

STATE OF MICHIGAN
COURT OF APPEALS

In re J J CHANDLER, Minor.

UNPUBLISHED

June 17, 2021

No. 355311

St. Joseph Circuit Court

Family Division

LC No. 2019-000746-NA

Before: BOONSTRA, P.J., and MARKEY and SERVITTO, JJ.

PER CURIAM.

Respondent-mother appeals as of right the trial court’s order terminating her parental rights to the minor child. We affirm.

Respondent¹ previously had her parental rights to three of her children terminated due to issues concerning domestic violence, housing, and instability with income. JC was born on May 10, 2019, with a heart condition and positive for THC and, due to respondent’s prior terminations, Children’s Protective Services (CPS) was involved in this matter from JC’s birth. JC required inpatient intensive care for his condition until September 10, 2019, and underwent several surgeries while in the hospital. JC would require significant special care upon his release from the hospital and CPS conducted an investigation to determine if the issues leading to the prior terminations had been resolved and if respondent was able to properly care for JC.

Shortly after JC’s birth, respondent did not report any income and refused to let a caseworker in her home or submit to a drug screen. Respondent also failed to appear regularly at the hospital to bond with JC and learn his care, despite being provided with gas cards, hotel vouchers, and other assistance. Although JC was discharged home to respondent, the hospital expressed concern about the care she was able to provide JC. In addition, respondent was behind in her rent and was facing eviction. JC was removed from respondent and placed with the

¹ Father consented to the termination of his parental rights and is not part of this appeal. Thus “respondent” refers to mother only.

Department of Human Services (DHS) for care and supervision on September 12, 2019, after a hearing.

At a pretrial hearing on December 19, 2019, respondent entered a no contest plea to an amended petition containing an added allegation that respondent tested positive for methamphetamine on October 24, 2019. The trial court ultimately terminated respondent's parental rights to JC pursuant to MCL 712A.19b(3)(g) and (j).

On appeal, respondent does not contest whether there were sufficient statutory grounds to terminate her parental rights or that termination was in the child's best interests.² Instead, respondent challenges the factual sufficiency of her no-contest plea to the admission of drug-test results that formed an allegation added to the amended petition.

In relevant part, MCL 712A.2(b) provides jurisdiction over proceedings involving the abuse or neglect of juveniles:

Jurisdiction in proceedings concerning a juvenile under 18 years of age found within the county:

(1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. . . .

* * *

(2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in. . . . [MCL 712A.2(b).]

Respondent challenges the trial court's exercise of jurisdiction over JC because, "[o]n the date of the no contest plea and on the date of the drug test in question, the minor child was not in

² Because respondent does not challenge the trial court's determination that petitioner properly established statutory grounds for termination, we may assume that the trial court did not clearly err in finding that the statutory grounds existed. *In re JS and SM*, 231 Mich App 92, 98-99; 585 NW2d 326 (1998), overruled in part on other grounds by *In re Trejo Minors*, 462 Mich 341, 353; 612 NW2d 407 (2000). Nevertheless, we have reviewed the record and find no clear error regarding the statutory grounds for termination. See *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). We also conclude, after reviewing the record, that the trial court could have found by a preponderance of the evidence that termination was in the child's best interests and that it properly did so.

the care or custody of the Appellant Mother.” Respondent thus argues that her positive drug test had no negative impact upon JC. We disagree.

First, respondent provides no legal support for her argument. It is not sufficient for a party “simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.” *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998). Respondent has thus abandoned this issue on appeal.

Second, were we to consider respondent’s argument, we note that at the time of respondent’s positive drug test, the trial court had *already* exercised jurisdiction and removed JC from respondent’s care. The trial court signed the ex parte order removing JC, and took jurisdiction over him on September 12, 2019. Respondent’s no-contest plea, which occurred in December 2019, was merely to the admission of the drug test results that led to an additional allegation in the petition.

Regardless, the trial court properly exercised jurisdiction over JC. Jurisdiction was proper under MCL 712A.2(b)(1) because, as the trial court found, respondent failed to follow through with proper and necessary support for JC’s medical needs. Hospital staff related to CPS that respondent was not staying bedside when asked to do so and had little bond with JC. JC’s medical needs were undisputedly severe and a missed feeding or a missed medication administration could have been life threatening. Testimony concerning JC’s needs and respondent’s lack of follow through at the hospital thus allowed the trial court to find that probable cause existed to find that respondent would fail to provide necessary medical care for JC.

Respondent also argues that defense counsel provided ineffective assistance. Because respondent did not move for a new trial or an evidentiary hearing, this issue is unpreserved. See *People v Sabin (On Second Remand)*, 242 Mich App 656, 658-659; 620 NW2d 19 (2000). Our review is thus limited to errors apparent on the record. *Id.* at 659.

In analyzing claims of ineffective assistance of counsel at termination hearings, this Court applies by analogy the principles of ineffective assistance of counsel as they have developed in the criminal law context. *In re CR*, 250 Mich App 185, 197–198; 646 NW2d 506 (2001), overruled on other grounds by *In re Sanders*, 495 Mich 394; 852 NW2d 524 (2014). To establish a claim of ineffective assistance of counsel, a respondent must show that counsel’s performance fell below an objective standard of reasonableness and, but for counsel’s error, there is a reasonable probability that the result of the proceedings would have been different, thus depriving respondent of a fair trial. *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994).

The record does not plainly demonstrate that any of the alleged deficiencies in defense counsel’s performance fell below an objective standard of reasonableness. Defense counsel asked appropriate questions on direct and cross-examination of witnesses, attempted to emphasize the positive factors in respondent’s favor, and otherwise advocated on respondent’s behalf. Moreover, respondent fails to demonstrate that, even if defense counsel’s performance were deficient, there was a reasonable probability that the outcome of the proceedings would have been different. The record supports that the trial court did not clearly err by finding that clear and convincing evidence

established the statutory grounds to terminate her parental rights³ and that the trial court did not clearly err by finding that a preponderance of the evidence established that termination was in the child's best interests.

Affirmed.

/s/ Mark T. Boonstra

/s/ Jane E. Markey

/s/ Deborah A. Servitto

³ The testimony established, among other things, that respondent failed to attend any visitation with JC after December 2019, failed to submit to required drug screens and generally failed to follow through with any of the services required of her.