

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

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In the Matter of SKYLER WILES, Minor.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

V

CORREENE J. WILES,

Respondent-Appellant.

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UNPUBLISHED

September 15, 2005

No. 259776

Houghton Circuit Court

Family Division

LC No. 03-000001-NA

Before: Smolenski, P.J., and Murphy and Davis, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating her parental rights to the minor child on the basis of MCL 712A.19b(3)(c)(ii) and (3)(j). We affirm.

Jurisdiction was assumed over the minor child on February 11, 2003, pursuant to respondent's admission that she left three-year-old Skyler unattended on occasions when she left the home for periods of time approximating fifteen minutes. During the course of the proceeding, respondent was diagnosed with the arrested emotional development of a young child and traits of histrionic and borderline personality disorders, for which two to four years of therapy was recommended before she could appropriately parent a child on her own. Respondent's psychological makeup caused her to have difficulty telling the truth, handling criticism, modulating her emotions, and interacting with the service providers who worked with her to improve her parenting skills from the time of the child's birth. However, she also began living with a stable, mature partner, which gave her housing and financial stability. She gave birth to another child, Joshua, in May 2003. Joshua was not removed from her care because her partner was the legal father and assisted in parenting him.

Also during the proceeding, Skyler was diagnosed with reactive attachment disorder (RAD). RAD is a psychological disorder in children that can cause permanent and serious problems with social interaction later in life. It is essentially a disorder in which a given child has learned that the world is not safe and that adults cannot be trusted, so the child becomes unable to form appropriate and loving bonds. It can stem from a number of specific causes, but they all relate to "grossly pathological care," or disrupted bonding with a caregiver early in life. Treatment is again varied, but essentially requires a stable, structured, caring environment as quickly and stably as possible – an environment that goes beyond what "normal parenting"

would entail. See generally American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition* (Washington D.C., 1994), § 313.89. Thus, Skyler required therapy and consistent parenting in an emotionally warm, nurturing environment.

On the basis of this diagnosis, petitioner filed a supplemental petition requesting termination of respondent's parental rights on the basis of MCL 712A.19b(3)(c)(ii) and (3)(j). Respondent correctly notes that, because this was a new condition, evidence relating to its proof must be legally admissible. MCR 3.977(F)(1)(b). However, the original petition based on negligence, MCL 712A.19b(3)(g), pertained to respondent's lack of appropriate parenting skills as well as her own arrested emotional development and personality disorders. Therefore, evidence pertaining to her own psychological condition was properly received at the termination hearing irrespective of its admissibility under the Michigan Rules of Evidence. MCR 3.977(G)(2).

Respondent argues that portions of two doctors' reports and testimony were based on hearsay and therefore should not have been admitted. We disagree.

We review the lower court's decisions regarding admission of evidence for an abuse of discretion, but even if the lower court abuses its discretion we will not reverse on that basis "unless the court's ruling affected a party's substantial rights." *In re Caldwell*, 228 Mich App 116, 123; 576 NW2d 724 (1998). Furthermore, we will not disturb a lower court's order unless "failure to do so would be inconsistent with substantial justice." *In re TC*, 251 Mich App 368, 370-371; 650 NW2d 698 (2002), citing MCR 2.613(A).

Dr. Kahler's report pertained only to respondent's psychological state and predated the evaluation of Skyler that resulted in his RAD diagnosis. Dr. Kahler's testimony indicated that Skyler had special needs and briefly mentioned his RAD, but only in response to questioning by counsel for respondent. Otherwise, Dr. Kahler's testimony was concerned with respondent's psychological state, her prospective therapy, and how they affected her ability to parent pending the outcome of that therapy. Because none of Dr. Kahler's evidence pertained particularly to Skyler's RAD or respondent's ability to parent a child with RAD, it was admissible irrespective of any hearsay.

Dr. Kirkham's report specifically concerned Skyler's RAD and the particular parenting such a diagnosis required. Furthermore, it was based on documents that the parties had agreed Dr. Kirkham should not receive. However, respondent failed to inquire into the basis for the report when it was admitted into evidence without objection at the review hearing. The trial court and the parties relied on the report for three months before respondent objected. Furthermore, Dr. Kirkham relied on other admissible materials in making her diagnosis, including an interview with Skyler that indicated RAD by itself, so her diagnosis would have been the same even without the inadmissible materials. Because the inadmissible materials were functionally irrelevant to Dr. Kirkham's conclusions, the trial court did not abuse its discretion in admitting the evidence.

Respondent argues that the trial court clearly erred in finding statutory grounds for terminating her parental rights under either MCL 712A.19b(3)(c)(ii) or (3)(j) established by clear and convincing evidence. We disagree.

In order to terminate a parent's parental rights, petitioner must establish the existence of at least one statutory condition, as set forth in MCL 712A.19b(3), by clear and convincing evidence. *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003). "Once a statutory ground for termination is established by clear and convincing evidence, the trial court must terminate parental rights unless it finds from the whole record that termination clearly is not in the child's best interests." *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004), citing MCL 712A.19b(5). We review both findings of fact, that a ground for termination has been sufficiently proven and that the decision to terminate is in the child's best interests, for clear error. *Id.* at 296. "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *Id.* at 296-297.

Respondent argues under MCL 712A.19b(3)(c)(ii) that she rectified the original conditions of her adjudication and that she could reasonably be expected to parent a child with RAD successfully. The original conditions of respondent's adjudication included her overall emotional and mental health. The evidence indicated that she has made some progress, but only to a limited extent, and it reflected that she could not parent her second child, Joshua, without significant assistance from another individual. The record of the entire proceeding below reflects very clearly that respondent is not yet capable of consistency in her approach to and discharge of most parental responsibilities. She has improved, but she has much work to do. Thus, even without Skyler's diagnosis of RAD, the evidence showed that she would have difficulty caring for an additional child. Thus, the trial court did not clearly err in finding no significant progress toward rectifying the original conditions of respondent's adjudication. Furthermore, Skyler's RAD required those conditions to be rectified immediately, a fact of which respondent was notified, but the evidence showed that respondent would require at least two years of additional therapy, during which time respondent would be less able to focus on Skyler's difficulties at the same time as her own. The trial court did not clearly err in finding no reasonable likelihood that respondent could within a reasonable time rectify her emotional and psychological difficulties that made her unable to parent a child with RAD effectively.

Respondent argues under MCL 712A.19b(3)(j) that the "harm" to Skyler if returned to her is suboptimal mental health. The trial court noted that termination is not warranted merely because respondent might not be the best parent. However, RAD is an extremely serious condition that, among other problems, impairs sufferers' ability to relate to others and triples sufferers' likelihood of being involved in the legal system by the age of thirteen. Furthermore, treatment requires a consistent, supportive, nurturing environment that would ordinarily be desirable for any child, but an absolute necessity for a RAD sufferer. Given respondent's lack of progress and continued need for her own therapy, the trial court did not clearly err in finding that respondent would be unable to provide the environment Skyler required. Thus, the trial court did not clearly err in finding a reasonable likelihood that Skyler would be harmed if he returned home.

Affirmed.

/s/ Michael R. Smolenski

/s/ William B. Murphy

/s/ Alton T. Davis