

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DA, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

SHANNON DORE, f/k/a SHANNON LEITOW,

Respondent-Appellant.

UNPUBLISHED

May 22, 2003

No. 242582

Kalkaska Circuit Court

Family Division

LC No. 01-003309-NA

Before: Whitbeck, C.J., and White and Donofrio, JJ.

PER CURIAM.

Respondent Shannon Dore appeals as of right from the circuit court order terminating her parental rights to the minor child DA under MCL 712A.19b(3)(d), (g), and (i). We affirm. We decide this case without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

In June of 2001, the FIA filed a petition requesting termination of Dore's parental rights to DA. The petition alleged that Dore agreed to a limited guardianship in January of 1998 to place DA with Edna Miller, Dore's grandmother, for care and custody. At the time the guardianship was established, Dore did not have adequate housing and needed to improve her parenting skills. The placement plan required Dore to make weekly telephone contact with DA and participate in weekly outings with him. The guardianship was to continue until Dore and DA's father, Michael Harcourt, were able to provide a drug-free household, complete parenting classes, obtain employment, and establish a new residence.

The petition also alleged that, as of June 3, 1999, Dore had not been in weekly contact with DA and had provided no financial support as required by the guardianship agreement. Edna Miller reported to FIA that Dore had made very little effort to have a relationship with DA. At the time the petition was filed, Dore's parental rights to her other children had been terminated.

On October 18, 2001, the trial court held an adjudication bench trial regarding the June 12, 2001, petition. The FIA called Edna Miller as its first witness. Dore objected on the basis that she did not receive the FIA's witness list within thirty days of the pretrial order dated

August 21, 2001. Instead, the FIA filed its witness list less than a week before the trial. The FIA argued that Miller was not a surprise witness, considering that she was listed several times on the petition, and Dore had ample notice of her testimony. The trial court stated that there was no harm to Dore because Miller was listed in the petition. Furthermore, the trial court stated that if Dore needed additional time after direct examination to rebut Miller's testimony, it would grant her an adjournment to investigate and prepare.

Miller testified that Dore was living with her when DA was born and that DA lived with her until the FIA interfered. Miller became DA's guardian when he was three years old because Dore was still attending high school. Miller wanted a guardianship so she could take DA to the doctor and get him treatment if necessary. According to the guardianship agreement, Dore was to visit or call every week. Initially, Dore did see DA weekly and also lived with Miller for a period of time.

Miller testified that she could not remember the dates but that Dore eventually married and would see DA on the weekends. Dore brought clothes for DA when she was working. Miller testified that although at times Dore would visit DA two times a week, at other times she would go two to three months without seeing him. Miller also testified that she was not paid support weekly and that she could not remember how much support she received or how often. Miller further testified that the FIA never asked how much or how often Dore visited DA.

According to Miller, DA referred to Miller's daughter, Debra Kicklighter, as "mommy." At one point, according to Miller, Dore approached Kicklighter about adopting DA to get him away from the FIA. Miller testified that DA would look to Kicklighter to care for him. Kicklighter got up with DA every morning and bathed him before she went to work. Dore did not pay any support while she was in school. Dore did not show very much interest in DA when he was little. When Dore did visit, she played with DA and fed him. Miller testified that Dore moved out completely when DA was a year old. According to Miller, Dore would live with friends and then move back in. Miller said that helping out with DA was a family effort and when Dore lived there, Miller required her to help out with DA. Miller testified that she did not know where Dore was working or how many hours.

Miller testified that the longest period of time that went by with Dore not visiting DA was two or three months. Miller stated that she never saw Dore hit or abuse DA. She also testified that Dore did not use drugs except for one occasion in which someone else put something in her pizza, after which she was taken to the hospital. According to Miller, DA never moved in with Dore.

At the close of Miller's testimony, the trial court adjourned the trial to give Dore time to investigate further. Both the FIA and Dore stipulated that Dore, her boyfriend, and DA would participate in a psychological evaluation. The trial court spoke to Dore personally, stating, "And then you understand that the evaluation itself would not be used for purposes of adjudication or to get jurisdiction in this matter, but that it would be used for the dispositional phase." Dore answered, "Yes."

On February 1, 2001, the bench trial continued. The FIA called Luann Deane to testify. Deane testified that she was the case manager for the Kalkaska County Friend of the Court. According to Deane, Dore was ordered to pay support for DA in September 1998, but the first

payment was made March 5, 1999. Three payments were made in 2000 and nine payments were made in 2001. Deane stated that Dore was required to pay \$17 per week and that the payments were made through withholding orders, personal money orders, and bench warrants. Deane testified that in December of 2000, Dore had arrearages totaling \$1,810 and that in January of 2001, Miller waived the support payments. According to Deane, the last payment was returned for insufficient funds.

Deane also testified that there had been several court actions regarding Dore's inconsistent payment of support. Dore was held in contempt for failure to pay and sentenced to forty-five days in jail with twenty-seven days credit for time served. Dore told Deane that her husband would submit to an income withholding because she was not employed. However, Dore had one short period of time when she had income withholding because her employment mainly consisted of seasonal odd jobs.

The FIA next called Department of Corrections parole and probation officer Shannon Stantiford to testify. Dore objected based on MRE 609, contending that the admission of Dore's prior conviction would be prejudicial. The FIA argued that Stantiford's testimony was offered to show Dore's ability to comply with court orders. The trial court held that it would reserve its ruling on relevance and admissibility until after the testimony. Stantiford testified that Dore violated her probation in September 1999 by failing to report to her probation officer. According to Stantiford, Dore was convicted of second-degree retail fraud.

