STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of NYOKA PAULK, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DELORES WHITMORE,

Respondent-Appellant.

and

CRAIG WHITMORE,

Respondent.

UNPUBLISHED
June 10, 2008

No. 279806
Washtenaw Circuit Court
Family Division
LC No. 2006-000057-NA

In the Matter of SHANE STRICKLAND, a/k/a SHANE PAULK, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DELORES WHITMORE,

Respondent-Appellant.

and

CRAIG WHITMORE, GENE PAULK, and ROY ANDREWS

Respondents.

No. 279807
Washtenaw Circuit Court
Family Division
LC No. 2006-000058-NA

Before: Wilder, P.J., and Murphy and Meter, JJ.

PER CURIAM.

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

Respondent first claims on appeal that the trial court erred in terminating her parental rights because after 182 days had lapsed following the initial disposition, the condition that led to adjudication did not exist. We disagree.

We review for clear error the lower court's factual findings and determinations regarding statutory grounds for termination. *In re TM (After Remand)*, 245 Mich App 181, 194; 628 NW2d 570 (2001). We review de novo questions of statutory interpretation. *In re SR*, 229 Mich App 310, 314; 581 NW2d 291 (1998).

MCL 712A.19b(3) provides, in relevant part:

> (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.

Well-established principles guide this Court's statutory construction efforts. *Willett v Waterford Charter Twp*, 271 Mich App 38, 48; 718 NW2d 386 (2006). We begin our analysis by consulting the specific statutory language at issue. *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 458; 733 NW2d 766 (2006). This Court gives effect to the Legislature's intent as expressed in the statute's terms, giving the words of the statute their plain and ordinary meaning. *McManamon v Redford Charter Twp*, 273 Mich App 131, 135; 730 NW2d 757 (2006). When the language poses no ambiguity, this Court need not look beyond the statute or construe the statute, but need only enforce the statute as written. *Provider Creditors Comm v United American Health Care Corp*, 275 Mich App 90, 95; 738 NW2d 770 (2007). We do not interpret a statute in a way that renders any statutory language surplusage. *Pohutski v City of Allen Park*, 465 Mich 675, 684; 641 NW2d 219 (2002).

Respondent argues that within 182 days of the initial disposition, she "demonstrated at least the capacity to comply or substantially comply with the parent agency agreement and court ordered treatment." However, the trial court concluded that respondent failed to substantially comply with the terms of her parent-agency agreement. During the pendency of the case, respondent relapsed on drugs and alcohol, and ceased attending substance abuse treatment and therapy for mental health issues. Respondent eventually entered a dual-diagnosis program for mental health and substance abuse, but in light of her history, we cannot conclude that the trial court clearly erred by finding that it was unlikely that she would have been able to remain sober and mentally stable, and to refrain from exposing the children to drugs and domestic violence. Therefore, the trial court did not clearly err in finding clear and convincing evidence to terminate respondent's parental rights under subsection (3)(c)(i). *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000); *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999).

Respondent next argues that the trial court erred in terminating her parental rights under subsection (3)(g), for failure to provide proper care or custody. We disagree.

MCL 712A.19b(3)(g) requires that the court find, by clear and convincing evidence, that "[t]he parent, without regard to intent, fail[ed] to provide proper care or 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."

Respondent went to Florida for several months. During her time in Florida, respondent failed to visit the children. Although she was dealing with her mother's illness, respondent's absence caused a weakening of the bond between her and her children. Respondent did not see the children from September 2006 till the termination hearing in June 2007. The trial court did not clearly err in finding clear and convincing evidence to satisfy the requirements of subsection (3)(g).

Respondent also contends that the trial court erred in terminating her parental rights under subsection (3)(j). Again, we disagree.

MCL 712A.19b(3)(j) requires that the court find, by clear and convincing evidence, that "[t]here 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." Respondent's repeated substance abuse relapses, and her history of domestic violence and instability, unmistakably suggest that the children would be at risk of harm if returned her care. Thus, subsection (3)(j) was satisfied.

We conclude that, although clear and convincing evidence of only one statutory ground is necessary to terminate parental rights, termination of respondent's parental rights was warranted under subsection (3)(c)(i), (3)(g), and (3)(j). *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

Respondent argues that termination of her parental rights was "clearly not" in the children's best interests. We disagree.

MCL 712A.19b(5) provides: "If the court finds that there are grounds for termination of parental rights, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made, unless the court finds that termination of parental rights to the child is clearly not in the child's best interests." See *Trejo, supra* at 353, 356-357.

Respondent clearly loved her children and had the capacity to be a good mother, when she could turn her attention to parenting and conquering her issues with mental health and substance abuse. She had a bond with at least Nyoka. However, the children are very young and need a permanent, safe, and stable home, which respondent cannot provide. While these children were returned to their father's home in Florida, and respondent would not have had primary custody, we still cannot find clear error in the trial court's determination that termination was necessary in order to give the father the legal tools to keep respondent away, should this prove necessary. Termination of respondent's parental rights was not clearly contrary to the children's

best interests, considering respondent's mental and substance abuse problems, frequent absences, and destructive behavior patterns. Compare *Trejo, supra* at 353, 356-357.

Respondent last argues that she received ineffective assistance of counsel. We disagree.

A claim of ineffective assistance of counsel presents a mixed question of fact and constitutional law. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). We review factual findings for clear error, but we review de novo questions of constitutional law. *Id.*

To establish a claim of ineffective assistance of counsel, the claimant must show that counsel's performance was deficient, and that there is a reasonable probability that, but for the deficiency, the factfinder would have reached a different result. *People v Pickens*, 446 Mich 298, 309; 521 NW2d 797 (1994). Counsel are given wide berth in matters of trial strategy, because many calculated risks may be necessary in order to win difficult cases. See *id.* at 325. There is accordingly a strong presumption of effective assistance of counsel. *People v Matuszak*, 263 Mich App 42, 58; 687 NW2d 342 (2004). We will not substitute our judgment for that of counsel on matters of trial strategy, nor will we use the benefit of hindsight when assessing counsel's competence. *People v Rockey*, 237 Mich App 74, 76-77; 601 NW2d 887 (1999).

On the record before us, respondent has not shown that trial counsel's performance was defective, that the defect deprived her of a fair trial, *People v Hoag*, 460 Mich 1, 5-6; 594 NW2d 57 (1999), or that serious errors occurred, without which she would have enjoyed a reasonable probability of a different result, *LeBlanc, supra* at 578; see also *Strickland v Washington*, 466 US 668, 687; 104 S Ct 2052; 80 L Ed 2d 674 (1984). While respondent moved for a new trial on this ground, the motion was correctly denied for lack of jurisdiction, MCR 7.203(A), since respondent had already filed a claim of appeal in this Court, and the trial court was without authority to enter any order altering the result. MCR 7.208(A). Because respondent has not shown that trial counsel's alleged errors were prejudicial, or not sound trial strategy, trial counsel's performance overall was not constitutionally defective, and we find no reversible error.

Affirmed.

/s/ Kurtis T. Wilder
/s/ William B. Murphy
/s/ Patrick M. Meter