

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of ALEXIS PEAKE and AUSTIN  
JACOB BOVEE, Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

STEPHANIE BOVEE-PEAKE,

Respondent-Appellant,

and

BENJAMIN FANZOTT and MATTHEW  
PEAKE,

Respondents.

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UNPUBLISHED

June 2, 2009

No. 287898

Macomb Circuit Court

Family Division

LC No. 2007-000356-NA

Before: Bandstra, P.J., and Owens and Donofrio, JJ.

PER CURIAM.

Respondent Stephanie Bovee-Peake appeals as of right the trial court order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

The trial court did not clearly err when it concluded that petitioner established, by clear and convincing evidence, one or more statutory grounds for termination of respondent's parental rights. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). In February 2007, respondent brought her son Austin to live with his maternal grandmother because respondent's marriage was abusive. Three months later, respondent's daughter Alexis was born with codeine and opiates in her system. Alexis was removed from respondent's care shortly after she was born and placed with her maternal grandfather. Thus, the conditions that led to adjudication were domestic violence, respondent's unstable housing and employment, and her prescription drug abuse. At the time of the termination, although respondent had been offered services, these issues continued to exist.

Respondent clearly had not adequately overcome her substance abuse issues. Respondent failed to consistently submit to random drug screens. Further, there was insufficient documentation substantiating the legitimacy of her prescription drug use. Respondent similarly failed to adequately address her domestic violence issues. Respondent had a history of involvement with abusive men. As part of her treatment plan, respondent attended domestic violence counseling at Turning Point. Respondent testified that continued counseling at Turning Point was deemed unnecessary. However, the most significant indication that respondent had not adequately addressed this issue was her continued involvement with her abusive husband, respondent Matthew Peake. Indeed, while in the midst of domestic violence counseling, respondent went to Lapeer County to see Peake. Both she and Peake had been drinking. During the visit, a physical altercation ensued, which resulted in respondent being choked, bruised, and battered. To further compound the issue, respondent initially lied during her testimony when she claimed that she went to see Peake at the request of a police officer who was investigating prescription fraud charges against Peake. Clearly, respondent had not adequately addressed the issue of domestic violence in her life.

At the time the children came into care, respondent was not able to provide the children with a stable and nurturing living environment. Indeed, this was a long-standing problem. Respondent had lived at 17 addresses since six-year-old Austin's birth. This pattern of housing instability continued throughout the entire case. At the time of the termination hearing, respondent lacked suitable housing. During the 15 months that the children were in care, respondent lived with friends. She did not pay rent and only occasionally contributed to the expenses. Further, respondent could not obtain and maintain a sufficient source of income. She had several part-time jobs with none of them lasting more than a few weeks or a few months. At the time of the termination hearing, respondent could barely take care of herself. Clearly, she was in no position to take on the added responsibility of two children.

In addition to respondent's decision to maintain contact with a known abuser, respondent made other poor choices in her life. Respondent had two DUI offenses in the last couple of years. As a result, her license was revoked. Yet, she continued to operate a motor vehicle with no valid operator's license. She was caught on two occasions and, as a result, she incurred fines that she did not pay. Then, to further compound the situation, a warrant was issued for her arrest for nonpayment, and she was arrested after one of the court hearings. Respondent's pattern of poor decision-making further supported the court's finding that respondent was unable to conduct herself in a manner that would warrant reunification with her children.

There was ample evidence from which the court could conclude that the conditions that caused the children to come into care continued to exist at the time of the termination hearing. This same evidence supported a finding that respondent failed to provide proper care and custody of her children and that the children would be harmed if returned to her care. The trial court did not err when it further concluded that the conditions were unlikely to change within a reasonable time in light of the children's ages. Respondent herself admitted that she would need at least six months to a year before she was stable enough to care for her children. The children had already been in care for 15 months. The trial court did not err by concluding that, considering the children's ages, it would be unreasonable for them to wait another year before they could expect

stability and permanency in their lives. We find that the statutory grounds for termination of respondent's parental rights were established by clear and convincing evidence.

Respondent next contends that her due process rights were violated when petitioner called the replacement caseworker, Constance Leonard, and not the original caseworker, Theresa Cipponeri, to testify at the termination proceedings. Respondent then argues that the trial court erred when it failed to allow an adjournment of trial to procure Cipponeri's testimony. Neither argument is persuasive.

Respondent did not object to Cipponeri's absence from the proceedings, nor did she request an adjournment to procure her testimony. Therefore, this Court reviews this unpreserved issue for plain error affecting respondent's substantial rights. *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999).

First, it was not improper for the petitioner to rely upon the testimony of Leonard and on Cipponeri's reports, rather than Cipponeri's testimony, to establish its case. Hearsay is permissible under the circumstances, and the court can rely on an oral or written report "to the extent of its probative value." MCR 3.977(G)(2). The parties must be allowed an opportunity to controvert an oral or written report "and shall be allowed to cross-examine individuals who made the reports when those individuals are reasonably available." *Id.* In this case, respondent was given the opportunity to controvert written reports. Leonard was examined extensively regarding her knowledge of the case, what she had done to prepare, and whether the case had been properly documented. Because Cipponeri was hospitalized at the time, she was not "reasonably available." Plain error did not occur where petitioner called the new foster care worker rather than Cipponeri, the original worker.

Similarly, there was no plain error related to the lack of an adjournment to secure Cipponeri's testimony. As noted, respondent did not object to Leonard's testimony or Cipponeri's absence. At no time did counsel for respondent request an adjournment to procure Cipponeri's testimony. Indeed, it appears that counsel may have strategically decided not to seek that testimony. Respondent had indicated on several occasions that she provided Cipponeri with requested documentation, that she had not received referrals from Cipponeri, and that Cipponeri had not returned phone calls. Based upon Cipponeri's statement at previous dispositional hearings and her written reports, it is probable that Cipponeri's testimony would have directly contradicted respondent's claims. Considering respondent's credibility issues, respondent's counsel may have decided that it was better for respondent that Cipponeri did not testify. We conclude that respondent may not assign as error on appeal something that she, through her attorney, deemed proper in the court below. *Marshall Lasser, PC v George*, 252 Mich App 104, 109; 651 NW2d 158 (2002).

Finally, respondent takes issue with the trial court's conclusion that termination of her parental rights was in the children's best interests. MCL 712A.19b(5). The evidence established that the children would likely be harmed if returned to respondent's care because respondent had not achieved any stability in her life and had not adequately addressed issues of domestic violence and substance abuse. Moreover, the bond between respondent and her children was tenuous. Alexis was never in respondent's care, and respondent was inconsistent in visiting Austin when she had the opportunity to do so. Austin's maternal grandmother, respondent's

mother, testified that Austin did not ask for respondent and did not appear particularly unsettled when he did not see his mother. Under these circumstances, the trial court did not err when it concluded that termination of parental rights was in the children's best interests. Stability and permanency were required in order to facilitate their continued growth and development.

We affirm.

/s/ Richard A. Bandstra

/s/ Donald S. Owens

/s/ Pat M. Donofrio