The FIA then called Mary Lou Stewart, who was qualified as an expert in foster care and child welfare. Stewart testified that she was employed by Maple Clinic in Traverse City and had been DA's therapist since September of 2001 and that she met with him twelve times. According to Stewart, DA was referred to her because he was acting out sexually. Stewart testified that DA spoke of Kicklighter as his mother. Stewart never observed DA and Dore together but, based on her sessions with DA, she testified that he was not bonded to Dore. Although DA knew that Dore was his biological mother, he never spoke about her unless Stewart brought her up. However, DA talked frequently about Kicklighter and her sister. Although DA did not talk negatively about his mother, he never brought her up at all. Stewart stated that DA did seem attached to his foster family. She also testified that even children who have not seen their parent for a period of time usually still talk about their parent if there was a bond.

William Dore, Dore's husband, testified that he had been married to Dore since December of 2001 and that they lived together in Cadillac, Michigan, in a rented three-bedroom home. William Dore was employed for \$8 per hour and was also in the National Guard. Dore was working part-time and going to school to be a surgical technician. William Dore met DA when the child was still living with Miller. William Dore accompanied Dore when she took DA to the hospital when he scalded his foot. William Dore testified that when DA was living with Miller, he was scalded when water that had been heated on a stove was poured into the bathtub.

At the close of testimony, the trial court restated the stipulation to admit the psychological evaluation for purposes of disposition. The trial court heard adjudication arguments and stated that it would issue a written opinion and set the case for a disposition hearing, which was held on April 5, 2002. Dr. Kerri S. Schroder, a licensed psychologist, testified on the best interests issue and the psychological evaluation was admitted during that hearing. On May 31, 2002, the trial court issued its opinion terminating Dore's parental rights to DA.

II. Evidentiary Issues

A. Standard Of Review

Respondent presents several evidentiary issues on appeal. During the trial phase of a parental rights termination case, the rules of evidence for a civil proceeding generally apply.¹ The decision whether to admit evidence is in the trial court's sound discretion.²

B. Miller's Testimony

Dore argues that she was prejudiced because the FIA's witness list was not filed until a week before trial and that Edna Miller's testimony was a surprise to her. However, Dore has failed to show how she was prejudiced. Not only was Miller included numerous times on the original petition, but Dore had ample opportunity to prepare for her testimony. The trial court agreed to adjourn the trial after Miller's direct examination so that Dore could have time to investigate and prepare. Dore had four months to investigate and prepare to cross-examine Miller, to recall her as a witness, or to offer rebuttal testimony. Any prejudice that the late notice of Miller's testimony was surely harmless in light of the four-month adjournment the trial court granted to ensure Dore had enough time to contemplate the effect of her testimony. Given the fact that Miller's testimony was not a surprise to Dore and the fact that the trial court cured any prejudice to Dore with the granting of the adjournment, we conclude that the trial court did not abuse its discretion when it admitted Miller's testimony.

C. Stewart's Testimony

Dore argues that Stewart's testimony was not relevant because she never had the opportunity to observe Dore with Dylan and that she only provided treatment to DA during a period of time when he was not allowed to visit with Dore. Stewart testified that she provided therapy for DA for twelve sessions. Her evaluation and opinion were based on DA's statements, behavior and attitude regarding Dore. It was also based on Stewart's experience and expertise with many other children in foster care. Stewart testified that DA did not mention Dore and referred to Kicklighter as his mother. Based on DA's statements and his feelings about Dore, Stewart was able to determine that DA was not bonded to Dore the would be a child normally was to his parent.

Dore's suggestion that the only possible way to evaluate a parent-child bond is to observe interaction between the two is unfounded. While observing parent-child interaction is one method of determining how bonded they are, a child's statements and demeanor is another. Therefore, we conclude that the trial court did not abuse its discretion when it ruled that Stewart's testimony was relevant.

¹ MCR 5.972(C)(1), *In re Gilliam*, 241 Mich App 133, 136; 613 NW2d 748 (2000).

² *In re Miller*, 182 Mich App 70, 80; 451 NW2d 576 (1990).

D. Stantiford's Testimony

Although Dore insists that Stantiford's testimony was unduly prejudicial and influenced the trial court, the trial court repeatedly stated in its findings of facts that it did not consider Stantiford's testimony in its ruling. Therefore, this issue is moot.

E. Psychological Evaluation

Dore argues that her counsel stipulated to the use of a psychological evaluation for the purposes of adjudication only and that the record reflects no foundation laid for the entry of the evaluation other than the limited stipulation. Dore contends that the trial court then used the contents of the psychological evaluation to support its dispositional decision to terminate parental rights.

We conclude, however, that the trial court did not abuse its discretion when it admitted the psychological evaluation for the purposes of disposition. Clearly, Dore's argument regarding the psychological evaluation is based on a false premise. Dore stated several times in her brief on appeal that the psychological evaluation was admitted for the sole purpose of adjudication. However, while the stipulation was made during the adjudication phase, the record reveals that the stipulation was expressly to exclude consideration of the evaluation for adjudication, and to permit consideration for disposition. We conclude that the evaluation could properly be used for dispositional purposes.

Affirmed.

/s/ William C. Whitbeck
/s/ Helene N. White
/s/ Pat M. Donofrio