STATE OF MICHIGAN

COURT OF APPEALS

	UNPUBLISHED December 15, 2011
In the Matter of BRADLEY/SANDERS, Minors.	No. 304164 Wayne Circuit Court Family Division LC No. 09-490849
In the Matter of BRADLEY/SANDERS, Minors.	No. 304173 Wayne Circuit Court Family Division LC No. 09-490849

Before: MURPHY, C.J., and JANSEN and OWENS, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right the trial court's order terminating their parental rights pursuant to MCL 712A.19b(3)(c)(*i*), (c)(*ii*), (g), and (j). We affirm.

Respondent-mother contends that the trial court clearly erred in terminating her parental rights to the minor children because the conditions that led to adjudication no longer existed at the time of the supplemental petition, she had proven herself to be a "fit parent," and there was no evidence that the children would be harmed if returned to her care. We disagree.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination was established by clear and convincing evidence and that termination is in the best interests of the children. MCL 712A.19b(3) and (5); *In re Vandalen Minors*, __ Mich App __; __ NW2d __, issued June 16, 2011 (Docket Nos. 301126 and 301127), slip op at 9. This Court reviews for clear error the factual findings made by the trial court as well as the court's ultimate determination that a statutory ground for termination was proved by clear and convincing evidence. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010); *In re Trejo Minors*, 462 Mich 341, 355-357; 612 NW2d 407 (2000).

All of the allegations forming the basis for the initial petition revolved around respondent-mother's alcohol abuse. Only for one brief period during the pendency of the case did she show sobriety, and that occurred only after a court-ordered detox program. Respondent-

mother twice appeared in court intoxicated, she tested positive for marijuana use on two court hearing dates, and she failed to appear in court on several other occasions. One of the children suffered from fetal alcohol exposure. Respondent-mother never pursued any aspect of her treatment plan, with the exception of participating in a psychological evaluation and three drug screens, two of which she failed. She did not participate in any parenting classes, substance abuse classes, or any individual or group therapy beyond the intake interviews. Her last visit with the children was six months before the termination hearing, and she never inquired about the children's well being after visitation was suspended. Respondent-mother did not even show up for the termination hearing. There simply was no evidence that respondent-mother had become a "fit parent" as she claims on appeal.

Our review of the record convinces us that there was overwhelming clear and convincing evidence to support the trial court's finding that the statutory grounds had been established. Moreover, respondent-mother's near complete lack of interest in her own sobriety or in planning for her children confirms that the trial court did not clearly err in finding that termination of her parental rights was in the best interests of the children.

Respondent-father contends that he was denied the effective assistance of counsel. The right to due process indirectly guarantees the assistance of counsel in child protective proceedings, and the principles of effective assistance of counsel as developed in criminal law apply by analogy in parental termination cases. *In re CR*, 250 Mich App 185, 197-198; 646 NW2d 506 (2002). To prevail on his claim of ineffective assistance of counsel, respondent-father must show that counsel's performance was deficient, i.e., it fell below an objective standard of reasonableness, and that the representation prejudiced him such that he was denied a fair trial. *Id.* at 198. With respect to prejudice, respondent-father must establish that there is a reasonable probability that, but for counsel's errors, the result of the proceedings would have been different. *Id.*

Respondent-father claims that he was denied the effective assistance of counsel when his trial counsel failed to object to leading questions. Our review of the record reveals that the challenged questions occurred during the cross-examination of a witness for the petitioner by the attorney for the minor children. The questioning pertained to both respondents' failure to participate in services, which is evidence that was certainly admissible, so any sustained objection would have simply led to a rephrasing of the leading questions and the introduction of the evidence. Respondent-father fails to cite any authority in support of the position that leading questions could not be used on cross-examination under the circumstances, and we note that MRE 611(d)(2) provides that "[o]rdinarily leading questions should be permitted on cross-examination." To the extent that the Michigan Rules of Evidence do not apply under MCR 3.977(H)(2), said court rule provides that the parties must be allowed to cross-examine individuals who prepare reports submitted into evidence, and there is no indication that leading questions are barred. In sum, counsel's performance was not deficient, nor has prejudice been shown.

Next, respondent-father claims that he was denied the effective assistance of counsel when his trial counsel failed to vigorously argue against the termination of his parental rights in closing argument. Assuming deficient performance, reversal is unwarranted. The record is replete with evidence that overwhelmingly indicates that, regardless of what counsel argued in

closing, the trial court was going to terminate respondent-father's parental rights. Moreover, respondent-father fails to articulate any argument that could have been proffered that might have led to a different result. Having carefully reviewed the record, we are convinced that there is no reasonable probability that the result of the proceedings would have been different even had counsel argued more vehemently on behalf of respondent-father, and thus the requisite showing of prejudice has not been satisfied.

Finally, respondent-father contends that it was contrary to the best interests of his daughter to terminate his parental rights. We disagree. Respondent-father claims that termination was improper because there was no investigation of the home of the maternal great-grandmother or of the home of the paternal grandparents of the two boys. Respondent-father's reliance on MCL 712A.19a(6)(a) is misplaced, where the statute simply provides that a court is not required to order petitioner to commence termination proceedings where the "child is being cared for by relatives." This provision does not preclude the court from finding, in a situation where relatives are available to provide care, that termination is in a child's best interests. Respondent-father's reliance on *In re Mason*, 486 Mich 142, is equally unavailing, given that the Supreme Court merely pointed out that "Michigan traditionally permits a parent to achieve proper care and custody through placement with a relative," such as where the parent is incarcerated, ill, unemployed, or facing a similar situation. *Id.* at 161 n 11. We are addressing the child's best interests, and "[i]f it is in the best interests of the child, the . . . court may properly terminate parental rights instead of placing the child with relatives." *In re IEM*, 233 Mich App 438, 453; 592 NW2d 751 (1999). Here, there was evidence that respondent-father abused alcohol, showing up to one hearing intoxicated, that he missed many visitations, that he showed no interest or concern when visitations were suspended, that he failed to comply with his treatment plan, that he missed numerous drug screens, that he did not bother to attend the termination trial, and that the children were doing well and thriving in foster care. On this record, we conclude that the trial court did not clearly err in finding that termination was in the child's best interests.

Affirmed.

/s/ William B. Murphy
/s/ Kathleen Jansen
/s/ Donald S. Owens