

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of C.T.B., J.L.B., W.J.B., III, and  
H.C.L.B., Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

TENNILLE BOULLIER,

Respondent-Appellant,

and

WILLARD BOULLIER,

Respondent.

UNPUBLISHED

May 22, 2012

No. 306982

St. Clair Circuit Court

Family Division

LC No. 10-000466-NA

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Before: RONAYNE KRAUSE, P.J., and SAAD and BORRELLO, JJ.

PER CURIAM.

In these consolidated appeals, respondents challenge the trial court's order that terminated their parental rights to their minor children pursuant to MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (risk of harm if returned to parents). For the reasons set forth below, we affirm.

## I. FACTS

The petition states that in December 2010 the police were dispatched to respondents' home, where respondents admitted that their verbal argument had escalated to pushing and striking each other. Respondents admitted that they exposed their children to domestic violence, and it was apparent to the police that respondents were intoxicated and unable to care for the children. Respondent Ms. Boullier admitted being unable to care for the children because of her drug abuse, and respondent Mr. Boullier admitted that the police brought him to a hospital after he became disoriented from his drug use. Also, respondents were arrested for shoplifting on December 2, 2010 while their children were with them and aware of the criminal activities. The petition further alleged that both parents had ongoing substance abuse problems with prescription medications and opiate drugs, including heroin.

The children became temporary court wards after a hearing on January 27, 2011. The trial court entered dispositional orders that required the parents to obtain and maintain suitable housing and a legal source of income, to participate in services to address their problems with parenting, substance abuse, and anger management, to document such participation and progress, and to attend visitation with the children.

The record reflects that respondents' participation in services was erratic at best, and neither ever provided documentation of progress as required. They visited while the children were with relatives, sometimes while intoxicated, but when visitation moved to petitioner's premises, respondents stopped participating. Ms. Boullier admitted that she stopped visiting because she was dodging arrest warrants and had relapsed into substance abuse. Mr. Boullier stated that he stopped visiting because the schedule conflicted with his work hours. Further, both respondents were arrested while this case was pending, and each spent several weeks in jail.

At the termination hearing, the foster care specialist described respondents as "noncompliant" with the order to obtain suitable housing, and added that it was "very difficult keeping track of the parents" in general, despite a court-ordered requirement that respondents maintain regular contact. The caseworker further reported that the therapist working with Mr. Boullier opined that his failure to address his substance abuse and marital issues posed a threat to the children's well being. The caseworker additionally reported that respondents had not made themselves available for random alcohol or drug screening.

The caseworker testified that she had referred respondents for all the services they needed, but, that at a meeting in a restaurant with them, they stated that they would not be able to complete services in St. Clair County because Ms. Boullier was evading warrants for her arrest. The caseworker offered an alternative referral for substance-abuse counseling, but that arrangement was terminated for noncompliance when the therapist was unable to locate

respondents. The caseworker opined that it would be in the children's best interest to terminate respondents' parental rights.

The trial court's October 20, 2011 termination order declared separately that clear and convincing established that termination of each respondent's parental rights was warranted under the three statutory criteria at issue, and that termination was in the children's best interests.

## II. STANDARDS OF REVIEW

An appellate court "review[s] for clear error both the court's decision that a ground for termination has been proven by clear and convincing evidence and . . . the court's decision regarding the child's best interest." *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). See also MCR 5.974(I). A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A reviewing court must defer to the special ability of the trial court to judge the credibility of witnesses. *Id.*

However, unpreserved claims of error are reviewed for plain error affecting substantial rights. *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000).

## III. RESPONDENT TENNILLE BOULLIER

"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). Again, in this case the trial court terminated respondents' parental rights under MCL 712A.19b(3)(c)(i), (g), and (j), which provide as follows:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

\* \* \*

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) 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.

\* \* \*

(g) The 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.

\* \* \*

(j) There 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.

Ms. Boullier does not claim that the conditions of the adjudication have been corrected or that she is now in a position to provide proper care or custody for the children, but instead argues that she needs more time to correct the conditions. However, "the Legislature did not intend that children be left indefinitely in foster care, but rather that parental rights be terminated if the conditions leading to the proceedings could not be rectified within a reasonable time." *In re Dahms*, 187 Mich App 644, 647; 468 NW2d 315 (1991), citing MCL 712A.19b(3)(c)(i). Indeed, subsection (c) specifies 182 days, and both subsections (c)(i) and (g) speak of "reasonable time."

