

STATE OF MICHIGAN  
COURT OF APPEALS

---

UNPUBLISHED  
February 17, 2011

In the Matter of D. G. HARMON-DARNELL,  
Minor.

No. 297503  
Wayne Circuit Court  
Family Division  
LC No. 08-475662

---

Before: CAVANAGH, P.J., and STEPHENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent appeals as of right an order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i) and (j). We affirm.

This Court reviews the trial court's finding that statutory grounds for termination of parental rights have been established and its best interests determination for clear error. MCR 3.977(K); *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). "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).

The trial court did not clearly err when it found the evidence clear and convincing to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i) and (j). The issues that led to adjudication included mental health and parenting issues. Respondent was in a mental health crisis and called the police to report injury to her daughter and claimed that she wanted to hurt her daughter. She had pushed the minor child to the floor and slammed a door hitting the one-year-old child in the head. It had subsequently been determined that respondent had issues with marijuana use.

The termination hearing was held two years later. At that time, respondent had made some progress on her treatment plan. She had a home and was receiving SSI, with mental illness as her disability. She had completed two parenting classes and a substance abuse treatment program. Respondent, however, failed to follow through on some important issues. Respondent's visits with the minor child were not without incident. Her visitation was suspended after respondent squeezed the minor child's hand so hard that the minor child started screaming and respondent took quite some time to release the minor child's hand. Respondent did not follow the rules during visitation, refusing to stay in the visitation room and arguing with the workers. She testified at the hearing that she said she was going to hurt the minor child when

she called the police two years earlier because she was in a mental health crisis and could not get the help she needed unless it was a life and death situation. She characterized her statements of wanting to hurt the minor child and having thoughts of snapping her neck as “senseless.”

Respondent did not provide any evidence that she was compliant with her medication or consistent with mental health treatment through therapy although she claimed to have therapy twice a week until approximately a month before the termination hearing. She was not consistent with the required substance abuse drops and had not complied for the five-month period before the hearing. Respondent’s reason for not complying with drops was that she lost her state ID and did not have enough money to obtain another. Respondent argues on appeal that her missed screens should not be counted as positives, yet it was made clear to respondent what was expected and how missed screens were treated. The trial court made sure that respondent was aware of the process necessary for her to drug test on several occasions during the court proceedings. During the time the minor child was in temporary care, respondent had tested positive for THC on two occasions, tested positive for propoxyphene on two occasions, tested positive for opiates on one occasion, and provided a watered-down sample on one occasion. Respondent testified that she had provided her caseworker with a prescription or letter from her dentist that explained her use of Darvon for tooth pain, yet her caseworker had no recollection of that. Respondent also testified that she kept the pill bottles in the event she would need to prove that she had a prescription but did not bring them with her to court.

The trial court also did not clearly err in its best interests determination. Respondent was unable to provide the minor child with a stable, safe, consistent, and permanent environment because of her failure to address her substance abuse and mental health issues.

Respondent also argues that she was denied the effective assistance of counsel because her attorney did not object to inadmissible hearsay evidence regarding respondent’s drug screens and failed to produce evidence regarding respondent’s mental health status. The issue was not preserved because respondent did not move for a new termination hearing or an evidentiary hearing on the issue of ineffective trial counsel. See *People v Sabin (On Second Remand)*, 242 Mich App 656, 658-659; 620 NW2d 19 (2000). Our review is therefore limited to the record. *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000). To establish a claim of ineffective assistance of counsel, respondent must show that counsel’s performance fell below an objective standard of reasonableness and that she was prejudiced by counsel’s deficient performance. *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001). Even if respondent’s trial counsel’s assistance fell below an objective standard of reasonableness, respondent must show that there was a reasonable probability that, if not for the alleged error, the result of the proceedings would have been different. *In re CR*, 250 Mich App 185, 198; 646 NW2d 506 (2002).

Respondent argues that she was denied the effective assistance of counsel because her attorney failed to call expert witnesses to confirm her mental health treatment. Respondent claimed to be attending therapy twice a week but did not provide any evidence of this. On appeal, she does not provide affidavits from therapists regarding her attendance at therapy or that they would have testified in her favor. Even if her attorney had presented evidence regarding respondent’s participation in therapy, we find that there was no reasonable probability that the result of the proceedings would have been different. There was testimony regarding the events that led to the child coming into care, problems that arose during visitation, respondent’s anger

issues, her failure to provide weekly drug screens ordered by the trial court, and her positive drug screens. Further, respondent's argument regarding her trial attorney's failure to object to the hearsay testimony of the caseworker about respondent's drug screens is without merit. The trial court may consider all relevant and material evidence, including hearsay, at the dispositional phase of a termination proceeding. See MCR 3.973(E) and 3.977(H)(2). Thus, it would have been futile for respondent's counsel to object to hearsay testimony in this instance.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Cynthia Diane Stephens  
/s/ Amy Ronayne Krause