(b)(i), (g), and (j), nor did the court clearly err in regard to its best-interests determination. The court's rulings were supported by evidence of severe beatings with a belt that caused bleeding, evidence of respondent-mother allowing respondent-father to return to the family home despite knowledge of sexual abuse committed by him against one of the children and continuing denial of the abuse,³ evidence of neglect relative to dental needs,⁴ and evidence of a failure to obtain necessary medical care. With respect to respondent-father, the trial court did not clearly err in finding, by clear and convincing evidence, that grounds for termination existed under MCL 712A.19b(3)(b)(i), (g), and (j), nor did the court clearly err in regard to its best-interests determination. The court's rulings were supported by evidence of sexual abuse committed by respondent-father, evidence of neglect relative to dental needs, evidence of a failure to obtain necessary medical care, evidence of an unwillingness to accept responsibility for the medical and dental neglect, and evidence of physical beatings with a belt that caused bleeding.

Affirmed.

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

³ Respondent-mother recently became pregnant again with a child fathered by respondent-father.

⁴ There was evidence that one of the children had rotting teeth resulting from severe neglect of dental needs.