STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of LACEY WELTON, DEVON WELTON and DONIELLE WELTON, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MARY URIBE,

Respondent-Appellant,

and

ALAN G. WELTON,

Respondent.

UNPUBLISHED
February 26, 1999

No. 209241
Clinton Juvenile Court
LC No. 95-004708 NA

Before: Whitbeck, P.J., and Cavanagh and Griffin, JJ.

PER CURIAM.

Respondent Mary Uribe appeals as of right from a juvenile court order terminating her parental rights to her minor children, Lacey, Devon, and Donielle Welton, pursuant to MCL 712A.19b(3)(b)(ii); MSA 27.3178(598.19b)(3)(b)(ii) [failure to prevent sexual abuse], MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i) [conditions leading to adjudication continue to exist], MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g) [without regard to intent, parent has failed to provide proper care and custody], and MCL 712A.19b(3)(j); MSA 27.3178(598.19b)(3)(j) [reasonable likelihood of harm if child is returned]. We affirm.

I

Respondent first argues that the juvenile court erred in finding that the statutory grounds for termination were proven by clear and convincing evidence. In order to terminate parental rights, the

court must find that at least one of the statutory grounds for termination has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1993). Once a statutory ground is found to exist, "the court shall order termination of parental rights . . . unless the court finds that termination of parental rights to the child is clearly not in the child's best interests." MCL 712A.19b(5); MSA 27.3178(598.19b)(5). The burden is then on the respondent to come forward with evidence that termination is "clearly not" in the child's best interests. *In re Hamlet (After Remand)*, 225 Mich App 505, 515; 571 NW2d 750 (1997). This Court reviews the trial court's decision in its entirety for clear error. *Id*.

Even without considering VanEtten's alleged sexual abuse of Lacey, there was sufficient evidence of his physical abuse, and of respondent's failure to protect the children from physical abuse, as well as evidence of respondent's continued inability to remove herself from abusive relationships, to support the trial court's decision to terminate parental rights under § 19b(3)(b)(ii). Likewise, the trial court did not clearly err in finding that termination was warranted under §§ 19b(3)(g) and (j). Indeed, even respondent's own therapist could not say that respondent would be able to protect her children from harm within a reasonable time. We also agree that termination was proper under § 19b(3)(c)(i), because the evidence clearly and convincingly established that respondent was continuing to involve herself in abusive relationships, and it was not reasonably likely that any alteration in respondent's behavior would occur within a reasonable time.

II

Respondent next argues that she was denied her due process right to a fair hearing when the trial court relied on hearsay evidence and a transcript from a criminal trial. We disagree with respondent's claim that her due process rights were violated when the trial court did not permit the children to testify at the termination hearing. A court does not abuse its discretion in making particularized findings regarding the necessity of having a child victim testify outside the presence of her parents and their counsel. *In re Brock*, 442 Mich 101, 115; 499 NW2d 752 (1993).

We likewise reject respondent's argument that the trial court abused its discretion in admitting hearsay evidence from different sources. See *Hottman v Hottman*, 226 Mich App 171, 177; 572 NW2d 259 (1997). First, we conclude that Dr. Worthington's report and testimony were properly admitted pursuant to MRE 803(4). See *People v Meeboer (After Remand)*, 439 Mich 310, 322-325; 484 NW2d 621 (1992). Although respondent contends that other hearsay evidence was used to establish the factual basis for the finding of parental unfitness without the preliminary foundational hearing required by MCR 5.972(C)(2), respondent never requested a "foundational" hearing in the trial court. Therefore, this argument is not preserved for appellate review. See *In re Snyder*, 223 Mich App 85, 92; 566 NW2d 18 (1997). In any event, reversal would not be warranted because (1) there was extensive evidence supporting the trustworthiness of Lacey's testimony, and hence its admissibility, if it had been presented at a hearing, and (2) as already stated, Lacey's statements to Dr. Worthington were properly admitted under MRE 803(4). See *Snyder*, *supra* at 92-93.

With regard to respondent's other claims of evidentiary error, the children's letters and journals were largely cumulative of other evidence and, in any event, there is no indication that they were relied

upon by the trial court. The trial court should not have taken judicial notice of Lacey's testimony at VanEtten's criminal trial. See MRE 201(b). However, because this testimony was cumulative of other, properly admitted evidence, we conclude that the error was harmless.

III

Respondent also alleges that petitioner violated its own policies and failed to make a "good-faith effort" to reunite her family. We have examined each of respondent's claims and do not find that they warrant reversal of the trial court's decision. Under the circumstances, petitioner reasonably determined that respondent's progress was too slow to make reunification a realistic goal. Petitioner was not obligated to fund respondent's treatment with Dr. Hobbs, in lieu of other therapists who were under contract with petitioner. Cf. *Anderson v Director, Dep't of Social Services (After Remand)*, 101 Mich App 488, 496-497; 300 NW2d 921 (1980). Also, it was not unreasonable for petitioner to give more weight to the opinion of the children's therapist, rather than that of Dr. Hobbs, when the latter never met with the children. The RAVE program was not related to respondent's central psychological issues, including her failure to believe Lacey's allegations regarding VanEtten, and petitioner was not required to provide respondent with financial assistance to find her own apartment when the RAVE shelter was available. We also reject respondent's claim that petitioner improperly declined to provide visitation when visitation was prohibited by the court's order. Finally, respondent has not demonstrated that the alleged lack of reports, revisions to the parent-agency agreement, loss of notes, or turnover in caseworkers, had any effect on the outcome of the proceedings. Indeed, the trial court expressly considered these alleged deficiencies and determined that they did not overcome the evidence in support of termination. This determination is not clearly erroneous. See *Hamlet*, *supra*.

IV

Finally, respondent claims that the trial court should have ordered specific performance of the parent-agency agreement after she complied with its terms. We disagree. As this Court observed in *In re Zelzack*, 180 Mich App 117, 128; 446 NW2d 588 (1980), "[w]here the agency, in the proper determination of its statutorily mandated duties, discovers that it cannot fulfill a portion of an agreement, we will not permit doctrines of contract law to defeat the legislative purpose of protecting neglected children." *Id*. at 128. Even if specific performance were an available remedy, under the circumstances of this case, the court's failure to grant specific performance was not an abuse of discretion. See *Derosia v Austin*, 115 Mich App 647, 652; 321 NW2d 760 (1982).

Affirmed.

/s/ William C. Whitbeck
/s/ Mark J. Cavanagh
/s/ Richard Allen Griffin