

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MARREA AJENA JONES,
MYKELTI MEKEL SAUNDERS, MARKEYA
RENNEE SAUNDERS, ANDRAE KAREEM
SCOTT, and DEVAUGHN JEROME MOORE,
Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CLARERENNEE DENESSEE SAUNDERS,

Respondent-Appellant,

and

MEGUEL JESUS JONES and WALLACE
JEROME MOORE,

Respondents.

UNPUBLISHED

July 7, 2009

No. 288537

Oakland Circuit Court

Family Division

LC No. 07-732309-NA

Before: Borrello, P.J., and Meter and Stephens, JJ.

PER CURIAM.

Respondent Clarerennee Saunders appeals as of right from the order terminating her parental rights to her minor children under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). We affirm.

To justify the termination of parental rights, a court must find that at least one statutory basis for termination has been established by clear and convincing evidence and that termination is in the children's best interests. *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003); MCL 712A.19b(5). This Court reviews for clear error both the trial court's determination that the petitioner established at least one statutory basis for termination and the trial court's decision regarding the children's best interests. *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCR 3.977(J).

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. Petitioner provided clear and convincing

evidence that respondent had not rectified the condition that brought the children into care – educational neglect – and was not likely to within a reasonable time.¹ MCL 712A.19b(3)(c)(i). Respondent also had not rectified other conditions – homelessness, mental illness, and accompanying neglect – despite the opportunity to do so, and was not likely to within a reasonable time. MCL 712A.19b(3)(c)(ii). Moreover, respondent’s poor mental health caused her to fail to provide proper care and custody and she was not likely to within a reasonable time, regardless of intent. MCL 712A.19b(3)(g). Finally, although the trial court cited evidence supporting MCL 712A.19b(3)(j) that was not documented in the record, there was other evidence sufficient to show that the children were likely to be harmed if returned, thus satisfying subsection (3)(j).

We note that a psychologist testified that respondent’s prognosis was positive *only if* she remained on medication and in treatment. He believed she was almost certain not to do so and would require close monitoring until the children were grown. Further, respondent’s conduct demonstrated that her mental illness prevented her from taking advantage of services, including therapy, parenting classes, housing assistance, and assistance in applying for social security benefits. Additionally, respondent did not merely lack long-term housing; she lived in cars, with unnamed friends, and in her mother’s home, which was overcrowded. No basis for reversal is apparent.

The trial court also did not clearly err in its determination regarding the children’s best interests. The children’s ages, years spent with respondent as primary caregiver, and attachment to respondent were relevant to the best-interests analysis. See *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004), and *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001). However, the children’s need for permanence was also relevant to the decision whether termination was in their best interests. *In re McIntyre*, 192 Mich App 47, 52; 480 NW2d 293 (1991). There was evidence of past neglect in this case, and not merely speculation of future neglect. Respondent did not have appropriate housing, and her testimony was strong evidence that she was still far from a mental health state that would allow her to provide proper housing, guidance, and supervision for any of her children, even if she received financial assistance. Respondent also had indicated that she did not believe in psychotropic medication and would likely stop treatment. Under the circumstances, there is no basis for reversal.

Respondent next argues that the trial court violated her due process rights when it prevented her from offering witnesses when her witness list was filed late. A parent’s interest in the custody of her children is an element of liberty protected by due process. *In re JK*, *supra* at 210. Procedural due process requires fundamental fairness, which generally involves consideration of the private interest involved, the state’s interest, the risk of erroneous deprivation of the private interest, and the probable value of additional safeguards. *In re Brock*, 442 Mich 101, 111; 499 NW2d 752 (1993).

¹ Basically, there was insufficient evidence that the underlying causes for the educational neglect had been adequately resolved. At any rate, even if, for the sake of argument, MCL 712A.19b(3)(c)(i) was not satisfied, there were other statutory bases for termination that *were* clearly satisfied.

Under MCR 2.401(I), the parties must file witness lists by the date directed by the court, and the court may preclude testimony from any witnesses not listed in accordance with the rule unless good cause is shown. We review for an abuse of discretion the trial court's decision to exclude witnesses based on a late-filed witness list. *Carmack v Macomb Co Community College*, 199 Mich App 544, 546; 502 NW2d 746 (1993). In the present case, respondent offered no explanation for her failure to provide the list. Witness lists are an element of discovery intended to prevent surprises at trial. *Grubor Enterprises, Inc v Kortidis*, 201 Mich App 625, 628; 506 NW2d 614 (1993). Although the witnesses respondent claims she intended to call were persons petitioner was aware of, petitioner did not have time to prepare for questioning, unlike in the criminal case respondent cites, *People v Yost*, 278 Mich App 341, 380-381; 749 NW2d 753 (2008), because the updated list was provided on the only day of trial. Further, and significantly, respondent did not establish how her witnesses would have changed the outcome of the proceedings. In particular, there was no reason to believe the witnesses would have testified that respondent was in therapy or obtained suitable housing or that they knew respondent had changed her mind about psychotropic medications and was taking her medication. The trial court did not abuse its discretion in excluding respondent's witnesses.

Respondent further argues that her attorney's failure to timely file the witness list violated her right to the effective assistance of counsel. Due process requires the effective assistance of counsel in child protective proceedings. *In re CR*, 250 Mich App 185, 197-198; 646 NW2d 506 (2002). To justify appellate relief, respondent must demonstrate that her "counsel's performance fell below an objective standard of reasonableness, and that the representation so prejudiced" her that she was denied a fair trial. *Id.* at 198 (internal citations and quotation marks omitted). Prejudice requires a finding that, absent the attorney's error or errors, the result of the proceedings likely would have differed. *Id.* An attorney's failure to file the witness list by the deadline, without good cause, resulting in the court's prohibiting all the party's witnesses, generally falls below an objective standard of reasonableness. However, neither trial nor appellate counsel made any offer of proof regarding the proposed testimony of the excluded witnesses, and there was no other basis from which to conclude that they would provide crucial testimony. We cannot conclude that there was a reasonable probability that the result of the proceedings would have been different even if the witnesses had testified, based on the information available regarding the witnesses' probable testimony. Our review is limited to errors apparent on the record, because respondent did not request a hearing regarding this issue in the trial court or move for a new trial. See *People v Sabin*, 242 Mich App 656, 658-659; 620 NW2d 19 (2000). Therefore, respondent has failed to establish that she was denied the effective assistance of counsel.

Affirmed.

/s/ Stephen L. Borrello
/s/ Patrick M. Meter
/s/ Cynthia Diane Stephens