

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TOMMIE DWAYNE
YOUNGBLOOD, JR., Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MARVINA DIONDRA LATRICE LAURY,

Respondent-Appellant.

UNPUBLISHED

January 6, 2009

No. 286798

Saginaw Circuit Court

Family Division

LC No. 08-031493-NA

Before: Zahra, P.J., and O'Connell and Fort Hood, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating her parental rights to the minor child pursuant to MCL 712A.19b(i) and (l). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, respondent does not challenge the trial court's finding that petitioner proved the statutory grounds for terminating her parental rights. Rather, she argues that termination of her parental rights was not in the child's best interests. We disagree.

If a statutory ground for termination is established, the trial court must terminate parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 354; 612 NW2d 407 (2000). We review the trial court's decision terminating parental rights for clear error. MCR 3.977(J); *Trejo, supra* at 356-357.

The trial court did not clearly err when it determined that termination was not in the child's best interests. The evidence failed to establish that a bond existed between respondent and her child; the child had been born with crack cocaine in his system and was removed from respondent's care at birth. Respondent's extensive history of drug use, criminality, and incarceration relating to her drug use demonstrated that termination of her parental rights was not clearly contrary to the child's best interests. In particular, we note that respondent had given birth to other children who tested positive for cocaine at birth and that, for over ten years, respondent failed to recognize the severity of her drug problem and the harm it posed to her children. There is no reason to believe that respondent has suddenly changed her ways or has

overcome her chronic drug addiction. In fact, at the time of the permanent custody hearing, respondent was incarcerated on a probation violation that resulted from a drug-related conviction. Given respondent's longstanding, untreated drug abuse, her lack of housing, and her unemployment, she cannot provide the child with the stability and consistency that he needs. Further, it would not be in the child's best interests to live with respondent and to be exposed to the effects of her untreated drug addiction. "If a parent cannot or will not meet her irreducible minimum parental responsibilities, the needs of the child must prevail over the needs of the parent." *In re Terry*, 240 Mich App 14, 28; 610 NW2d 563 (2000), quoting *In re AP*, 1999 Pa Super 78; 728 A2d 375, 379 (1999). Thus, the trial court did not clearly err in finding that termination of respondent's parental rights was in the child's best interests.

Next, respondent requests reversal of the termination because the child's attorney violated the Michigan Rules of Professional Conduct (MRPC) by also representing respondent in a criminal matter. Although we agree that the attorney violated the MRPC, we find no basis for a retrial.

Generally, we will not review issues that were not raised before and decided by the trial court. MCR 7.203; *Bajis v City of Dearborn*, 151 Mich App 533, 536; 391 NW2d 401 (1986). However, there are exceptions to this general rule. We will review issues not raised below if a miscarriage of justice will result from a failure to pass on them, *American Way Service Corp v Comm'r of Ins*, 113 Mich App 423, 428; 317 NW2d 870 (1982), if the question is one of law and all the facts necessary for its resolution have been presented, *Kahn-Reiss, Inc v Detroit & Northern Savings & Loan Ass'n*, 59 Mich App 1, 12; 228 NW2d 816 (1975), or where resolution is necessary for a proper determination of the case, *Loper v Cascade Twp*, 135 Mich App 106, 111; 352 NW2d 357 (1984). Because respondent did not raise this issue in an appropriate motion in the trial court, our review is limited to mistakes apparent on the record. *People v Riley (After Remand)*, 468 Mich 135, 139; 659 NW2d 611 (2003).

Respondent argues that the child's attorney, Timothy Lynch, represented her in a criminal case on April 21, 2008,¹ and May 12, 2008,² and, therefore, his representation of the child during this case created a conflict of interest that violated his professional duty of loyalty.³ Although failure to comply with the requirements of the MRPC "may provide a basis for invoking the disciplinary process, such failure does not give rise to a cause of action for enforcement of the rule or for damages caused by failure to comply with the rule. MRPC 1.0(b)." *Watts v Polaczyk*, 242 Mich App 600, 607 n 1; 619 NW2d 714 (2000).

In this case, there is no evidence that respondent consented to Lynch's representation of the child, and the child could not consent to representation by Lynch due to his age. Although this ethical violation was possibly unintentional, Lynch should have recognized and avoided the

¹ On April 21, 2008, respondent was arraigned on a bench warrant and pleaded guilty to a probation violation.

² On May 12, 2008, respondent was sentenced to a probation violation.

³ Lynch represented the child as his attorney *guardian ad litem* at the preliminary hearing on April 18, 2008, and at the permanent custody hearing on July 1, 2008.

conflict. Lynch's simultaneous representation of the child and respondent was an ethical violation of MRPC 1.7. Regardless, reversal is not required absent "demonstrated harm." *In re Osborne*, 459 Mich 360, 369; 589 NW2d 763 (1999).

Here, there is no demonstrated harm, and there is no evidence that the error was prejudicial, i.e., outcome determinative. *In re Hall*, 188 Mich App 217, 222-223; 469 NW2d 56 (1991). Respondent was represented by counsel, who argued strenuously against termination of her parental rights. It is unlikely that any additional argument made by Lynch that referenced respondent's criminal case would have changed the outcome of the hearing. Further, respondent did not describe how the breach of duty caused harm. She has not provided a specific description of any damage suffered as a result of this breach, other than to say that Lynch's knowledge *might* have impacted his recommendation on behalf of the child. Respondent also failed to show any harm when she argued that she *might* not have understood that the criminal plea Lynch assisted her in obtaining might have been used to argue in favor of terminating her parental rights. There is no evidence that Lynch's error prejudiced respondent's case, and Lynch's representations did not fall below an objective standard of reasonableness. *In re CR*, 250 Mich App 185, 198; 646 NW2d 506 (2002). This violation of the MRPC does not warrant a remand to the trial court for a new trial.

Affirmed.

/s/ Brian K. Zahra
/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood