STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of BRIANA L. RICHARDSON,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LISA LEIDENHEIMER,

Respondent-Appellant,

and

ZACHARY RICHARDSON,

Respondent.

UNPUBLISHED
April 22, 2010

No. 293676
Oscoda Circuit Court
Family Division
LC No. 08-000433-NA

Before: SAAD, P.J., and HOEKSTRA and MURRAY, JJ.

PER CURIAM.

Respondent Lisa Leidenheimer appeals from the court order that terminated her parental rights to the minor child pursuant to MCL 712A.19b(3)(d). We affirm.

In 2006, respondent, who lived in Oscoda County, agreed to let the minor child live with another family in Oakland County pursuant to a limited guardianship. This limited guardianship was to continue until the minor child graduated from high school, but respondent testified that she and the limited guardians verbally agreed that the limited guardianship could be terminated at any time if she or the minor child so desired. The limited guardianship placement plan set forth provisions governing contact between respondent and the minor child that were intended to maintain the parent-child relationship. During the first few months of the guardianship, the minor child exhibited disturbing behaviors and the limited guardian obtained counseling for the child. Meanwhile, respondent did not contact or visit with the minor child in accordance with the limited guardianship placement plan. In December 2006, respondent sought to terminate the guardianship but, in supervised visitations held in May 2007, the child expressed a desire to remain with the limited guardians. Respondent blamed the limited guardians for creating the divide between respondent and the child, while the child's counselor at Oakland Family Services believed the child did not want to return to respondent's house because of the neglect

experienced by the child when living with respondent and because of the poor treatment inflicted upon the child by two older siblings.

Respondent started counseling and, during the summer of 2007, supervised visitations were held in Oscoda County. After the child and the limited guardian moved back to Oakland County in August 2007, the probate court issued a September 4, 2007 order that supervised visitation was to occur either at Haven House (located in Oakland County) or with a counselor in Oakland County. A review hearing was held in December 2007, where it was reported that no visitations had occurred since August 2007, prompting the probate court to terminate the limited guardianship and the Oakland Circuit Court to authorize the initiation of a child protective proceeding. The protective proceeding was eventually transferred to Oscoda County and, on July 15, 2008, an amended petition seeking the termination of respondent's parental rights was entered. A plea agreement was initially pursued but later abandoned when the prosecutor decided to revert back to seeking termination. A jury returned a verdict that a statutory ground for jurisdiction had been proven[1] and, following an initial dispositional hearing, the Oscoda Circuit Court ordered the termination of respondent's parental rights.

Respondent protests the abandonment of the plea agreement. In termination proceedings, this Court applies the same principles developed in criminal cases for plea withdrawals. *In re Zelzack*, 180 Mich App 117, 125; 446 NW2d 588 (1989). Where a respondent's plea is induced by an unkempt promise, the remedies are either specific performance or vacating the plea. *Id*. Here, respondent is not protesting a withdrawal of a plea. Instead, she seeks to enforce the plea agreement under which she entered a plea of admission to certain allegations in the amended petition in exchange for the promise that a permanent guardianship would be established at the dispositional hearing. However, specific enforcement of the plea agreement was not required since the Oscoda Circuit Court granted respondent's motion to withdraw her plea. Therefore, respondent was provided a legally appropriate remedy for the prosecution's violation of the plea agreement, and there was no error.

Respondent also contends that the trial court improperly terminated her parental rights at the initial dispositional hearing. Under 3.977(E)(1), a court can order the termination of parental rights at the initial dispositional hearing if, among other things, the original or amended petition contains a request for termination. Respondent argues that, in this case, the petition relied upon at the initial dispositional hearing was a supplemental petition filed by the prosecutor after the plea agreement was abandoned, rather than an original or amended petition as required by the court rule. However, the prosecution relied upon the July 15, 2008 amended petition when pursuing termination of respondent's parental rights at the initial dispositional hearing. This amended petition, although indirectly abandoned by the plea agreement, was never withdrawn, apparently because the guardianship documents were never filed. Although the amended petition does have a box checked off marking it as a supplemental petition, this box was apparently marked in error as there was no mention of a supplemental petition being filed. Finally, the alteration of the amended petition that respondent challenges was done as part of the

[1] In an attempt to help the jury focus on the issue of jurisdiction rather than termination, all references to termination were blacked out from the exhibits admitted into evidence and submitted to the jury.

adjudication, where the court was trying to help the jury focus on the issue of jurisdiction rather than termination. This blacking out did not affect the prosecution's reliance upon the amended petition when seeking termination at the initial dispositional hearing. Therefore, the Oscoda Circuit Court properly ordered termination at the initial dispositional hearing based on the July 15, 2008 amended petition.

