

**Court of Appeals, State of Michigan**

**ORDER**

In re Connyer, Minors

Docket No. 311635

LC No. 11-003855 NA

E. Thomas Fitzgerald  
Presiding Judge

Patrick M. Meter

Michael J. Kelly  
Judges

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The Court orders that the unpublished per curiam opinion issued on February 19, 2013, is hereby AMENDED to correct two clerical errors in the caption of the opinion:

The case title is amended to read “*In re Connyer, Minors*” and the release date of February 19, 2013, is added to the caption.

In all other respects, the February 19, 2013 opinion remains unchanged.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

FEB 26 2013

Date

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Chief Clerk

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of DMC and TMEC, Minors.

UNPUBLISHED  
No. 311635  
Midland Circuit Court  
Family Division  
LC No. 11-003855-NA

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Before: FITZGERALD, P.J., and METER and M. J. KELLY, JJ.

PER CURIAM.

Respondent appeals by right the trial court's order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g), (i), and (j). Because we conclude that there were no errors warranting relief, we affirm.

Respondent first argues that the Department of Human Services did not make reasonable efforts to reunify her with her children. Generally, the Department must make reasonable efforts to reunify the child and family. MCL 712A.19a(2); see also *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). Contrary to respondent's contention, however, the record shows that the Department made such efforts.

Prior to the children's removal in March and April 2011, the Department and Community Mental Health had provided respondent with services for more than a year; and the services continued after removal. The Department provided her with individual and family counseling, substance abuse treatment, psychological evaluations, parenting time, drug screens, and many other services. Respondent maintains that these services were inadequate because, according to her, the Department's family counselors, Virginia Norfolk and Karissa Walker, actually worked against reunification.

The record shows that Norfolk counseled respondent intermittently for over five years before this case. Norfolk stated that reunification was initially her goal, but that changed over time. She explained that she wanted what was in the children's best interests, and, after a time, she concluded that it was not in the children's best interests to be with respondent. The statutory termination scheme is an attempt to balance various interests: the parent's liberty interest in the child's care and custody, the desire to preserve the family, and the need to protect a child's right to security and permanency. See *Santosky v Kramer*, 455 US 745, 753; 102 S Ct 1388; 71 L Ed 2d 599 (1982); *In re Trejo, Minors*, 462 Mich 341, 354; 612 NW2d 407 (2000). Thus, it was proper for Norfolk to consider the children's best interests as a part of that balance. Further, there is a fundamental difference between believing that reunification is not in the children's best interests and actively working against reunification. Norfolk understood that reunification was

the Department's goal and coached respondent as to what she needed to do for that to happen. Respondent simply failed to make the necessary changes.

Similarly, the record shows that Walker did not work to prevent reunification. Walker indicated in an early report that the goals of family treatment "have consisted of strengthening family relationships, improving effective communication, and increasing nurturing behaviors from parent," but later reported that respondent's progress was minimal and that the "[f]amily therapy is no longer working towards reunification, but still working to improve communication and relationship. Recently, goals have been related to termination and how [DMC] and [respondent] can still have an appropriate and positive relationship." Respondent finds it noteworthy that the decision to stop working toward reunification was made before the trial court authorized the termination petition.

The Department requested authorization to file a termination petition during a hearing held a few days after Walker's first report. The trial court denied the request but ordered the Department to prepare for both reunification and termination. Given these parallel goals and respondent's lack of progress, it was not inappropriate to shift the goal. Walker's focus on maintaining an appropriate and positive post-termination relationship between the child and respondent was consistent with the trial court's order.

Respondent next argues that the Department's efforts fell short because it gave the children too much control over parenting time. Specifically, respondent blamed the Department for allowing the children to not engage with respondent. But the Department had no obligation to ensure that the children interacted with her. It was respondent's duty to demonstrate her commitment to reunification and her ability to parent by directing and interacting with the children during parenting time.

The record also does not support respondent's assertion that she was not referred to parenting classes. According to a report prepared by respondent's case manager, respondent was referred to Strategic Family Therapy. Further, Norfolk testified that she worked with respondent to improve her parenting skills. Respondent was simply unable to apply what she learned.

Finally, respondent argues that the Department should have tried new and more intensive substance abuse treatment because it was familiar with her history and the ineffectiveness of prior treatments. However, a foster care worker stated that respondent was not open to inpatient substance abuse treatment and instead wanted outpatient treatment. As such, although it is not entirely clear from the record, it appears that respondent was offered more intensive substance abuse treatment, but rejected it.

On this record, we conclude that the Department provided respondent with services appropriate to her needs and geared toward reunification.

Next, respondent argues that the trial court clearly erred in finding that the Department had established grounds for termination under MCL 712A.19b(3)(c)(i), (g), (i), and (j). We "review for clear error . . . the court's decision that a ground for termination has been proven by clear and convincing evidence." *In re Trejo Minors*, 462 Mich at 356-357. The trial court's termination decision "is clearly erroneous if, although there is evidence to support it, the

reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.” *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

We agree that §19b(3)(i) was inapplicable. We nonetheless affirm because the trial court did not clearly err in finding that termination was appropriate under §§ 19b(3)(c)(i), (g), and (j). See *In re CR*, 250 Mich App 185, 195; 646 NW2d 506 (2002).

Termination is proper under § 19b(3)(c)(i) when there is clear and convincing evidence that the “conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.” Here, the principal conditions that led to adjudication were allegations of physical abuse and neglect, and respondent’s substance abuse. The initial dispositional order was entered in August 2011, and the evidence established that respondent was still struggling with these issues at the time of the termination hearing, which was more than 182 days later.

