

STATE OF MICHIGAN  
COURT OF APPEALS

---

In the Matter of NOFFSINGER/MAPES, Minors.

UNPUBLISHED  
October 26, 2010  
No. 295954  
Livingston Circuit Court  
Family Division  
LC No. 2008-012217 NA

---

Before: O'CONNELL, P.J., and BANDSTRA and MARKEY, JJ.

PER CURIAM.

Respondent father appeals as of right the trial court order terminating his parental rights under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been established by clear and convincing evidence, and that termination is in the children's best interests. MCL 712A.19b; MCR 3.977; *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). Both the trial court's decision that a statutory ground for termination has been proven by clear and convincing evidence and its best interest determination are reviewed for clear error. MCR 3.977(K); *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). "A finding is 'clearly erroneous' [if] although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Respondent father first argues that the trial court clearly erred by concluding that petitioner had established at least one statutory ground for termination by clear and convincing evidence. We disagree.

Respondent father's parental rights were terminated under MCL 712A.19b(3)(c)(i), (g), and (j), which provide:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

\* \* \*

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial

dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

\* \* \*

(g) The parent, without regard to intent, fails to provide proper care and custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

\* \* \*

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

The evidence presented at trial established that more than 182 days had elapsed since the issuance of an initial disposition order, that the conditions that led to adjudication continued to exist and that respondent father could not provide proper care and custody for the children within a reasonable time considering the children's ages. The conditions of adjudication were an unfit home, domestic violence, injuries to the older son and the boy's fear of respondent father, and respondent father's substance abuse and anger issues. In the seven months before respondent father was incarcerated, he did not complete any services. At the time of the termination hearing, respondent father testified that he had resolved his anger and substance abuse issues through completion of classes while incarcerated. However, he did not have a long period of period of sobriety, and he received services before the removal of the children and did not benefit from them. Further, respondent father was convicted of domestic violence and drinking and driving during the pendency of the case. The record supports the trial court's conclusions that respondent father had not shown that he benefitted from the classes he completed while incarcerated and that the substance abuse, domestic violence, and anger issues continued to exist at the time of the termination hearing. Further, respondent father's failure to address his substance abuse, domestic violence, and anger issues prevented him from providing proper care and custody for his children.

The trial court also did not clearly err by finding that respondent father would not be able to rectify the conditions of adjudication or be able to provide proper care and custody within a reasonable time considering the children's ages. Respondent father received services before the filing of this case and did not benefit from them. He received services before his incarceration and did not benefit from them. He was convicted of domestic violence with a new girlfriend and of operating under the influence. There was no evidence that respondent father benefited from classes he completed while he was incarcerated and, after his release, respondent father did not take the initiative to get an AA sponsor or to seek visitation with the children. Therefore, considering the testimony presented at trial, we conclude that the trial court did not clearly err by

concluding that the statutory grounds for termination set forth in MCL 712A.19b(3)(c)(i) and (g) were established by clear and convincing evidence.

The trial court also did not clearly err by finding that there was a reasonable likelihood that the children would be harmed if returned to respondent father's home. MCL 712A.19b(j). The older son suffered two injuries while residing with respondent father and the younger children's mother testified that respondent father became angry and struck the boys to discipline them. The parenting coach who supervised visits testified that respondent father failed to put the children's needs ahead of his own, even during the short visitations that she supervised, and that respondent father frequently demonstrated anger and aggression during the visits. Respondent father's failure to address his anger and domestic violence issues at best subjects the children to emotional harm and may place them in danger of physical harm. Therefore, the trial court did not clearly err by concluding that the statutory ground for termination set forth in MCL 712A.19b(3)(j) was established by clear and convincing evidence.

The court also did not clearly err in its best interest determination. "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). Respondent father had not seen his children in a year. The parenting coach testified that there was no bond between respondent father and his younger children and that there was no foundation for one. The older son was afraid to see respondent father. Considering respondent father's substance abuse, domestic violence, anger issues and lack of a bond with the children, the trial court did not clearly err in finding that termination of his parental rights was in the best interests of the three children.