Ms. Boullier contends that she substantially complied with the service plan, but all indications are that her participation was spotty at best, amounting to substantial noncompliance. "Failure to substantially comply with a court-ordered case service plan is evidence that return of the child to the parent may cause a substantial risk of harm to the child's life, physical health, or mental well being." *In re Trejo*, 462 Mich at 346 n 3 (internal quotation marks and citation omitted).

More specifically, a parent's persistent failure to gain control over a substance-abuse program is ground for termination of parental rights. See *In re Conley*, 216 Mich App 41, 44; 549 NW2d 353 (1996), citing § 19b(3)(c)(i) and (g). Here, Ms. Boullier emphasizes her own testimony that, immediately upon leaving jail, she has immersed herself in substance-abuse treatment, but offers no explanation for her failure to provide any documentation of this latest attempt to overcome her substance abuse problems.

Ms. Boullier emphasizes that she was in jail for a substantial amount of time between the court's assumption of jurisdiction and the filing of the petition. But she does not deny that she was properly incarcerated as the consequence of her own criminal conduct. Indeed, her incarceration does not mitigate or excuse her failure to participate in court-ordered services. Ms. Boullier asserts that she made some progress on her service plan while in jail, but she does not explain or point to evidence of such endeavors.

In light of this record, the trial court did not clearly err in holding that clear and convincing evidence indicated that the conditions of the adjudication continued to exist, that respondent Ms. Boullier has failed to develop the capacity to provide proper care or custody for the children, and that there was no reasonable expectation that Ms. Boullier would correct the situation in reasonable time. MCL 712A.19b(3)(c)(i) and (g).

In asserting that termination of her rights was not in the children's best interests, Ms. Boullier argues that there were no allegations that she had physically or emotionally abused the children. This argument also bears on her challenge to the trial court's finding on subsection (j). The record does not establish that the children suffered physical abuse. However, the evidence clearly shows that the children were put at risk of emotional harm when respondents took the children on a shoplifting spree, during which the children witnessed their criminal behavior and

arrest. Moreover, because of Ms. Boullier's poor progress with court-ordered conditions and services, the risks to the children remain. Accordingly, the trial court did not clearly err in concluding that termination was warranted under subsection (j), and that it was in the children's best interests.

#### IV. RESPONDENT WILLARD BOULLIER

##### A. PROCEDURAL ISSUES

Mr. Boullier argues that subsection (c)(i) requires that "182 or more days have elapsed since the issuance of an initial dispositional order" before a court may terminate parental rights on the ground that the conditions of the adjudication continue to exist. He maintains that the 182 days should have been counted not from the January 27, 2011 dispositional review hearing at which he consented to the court's assumption of jurisdiction, but from April 25, 2011, which was the date of the first dispositional review hearing in which the record clearly shows that a valid case service plan existed. In other words, Mr. Boullier suggests that the statutory reference to an initial dispositional order should be read to include the requirement that a case service plan has been put in place, and that a two-month delay in starting a case service plan in his case should be attributable to petitioner.

However, not only was this procedural argument not raised below, it is not germane to the questions presented on appeal, which raise only substantive challenges to the trial court's findings concerning statutory bases for termination and the children's best interests. This Court is not obliged to entertain arguments that are not germane to the issues set forth in the statement of questions presented. See MCR 7.212(C)(5); *Meagher v McNeely & Lincoln, Inc.*, 212 Mich App 154, 156; 536 NW2d 851 (1995).

Moreover, Mr. Boullier's argument is without merit. MCL 712A.18f(2) states, "Before the court enters an order of disposition in a proceeding under section 2(b) of this chapter, the agency shall prepare a case service plan that shall be available to the court and all the parties to the proceeding." Mr. Boullier states, "Due to the fact that the record was so poorly kept in this case, it is unclear what happened at the initial dispositional hearing." Mr. Boullier also asserts that "[t]he order from the hearing merely states that a court report was considered by the court. The initial service plan (ISP) was never put in the court file or admitted into evidence as required by statute."

It is not possible to tell from the existing record whether a case-service plan had been prepared before the court's order assuming jurisdiction, which followed the January 27, 2011 hearing. But we do not regard that uncertainty as forming a basis for invalidating or delaying the effective date of the initial dispositional order. We hold that Mr. Boullier has failed to establish plain error, having shown only that the precise date of when the case service plan was prepared cannot be ascertained from the record.

Mr. Boullier also takes issue with a hearing that took place when he was in jail and claims he was denied a right to participate by telephone, citing *In re Mason*, 486 Mich 142; 782 NW2d 747 (2010). Again, Mr. Boullier did not raise this argument below, nor is it germane to the substantive question presented for appeal.