Respondent has a significant history of drug abuse. She acknowledged smoking crack cocaine daily for several years. Apparently she was no longer smoking crack cocaine, but she was abusing alcohol and abusing prescription medications by taking her medications in doses above the prescribed levels. Despite years of services, respondent made no significant or lasting improvements with her substance abuse or parenting. Based on respondent’s history, the trial court did not clearly err in finding that there was no reasonable likelihood that the conditions that lead to adjudication would be rectified within a reasonable time considering the children’s ages.

Termination is proper under § 19b(3)(g) when “[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.” The record evidence shows that respondent’s abuse of drugs has impaired her ability to properly parent her children. Not only does respondent deny that she has an alcohol problem, she also is unable to recognize the impact that it has on her children. A respondent’s persistent struggles with substance abuse are grounds for termination under § 19b(3)(g). *In re Conley*, 216 Mich App 41, 44; 549 NW2d 353 (1996).

Further, despite years of services, respondent made little lasting progress in her interactions with her children. Witnesses to the parental visitations spoke of respondent’s failure to supervise her children. There was testimony that respondent interacted with one child more as a peer than a daughter, which dynamic often resulted in the other child being isolated. Respondent also spoke melodramatically to the children, telling one child that she was dying. Norfolk summarized respondent’s problem: she “can do what’s needed in order to . . . accomplish the goals that she wants to accomplish, but . . . once she gets what she wants, she falls back into that rut of the children taking control.” On this record, we cannot conclude that the trial court clearly erred in finding that respondent failed to provide proper care and custody for the children and that there was no reasonable expectation that she would be able to do so within a reasonable time.

Finally, § 19b(3)(j) is satisfied if petitioner produces clear and convincing evidence that “[t]here is a reasonable likelihood,” based on the conduct or capacity of the child’s parent, that “the child will be harmed if he or she is returned to the home of the parent.” The record shows that respondent’s substance abuse prevents her from recognizing her children’s basic needs. Despite years of services, respondent continues to drink alcohol and abuse prescription drugs. Indeed, there was testimony that respondent appeared to be regularly intoxicated during parenting time. Respondent’s inability to make progress with her substance abuse places her children at risk and, for that reason, the trial court did not clearly err in finding grounds for termination under § 19b(3)(j).

Respondent also argues that the trial court clearly erred in concluding that termination was in the children’s best interests. “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). “In deciding whether termination is in the child’s best interests, the court may consider the child’s bond to the parent, the parent’s parenting ability, the child’s need for permanency, stability, and finality, and the advantages of a foster home over the parent’s home.” *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (internal citations omitted). Additionally, “the trial court has a duty to decide the best interests of each child individually.” *Id.* at 42.

The trial court found that termination was in the children’s best interest, noting their need for permanency. The trial court did not breakdown its findings with respect to each child. However, nothing in the record indicates that the analysis would have been different had the trial court done so. There is significant conflict between DMC and respondent, and respondent has demonstrated an inability to effectively communicate with and supervise the child. With regard to TMEC, the record demonstrates that respondent has not recognized her needs as a child with fetal alcohol syndrome, nor provided, as stated in one psychological evaluation, the “structured, repetitive, and developmental appropriate help” that the child needs. The trial court did not clearly err when it determined that termination was in both children’s best interests.

Respondent’s final argument is that she was denied effective assistance of counsel. “[T]he principles of effective assistance of counsel developed in the context of criminal law apply by analogy in child protective proceedings.” *In re CR*, 250 Mich App at 197-198. 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 there is a reasonable probability that, but for her counsel’s error, the result of the proceeding would have been different. *Id.* Respondent must overcome a strong presumption that counsel’s assistance was sound trial strategy. *People v Horn*, 279 Mich App 31, 37-38 n 2; 755 NW2d 212 (2008). Because there was no evidentiary hearing with regard to this claim, our review is limited to errors apparent on the record. *People v Davis*, 250 Mich App 357, 368; 649 NW2d 94 (2002).

Respondent argues that counsel was ineffective because he only cross-examined one of three witnesses during the termination hearing, and he did not call any witnesses or present any exhibits during the proceedings. However, respondent has not identified the witnesses that should have been called or summarized their testimony, and has not identified the exhibits that her lawyer should have offered. Thus, she has not overcome the presumption that those decisions were a matter of trial strategy. *People v Dixon*, 263 Mich App 393, 398; 688 NW2d 308 (2004).

Respondent also argues that her lawyer was ineffective because he did not request a neurological evaluation to determine whether respondent's intoxicated appearance was the result of a closed head injury. Respondent apparently did sustain a head injury in 1989, but she offers no evidence to substantiate her claim that the appearance of intoxication might have been a result of the injury. Therefore, respondent has not established the factual predicate for her claim of ineffective assistance. See *People v Carbin*, 463 Mich 590, 601; 623 NW2d 884 (2001).

Respondent next argues that her lawyer should have inquired as to whether respondent received services for a child with fetal alcohol syndrome and received strategic family therapy. The record is unclear as to whether respondent was offered these services. But respondent fails to explain how the failure to make these inquiries prejudiced her. Respondent merely announces her position and leaves it to this Court to discover and rationalize a basis for her claims, which is insufficient to establish her claim of error. *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

There were no errors warranting relief.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Patrick M. Meter  
/s/ Michael J. Kelly