Lastly, respondent father argues that the trial court abused its discretion by allowing the foster care worker to testify as an expert witness. The foster care worker opined that respondent father had not benefited from services and that termination of his parental rights was in the children's best interests. We note first that the issue was not properly presented for appellate review because it was not included in the statement of questions presented. MCR 7.212(C)(5); *Grand Rapids Employees Indep Union v City of Grand Rapids*, 235 Mich App 398, 409-410; 597 NW2d 284 (1999). Nonetheless, we will address it. Respondent's counsel objected to qualification of the foster care worker as an expert witness. Therefore, this Court's review is for an abuse of discretion. *Wolford v Duncan*, 279 Mich App 631, 637; 760 NW2d 253 (2008). An abuse of discretion exists if the result is outside the range of principled outcomes. *Barnett v Hidalgo*, 478 Mich 151, 158; 732 NW2d 472 (2007).

The foster care worker had a bachelor's degree in family studies with a minor in substance abuse education and rehabilitation. She had ten weeks training by the Department of Human Services to do foster care and protective services and had a minimum of 14 hours annually of in-service training. She interned with the Department of Human Services in Isabella County, worked for Family Reunification Services with the Judson Center, and worked in Children's Protective Services in Oakland County before beginning to work in foster care in Livingston County in 2007. Petitioner initially sought to qualify her as an expert in child development, physical development, and psychosocial development as well as child and family risk assessment and reunification services, but changed her field of expertise to social work. When asked what reliable principles her testimony would be based upon, the foster care worker

indicated that she would be basing her testimony on DHS policies, the DHS structured decision-making forms, and past experience.

“Under MRE 702, it is generally not sufficient to simply point to an expert’s experience and background to argue that the expert’s opinion is reliable, and therefore admissible.” *Edry v Adelmann*, 486 Mich 634, 642; 786 NW2d 567 (2010). Rather, MRE 702 requires that the proponent of the evidence demonstrate that the opinion has some basis in fact, that the opinion is the result of reliable principles or methods, or that the proposed expert applied his methods to the facts of the case in a reliable manner as required by MRE 702. *Id.* at 641. Petitioner did not provide any information with regard to what the foster care worker’s testimony was based upon, other than personal observation and experience, and the “principles or methods” she used to form her opinion were DHS assessments. There was no evidence that she applied her methods reliably. The foster care worker was not a licensed social worker and does not hold a degree in social work. Therefore, we find that the trial court abused its discretion in qualifying the foster care worker as an expert in social work.

That said, however, error requiring reversal may not be predicated on an evidentiary ruling unless a substantial right was affected. MRE 103(a); *Craig v Oakwood Hosp*, 471 Mich 67, 76; 684 NW2d 296 (2004); *Shaw v Ecorse*, 283 Mich App 1, 27; 770 NW2d 31 (2009). Thus, reversal is required only if the error was prejudicial, *People v McLaughlin*, 258 Mich App 635, 650; 672 NW2d 860 (2003), and a trial court’s misidentification of the ground for the admission of evidence does not necessarily require reversal. *People v Vandelinder*, 192 Mich App 447, 454; 481 NW2d 787 (1992).

The trial court’s error in qualifying the foster care worker as an expert was not prejudicial and did not effect respondent’s substantial rights because the foster care worker’s testimony was admissible under MRE 701, which permits opinion testimony by lay witnesses that is “(a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness’ testimony or the determination of a fact in issue.” MRE 701. The foster care worker’s testimony was rationally based upon her observations of respondent father and his children and was helpful to the trier of fact. Further, the foster care worker’s opinion was not given undue weight; the trial court appeared to give at least equal weight to the opinion of the parenting coach who observed respondent father’s parenting time with his younger children.

We affirm.

/s/ Peter D. O’Connell  
/s/ Richard A. Bandstra  
/s/ Jane E. Markey