

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of QUERON ZHANE BOONE, a/k/a
BABY HILL, and JERRY HILL, a/k/a JERRY
LAMONT KING, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DEBRA ANN HILL,

Respondent-Appellant,

and

JAMES EDWARD GIPSON and BENJAMIN
BURNS KING,

Respondents.

UNPUBLISHED
November 1, 2005

No. 261690
Wayne Circuit Court
Family Division
LC No. 02-410935-NA

Before: Gage, P.J., and Hoekstra and Murray, JJ.

PER CURIAM.

Respondent Debra Ann Hill appeals as of right from the trial court's order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

The trial court did not clearly err in determining that the statutory grounds for termination of parental rights were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Respondent was cognitively impaired and a Clinic for Child Study and neuropsychological evaluation showed that she had difficulty exercising basic living skills, demonstrated minimal parenting knowledge, and was unable to provide proper care for her children without constant supervision. Respondent had been under a guardianship for nearly twenty years and, although there was uncertainty regarding whether that guardianship was still in effect, she was not reasonably likely to become able to properly care for the children independently within a reasonable time. Respondent complied with some aspects of her parent-agency agreement, but there was no reasonable likelihood that she could rectify her incapacity. Twenty-eight months after the initial disposition a realistic plan had still not been

established whereby respondent could care for the children in a supervised setting. The relative who came forward just days before the termination hearing and expressed a willingness to assist with the special needs children had never met them, and the trial court correctly found that such a last minute plan was not feasible.

Additionally, respondent argues that she was denied the effective assistance of counsel because counsel failed to move to set aside jurisdiction. The trial court based jurisdiction upon the fact that respondent appeared to be under a guardianship, but noted in its written findings that “there is a possibility that the adult guardianship was discharged in the year 2001.” Generally, evidence that a respondent is under a guardianship raises a rebuttable presumption that grounds for jurisdiction exist. *In re Middleton*, 198 Mich App 197, 199-200; 497 NW2d 214 (1993).

Counsel was not ineffective in failing to move to set aside jurisdiction for several reasons. First, it was uncontroverted that respondent had been under a guardianship for nearly twenty years, which indicated a level of incapacity even if the guardian had been recently discharged. Second, regardless of guardianship, a preponderance of the evidence showed that two relatives expressed concern about respondent harming Queron if respondent was not supervised, and jurisdiction would have been appropriate under those facts alone. Third, regardless of whether the guardianship was still in effect, respondent’s December 5, 2002 Clinic for Child Study evaluation noted respondent’s cognitive limitations and concluded that respondent could not independently care for Queron, but required direct supervision and assistance. Therefore, respondent’s lack of capacity to care for a child was established independent of a guardianship only two months after the adjudication, and counsel’s motion to set aside jurisdiction on the ground that incapacity had not been established would have been futile. Fourth, even if the trial court had incorrectly assumed jurisdiction on the basis of respondent’s incapacity, it did correctly assume jurisdiction by way of Queron’s father’s admission that he was currently unable to provide for the child. Jurisdiction is tied to the child, and petitioner need meet its burden of proof with regard to only one parent. *In re CR*, 250 Mich App 185, 205; 646 NW2d 506 (2002).

A finding of ineffective assistance of counsel requires a showing of prejudice to respondent, see *id.* at 198, and counsel’s failure to move to set aside jurisdiction certainly did not prejudice the outcome of this termination proceeding against respondent. Sadly, respondent’s lack of capacity, her failure to comply with services, the questionable benefit of any services, and the lack of a realistic plan whereby a relative would be available to assist respondent over the long-term require termination of respondent’s parental rights.

Affirmed.

/s/ Hilda R. Gage
/s/ Joel P. Hoekstra
/s/ Christopher M. Murray