STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of NICOLE WOODS, BRITTANY WALKER, COURTNEY HALL, and JADEN LYNN, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

KELLY L. LYNN,

Respondent-Appellant.

UNPUBLISHED
November 16, 2006

No. 270106
Genesee Circuit Court
Family Division
LC No. 03-117453-NA

Before: Fort Hood, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's orders terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

Respondent first argues that the referee acted outside of the scope of her authority by making the substantive decision in this case as evidenced by the lack of detailed facts and a signature in the referee's report in violation of MCL 712A.10(1)(c). We disagree. We review issues of statutory interpretation de novo. *In re AMAC*, 269 Mich App 533, 536; 711 NW2d 426 (2006). The referee in this case apparently prepared a written summary of the testimony taken during the termination proceedings.[1] That report was statutorily deficient because it was unsigned and did not contain a recommendation for disposition. See MCL 712A.10(1)(c), which defines the scope of a referee's authority and requires a referee to "make a written signed report to the judge of probate containing a summary of the testimony taken and a recommendation for the court's findings and disposition." Despite these deficiencies, reversal is not warranted as they did not constitute a "significant deviation" from the statutory requirements. *In re AMB*, 248 Mich App 144, 216-220; 640 NW2d 262 (2001). Although not on her report, the referee's recommendation and signature were contained on the termination order itself. Further, although

[1] For purposes of this argument, we assumed, as did respondent, that the summary attached to the termination order, which was unsigned and undated, is, in fact, the referee's report.

brief, the report was sufficient to apprise the trial judge of the pertinent issues in the case, namely respondent's mental health and inability to care for the children. Most significantly, it was simply not apparent that someone other than the trial judge made the substantive legal decision in this case. *In re AMB, supra* at 217-220. To the contrary, the referee made detailed findings on the record, the judge entered his order on April 19, 2006, after the referee's April 5, 2006, recommendation, it appeared that the judge personally signed the termination order, and the referee indicated on the record that she was going to *recommend* termination to the trial judge. Contrary to respondent's argument, under these circumstances, there is no indication that the referee infringed on the trial judge's role as the decision-maker in this case.

Respondent next argues that that the referee's failure to inform her of her right to file a request for review of the referee's recommendations, as required under MCR 3.913(C), violated her right to procedural due process. We disagree. "Constitutional questions and issues of statutory interpretation, as well as family division procedure under the court rules, are reviewed de novo." *In re AMAC, supra* at 536.

"There is no question that parents have a due process liberty interest in caring for their children and that child protective proceedings affect that liberty interest." *In re CR*, 250 Mich App 185, 204; 646 NW2d 506 (2002). In this case, however, any risk of an erroneous deprivation of respondent's liberty interest in caring for her children by the referee's apparent failure to inform her of her right to request a review of the referee's recommendations was minimal considering that the evidence did not present a close case, and thus a review of the referee's findings and recommendations would likely not have affected the outcome of the proceedings.[2] See *In re Brock*, 442 Mich 101, 111; 499 NW2d 752 (1993); *In re MU*, 264 Mich App 270, 281; 690 NW2d 495 (2004). We also note that respondent, through her testimony, was given a meaningful opportunity to be heard at the termination proceedings as due process requires. *Reed v Reed*, 265 Mich App 131, 159; 693 NW2d 825 (2005). The court rules also afforded respondent with other forms of review, such as moving for reconsideration of the termination order under MCR 3.992 and/or appealing the order to this Court under MCR 3.993, thereby minimizing any prejudice that may have resulted from the referee's failure to advise her of her right to request review of the recommendations. Under these circumstances, we conclude that that respondent's right to procedural due process was not violated.

Respondent finally argues that petitioner failed to establish by clear and convincing evidence a statutory ground for termination of her parental rights. We disagree. In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993), citing *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). "Once a ground for termination is established, the court must issue an order

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[2]Under MCR 3.991(E), the judge must enter an order adopting the referee's recommendation unless he would have reached a different result had he or she heard the case; or the referee committed a clear error of law, which likely would have affected the outcome, or cannot otherwise be considered harmless.

terminating parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests." *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000); MCL 712A.19b(5). We review the trial court's determination for clear error. *Trejo, supra* at 356-357. We find no clear error in the trial court's determination that the evidence supported termination of respondent's parental rights under subsections (c)(i), (g) and (j). *Trejo, supra* at 356-357.

At the time of the adjudication, respondent was clearly unable to provide proper care or custody for the children due to her mental illness and resultant instability, which remained the largest barrier preventing reunification during the proceedings. Despite her progress towards addressing her mental illness, two years since the adjudication, respondent remained in a locked mental health treatment facility where, according to a treating psychologist, she had made only limited progress in recognizing her need for treatment and continued to display aggressive behavior that was "holding her back" from progressing to a discharge. Notably, only a few months before the termination trial, a probate court denied respondent's petition for discharge from mental health treatment. Further, testimony by the treating psychologist indicated that respondent could not be discharged for at least another six months, during which time she needed to demonstrate ongoing mental stability. Also concerning was that, before her mental illness manifested, respondent had never independently cared for or supported the children and relied on her grandmother for housing and significant assistance in their care.

We conclude that the foregoing evidence clearly established that respondent had not made enough progress by the time of the termination trial in attaining the requisite mental stability so that she could care for her children, the condition that led to their adjudication. MCL 712A.19b(3)(c)(i). In light of the caseworker's concern for the children's need for permanency, respondent's continued need for mental health treatment, and the over two-year period that the children had already been in care, we also conclude that the evidence clearly established that respondent would not likely be able to attain the requisite mental stability to enable her to provide proper care or custody for the children within a reasonable time.[3] MCL 712A.19b(3)(c)(i) and (g). Further, considering the severity of respondent's past conduct when her mental illness manifested, which clearly placed the children at a risk of harm, coupled with her past inability to care for the children independently, the evidence also clearly supported a determination that it was reasonably likely, based on her conduct or capacity, that the children would be harmed if returned to respondent's home. MCL 712A.19b(3)(j). Accordingly, the trial court did not clearly err in finding grounds for terminating respondent's parental rights. *Trejo, supra* at 356-357. We likewise find no clear error in the trial court's determination that the evidence failed to establish that termination would not be in the children's best interests. *Id*.

[3]In considering how much longer the children could wait to reunify with respondent, it is notable that two of respondent's children have special needs in that one was autistic and another had developmental delays. *In re Dahms*, 187 Mich App 644, 647-648; 468 NW2d 315 (1991) (a "reasonable time" should consider "how long it would take respondent to improve…[and] also how long her…children could wait for this improvement.")

Affirmed.

/s/ Karen M. Fort Hood
/s/ Christopher M. Murray
/s/ Pat M. Donofrio