Respondent also says that the word "terminated" was removed from the original version of the limited guardianship placement plan and, since the subsequent changes to that plan also failed to mention the possibility that respondent's parental rights could be terminated, respondent never received notice that a failure to comply with the plan could result in the termination of her parental rights. This argument misstates the facts because the original version of the limited guardianship placement plan did not have any words blackened out and contained the following statement: "As a custodial parent of the minor, I understand that if I substantially fail, without good cause, to follow this plan, my parental rights may be terminated by the court through proceedings under the juvenile code." Respondent signed the limited guardianship placement plan just under this statement, and was clearly alerted to the possibility that her parental rights could be terminated if she did not comply with the plan. It was not until the adjudication trial that the word "terminated" was blacked out in this statement in the effort to help the jury focus on the issue of jurisdiction rather than termination.

Also, respondent challenges the sufficiency of evidence. We review both the trial court's decision that a ground for termination of parental rights has been proven by clear and convincing evidence and the trial court's decision regarding the child's best interests for clear error. MCR 3.977(J); *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003). In this case, the Oscoda Circuit Court did not clearly err in basing termination upon MCL 712A.19b(3)(d). MCL 712A.19b(3)(d) provides that the court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, that

> The child's parent has placed the child in a limited guardianship under section 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5205, and has substantially failed, without good cause, to comply with a limited guardianship placement plan described in section 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5205, regarding the child to the extent that the noncompliance has resulted in a disruption of the parent-child relationship.

The first element of this statutory basis was proven by evidence that a limited guardianship described in MCL 700.5205 had been established. The second element was proven by evidence of respondent's failure to visit with the minor child from August through December of 2007, as required by the court-ordered limited guardianship placement plan.

Regarding the third element, there was sufficient evidence for the court to find that respondent was without good cause for substantially failing to comply with the limited guardianship placement plan. Respondent's complaints about the distance between Oscoda and Oakland counties were unpersuasive and, although respondent encountered problems arranging visitations, she was aware as of September 28, 2007 (through a letter sent to her attorney by the child's lawyer-guardian ad litem ["LGAL"]) that visitations would have to be held at Haven House and would have to be arranged by her. Respondent testified that she called Haven House

on numerous occasions and left many messages but received only one phone call in return; however, Haven House's records indicated respondent waited until November 15, 2007 to contact Haven House, at which point a visitation could not be scheduled on the date requested by respondent. Furthermore, although the LGAL acknowledged in her letter that supervised visitations at Haven House were not the "ideal arrangement," the problems encountered at Haven House may have been the result of respondent's own behavior. According to one of the child's counselors, the child was severely emotionally traumatized and suffered from a posttraumatic stress disorder caused by experiences from her early childhood, and the goal of counseling was for the child to develop a sense that she was a person in her own right. This counselor wrote in one of her summaries that "[t]he mother-daughter bond may have been gravely ruptured at the site of the supervised visitation" given respondent's inability "to respond in a nurturing way to [the child's] reluctance to engage with [respondent]." As such, Haven House was reasonably located, available, and appropriate, and the court did not clearly err when it found respondent was without good cause when she failed to visit the child.

The fourth and final element of MCL 712A.19b(3)(d) addresses the issue of whether respondent's failure to visit with the child had resulted in a disruption of the parent-child relationship. Respondent acknowledged that the parent-child relationship had worsened during the limited guardianship, and attributed the problems to the limited guardians. Meanwhile, the child's counselors and limited guardians all stated that the child regressed after contact with respondent, and the counselors testified about the child's emerging sense of self-worth. This evidence clearly indicated that, if the parent-child relationship were to continue, respondent needed to develop and implement a different way of interacting with the child. In order to accomplish that, her attendance at supervised visitations was crucial. Therefore, respondent's failure to visit the child from August through December of 2007 had resulted in a disruption of the parent-child relationship.

Also, under MCL 712A.19b(5), the trial court was required to make an affirmative finding that termination of parental rights was in the child's best interests before it terminated parental rights. In this case, the child did not want to be reunited with respondent. Furthermore, one of the child's counselors testified that a change of environment to one that supported the child's needs was fundamental to the child's ability to restore some healthy aspect of her personality. As such, the trial court did not clearly err in its best interests determination.

Affirmed.

/s/ Henry William Saad
/s/ Joel P. Hoekstra
/s/ Christopher M. Murray