

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TIARA VANDELLEN, DECOTA
TIMMONS, AWSTEN JOHN TIMMONS, and
TIFENI TIMMONS, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

V

LAURA TIMMONS,

Respondent-Appellant.

UNPUBLISHED

March 25, 2010

No. 291971

Mecosta Circuit Court

Family Division

LC No. 07-005136-NA

Before: Stephens, P.J., and Gleicher and M.J. Kelly, JJ.

PER CURIAM.

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

As a young child, respondent suffered horrific abuse. In many of her adult relationships, she reported being verbally and/or physically abused and she reported numerous sexual assaults. Some of respondent's relationships with men included relationships with sexual offenders, which placed the children at risk of serious harm. A petition seeking temporary custody of the children was filed in May 2007 after Child Protective Services substantiated a charge that the respondent physically abused her six-year-old son. For approximately two years, services were provided that focused on respondent's mental health and parenting skills. Respondent's parental rights were terminated in March 2009.

Respondent argues that she was denied the effective assistance of counsel because of two alleged errors committed by trial counsel. To prove a claim of ineffective assistance of counsel, respondent must demonstrate that her trial counsel's performance fell below an objective standard of reasonableness and that the representation so prejudiced her as to deprive her of a fair trial.¹ The first error purportedly occurred when counsel failed to challenge the trial court's jurisdiction over two of the children. A review of the court's assumption of jurisdiction shows it

¹ *People v Pickens*, 446 Mich 298, 303, 309, 338; 521 NW2d 797 (1994).

was based on the pleas of no contest entered by the fathers of the two children.² However, neither the original petition nor the amended petition contained any allegations against those fathers. Therefore, neither was a “respondent” during the adjudication phase, as defined in MCR 3.903(C)(10), and neither was able to make a plea establishing jurisdiction. *In re SLH, AJH, and VAH*, 277 Mich App 662, 670; 747 NW2d 547 (2008).³

Jurisdiction is a fundamental part of due process and it was a mistake for trial counsel not to challenge the court’s assumption of jurisdiction. The record reveals that the respondent entered her own no contest plea in February 2008, nine months after the initial hearing. However, the plea was entered based upon respondent’s belief that the court had already taken jurisdiction over the children. When the court accepted the pleas of the non-party fathers, the court concluded, “I now go to the evidence presented which does not appear to me to be sufficient at this point based on this testimony to sustain it.” Several months passed between the acceptance of the non-party fathers’ pleas and the respondent’s entry of a plea. It is highly speculative to conclude that the court would have assumed jurisdiction based on the evidence of the unfitness of respondent’s home at the time the petition was filed. However, after the petition was filed and before she entered a plea, respondent exposed her children to new risks resulting in the removal of all of the children from the home. In June 2007, respondent took the youngest child to the emergency room for a sexual abuse evaluation yet allowed the man whom she thought committed the abuse to stay at her house for a few more days. In July 2007, she allowed a former boyfriend to stay at her house (by this time, all of the children had been removed from her care) despite knowing that the police were investigating statements made by the children that this former boyfriend had inappropriately touched them. On July 27, 2007, respondent was injured when she intervened in an argument involving Mike Bassett, his mother, and his fiancée, all of whom respondent had allowed to reside in her apartment. When investigating the incident, the police arrested respondent’s then current boyfriend, Walter Holmes, after determining there was a contempt of court warrant out on him. Most of these risky behaviors occurred while she was receiving Families First services. She was ultimately asked to sign an amended parent agreement precluding unrelated men from living in her home. Her contact with her son, Decota, whose treatment led to filing the petition, was inconsistent even prior to the entry of her plea. The court was sufficiently concerned about her care of the children that all of them were placed out of her home before her plea, with visitation suspended for periods of time. This is indicative of the growing strength of the case for assumption of jurisdiction.

Additionally, even respondent notes that the court received testimony at an adjudication hearing after her plea was entered from Dr. Eyal, who diagnosed her as having a dissociative disorder, which could be remitted through long-term intensive treatment. In describing the impact this disorder would have on the children, Dr. Eyal noted that:

² In a later hearing, respondent entered her own plea of no contest with respect to the remaining two children but indicated her motivation to enter the plea was because she believed the court already had jurisdiction over the other two children.

³ A plea establishing jurisdiction in child protection proceedings may only be made by a respondent against whom allegations have been made. *In re SLH, AJH, and VAH*, 277 Mich App 662, 670; 747 NW2d 547 (2008).