Nonetheless, Mr. Boullier’s argument also lacks merit. In particular, Mr. Boullier has failed to show that his substantial rights were affected by the error.

MCR 2.004 requires the court and the petitioning party to arrange for telephonic communication with incarcerated parents whose children are the subject of child protective actions. The express purposes of the rule include ensuring “adequate notice . . . and . . . an opportunity to respond and to participate” . . . . [*In re Mason*, 486 Mich at 152-153, citing MCR 2.004(A) to (C).]

Here, petitioner’s caseworker stated at the beginning of the July 25, 2011 review hearing that “we have now been able to find” respondents. They were arrested a few days earlier on outstanding warrants and were in the Macomb County Jail. Accordingly, there is no dispute that petitioner and the trial court were aware of respondents’ incarceration at the start of that proceeding and there should have been an attempt to allow respondents’ participation by telephone.

In arguing that he was seriously prejudiced by the error, Mr. Boullier points out that the result of this hearing was an order directing petitioner to initiate proceedings to terminate parental rights. However, Mr. Boullier fails to explain how his participation in that hearing, by telephone or otherwise, would have brought about a different result. He does not rebut evidence that his participation in services was poor, and fails to recognize that his arrest and jailing actually underscored his continuing parental unfitness.

For these reasons, Mr. Boullier has failed to show how this plain error affected his substantial rights. See *Kern*, 240 Mich App at 336.

## B. SUBSTANTIVE ISSUES

Mr. Boullier claims that, “In St. Clair County, the court reports and case service plans are not admitted into evidence nor are they read into evidence.” But Mr. Boullier cites no authority for that proposition, and we emphasize that the rules of evidence do not apply, except those respecting privileges, in hearings to decide a termination petition. MCR 3.977(H)(2). Further, at these hearings, “all relevant and material evidence, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value.” *Id.* Mr. Boullier fails to show that the trial court erred to the extent that it relied on reports or service plans. He also complains that petitioner offered only a single witness—its caseworker—but neither attempts to impugn that witness’s credibility, nor cites authority for the proposition that her testimony was not sufficient for petitioner to make its case.

In specifically challenging the trial court’s findings with respect to subsection (c)(i), Mr. Boullier offers only his procedural challenge concerning whether 182 days had elapsed since the initial dispositional order, which argument we rejected above.

In challenging the finding on subsection (g), Mr. Boullier points to his own testimony that, at the time of the hearing, he was able to provide necessities for the children, that he was no longer using illegal drugs, and was attending intensive outpatient counseling for his history of substance abuse. However, Mr. Boullier offers no explanation for his failure to provide

documentation of any of these requirements. Credibility is for the trier of fact to ascertain, *In re Miller*, 433 Mich at 337, and the trial court was not obliged to believe any of Mr. Boullier's uncorroborated claims. We further note that Mr. Boullier nowhere even suggests that he has participated in anger-management or domestic-abuse programs as required.

Mr. Boullier challenges the finding under subsection (j) on the ground that the trial court relied on conjecture in concluding that the children would be harmed if returned to his custody. As did Ms. Boullier, Mr. Boullier emphasizes that no evidence showed he physically harmed the children.

But child protective proceedings concern not just physical harm to children, but also their mental well being. See *In re Trejo*, 462 Mich at 346 n 3. Again, "Failure to substantially comply with a court-ordered case service plan is evidence that return of the child to the parent may cause a substantial risk of harm to the child's life, physical health, or mental well being." *Id.* (internal quotation marks and citation omitted). And, as we opined in connection with Ms. Boullier, respondents took the children shoplifting, the children witnessed their crimes and arrest, and respondents exposed the children to substance abuse and domestic violence. The children were placed at risk of emotional harm and those risks remain because of Mr. Boullier's lack of progress with court-ordered conditions and services.

In challenging the court's best-interest determination, Mr. Boullier claims petitioner was uncooperative for refusing to adjust the visitation schedule to accommodate his work hours. However, even if true, this does not affect the trial court's finding concerning the children's best interests. Mr. Boullier otherwise asserts that the children were bonded with him, and suggests generally that his arguments concerning the statutory termination factors come to bear on the best-interest determination as well. We hold that, given the grave deficiencies in Mr. Boullier's parenting that initiated this case, his persistent failures to cooperate with, or benefit from, services, including his failure to document a legal source of income or progress in connection with anger management or substance abuse, supported the trial court's determination that termination of his parental rights was in the children's best interests.

Affirmed.

/s/ Amy Ronayne Krause

/s/ Henry William Saad

/s/ Stephen L. Borrello