It has an impact I would say on two areas. One is stability where her function shifts and her perception of reality shifts, sometimes it may happen within hours, definitely within days. The children don't have a very stable environment where they can count on the parent to be consistent and stable and set boundaries the same way and present a picture of reality that is the same way. The other area that I am worried about is attachment from observations with the family. I have severe concerns about attachment between Ms. Timmons and the baby...

Therefore, while we cannot say with certainty that a statutory ground for jurisdiction contained in MCL 712A.2(b) would have been proven at trial at the time of the non-party fathers' pleas, it is reasonably certain that jurisdiction would have been taken had a hearing been held at the time of respondent's plea. Therefore we conclude that respondent was not unfairly prejudiced by this mistake made by trial counsel. It is unfortunate that the court inappropriately assumed jurisdiction in this case and that the respondent entered a plea under the mistaken belief that jurisdiction was already taken over her children. However, the history of the case after her ill-advised plea supports the court's finding that the children were in harm's way while in her custody. We cannot conclude that the deficiency in counsel's failure to challenge jurisdiction rises to the level requiring reversal.

Respondent also asserts a claim of ineffective assistance of counsel based upon the alleged failure of trial counsel to seek accommodation for respondent's dissociative disorder under the Americans with Disabilities Act, 42 USC 12101 *et seq.* We disagree with this claim. It should be noted that, throughout the protective proceeding, respondent disputed the dissociative diagnosis and some counselors formulated different diagnoses. Counsel cannot be found ineffective for failing to request an accommodation that respondent rejected herself, especially since respondent did receive mental health services. The recommended treatment for dissociative disorder was long-term intensive counseling, and respondent received mental health services from many providers, including one who provided intensive therapy on child development and safety issues, bonding, and issues in respondent's past. Even though disassociation was not one of the issues specifically addressed, this therapy was designed to treat respondent's overall mental health, which would include a dissociative disorder if that diagnosis was accurate. The evidence showed that reasonable efforts were made to treat respondent's mental health and that trial counsel did not fail to seek accommodation for respondent's disassociation.

Next, the evidence was sufficient for the court to order termination on the statutory grounds set forth in MCL 712A.19b(3)(c)(i), (g), and (j). The adjudicating concerns were respondent's physical abuse of a child, her history of inappropriate relationships that included residing with sex offenders, her cluttered home, and her failure to benefit from multiple services. Although there were no more instances of physical abuse committed by respondent and her home was fine during the protective proceeding, respondent made no progress toward rectifying the other problems despite participating in and completing numerous services. Respondent continued her pattern of involvement in indiscriminate relationships with men she met on the Internet,⁴ and the fact that she devised a system to check if those men were registered sex

⁴ Although no men were apparently seen by workers after July 2008, respondent told her counselor about ongoing relationships with men and admitted receiving gifts and/or money from
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offenders did not provide sufficient safeguards for the children's safety.⁵ In addition, respondent did not progress toward accepting responsibility for her actions that contributed to the removal of the children from her care. Although respondent completed the Love & Logic parenting class, the parent educator still had concerns about certain parenting skills and respondent's lifestyle. Most significantly, respondent's ongoing mental health problems (whether she suffered from disassociation or other disorders) created a great deal of stress and confusion for the children and impacted respondent's ability to bond with them. Based on respondent's lack of progress in two years, it was unlikely that she would soon rectify the issues about her mental health, relationships, and parenting skills, or be able to provide proper care and custody for the children within a reasonable time given their ages. These unresolved issues would place the children at risk of harm if they were returned to respondent's home.

Finally, the court did not clearly err in its best interests determination.⁶ The evidence established that visitations or contact with respondent were traumatic for the three oldest children. After seeing respondent, one child wet the bed, another kicked a hole in a wall, and the third reverted to baby talk. One foster care worker testified that the children's negative reactions after visitations were "rather extraordinary" and not the result of typical stress associated with seeing a parent from whom they were separated. Another foster care worker testified that she had not seen any positive results to the children after visitations with respondent. The youngest child alone was seemingly unfazed by her interaction with respondent, but the evidence established that she was not attached to respondent and had been in foster care for the majority of her life. Based on this evidence, the trial court did not clearly err when it found that termination of respondent's parental rights was in the children's best interests.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Elizabeth L. Gleicher
/s/ Michael J. Kelly

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them.

⁵ At the termination hearing, respondent's testimony that she no longer had access to the Internet and was a hermit was countered by her testimony that she planned to re-gain access to the Internet.

⁶ Under MCL 712A.19b(5), the trial court must order termination 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."