STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of JUJUAN D'ANGELO BELL, Minor.

DAVID BELL and RESA BELL,

Petitioners-Appellees,

v

PHYLLIS BELL,

Respondent-Appellant.

UNPUBLISHED
October 29, 2009

No. 290285
Oakland Circuit Court
Family Division
LC No. 08-749038-NA

Before: Stephens, P.J., and Jansen and Wilder, 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(3)(e), (g), and (j). We affirm.

Respondent argues that the trial court erred in finding that it had jurisdiction over the child. We disagree. The trial court's decision to exercise jurisdiction is reviewed for clear error in light of the court's findings of fact. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). To properly exercise jurisdiction, the trial court must find that a statutory basis for jurisdiction exists. *Id.* Jurisdiction need only be established by a preponderance of the evidence. *Id.*

Petitioners requested that the court exercise jurisdiction over the child pursuant to MCL 712A.2(b)(4), which provides that the court has jurisdiction over a child "[w]hose parent has substantially failed, without good cause, to comply with a court-structured plan." The evidence indicated that under the court-structured plan, respondent was required to obtain and maintain employment, participate in parenting classes conducive to her cognitive abilities to care for the child, obtain stable housing, attend individual therapy to address depression, and participate in neighborhood services suitable to her needs based on her disability. Respondent was also required to establish the child's paternity and pay support of $40 a month to petitioners.

Although respondent attended parenting classes, the evidence is not clear that the classes were appropriate to her learning ability, or that the time and assistance provided to her was sufficient to enable her to derive a measurable benefit. Regardless, respondent's psychological evaluation revealed that she continued to have significant difficulty articulating appropriate solutions to problems typically encountered with young children. The evaluator concluded that

the child would be prone to injury and exploitation by others if left in respondent's care, and that respondent lacked sufficient parental judgment to independently care for a young child. Based on this evidence, the trial court did not err in assuming jurisdiction over the child. *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005). Regarding housing, respondent claimed that she had been leasing a house in Detroit with a friend for approximately a year, but she failed to produce a copy of the lease and the trial court found that the friend's testimony was not credible. We defer to the trial court's credibility determinations. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005). In addition, respondent remained unemployed, she never obtained any community service organization to assist her, and she never pursued paternity. In light of this evidence, the trial court did not clearly err in finding that there was a statutory basis for jurisdiction pursuant to MCL 712A.2(b)(4).

Respondent next argues that the trial court erred in finding that the statutory grounds for termination were established by clear and convincing evidence. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). We disagree. The evidence indicated that respondent failed to provide proper care for the child after his birth, failed to substantially comply with the court-structured plan that was subsequently established, and had cognitive and mental limitations that would prevent her from providing proper care for the child in the future, and which would place the child at risk of harm if he was returned to respondent's custody. Because respondent failed to comply with the court-structured plan, respondent only saw her child in a supervised setting just a few hours a week, and the child unsurprisingly did not view respondent as a parent figure.

In addition, given respondent's cognitive and mental limitations, the fact that the child had been under a guardianship for most of his life, and the fact that the child did not view respondent as his mother, the trial court did not clearly err in finding that termination of respondent's parental rights was in the child's best interests. MCL 712A.19b(5); *In re Trejo, supra* at 356-357.

In the alternative, respondent argues that the trial court was biased against her and that, therefore, reversal is required. We disagree. Because respondent did not either raise a claim of judicial bias below or otherwise object to the conduct that she now argues demonstrates bias, this issue is unpreserved. We review unpreserved issues for plain error affecting substantial rights. *In re Egbert R Smith Trust*, 274 Mich App 283, 285; 731 NW2d 810 (2007), aff'd 480 Mich 19 (2008).

A party claiming judicial bias bears a heavy burden of overcoming the presumption of judicial impartiality. *In re Forfeiture of $1,159,420*, 194 Mich App 134, 151; 486 NW2d 326 (1992). An actual showing of prejudice is required before a judge will be disqualified. *Id.* Respondent claims that the trial court was biased against her because (1) the trial court limited her counsel's cross-examination of a witness, (2) the trial court precluded respondent from calling Dr. Corey Vigor as a witness, and (3) the trial court questioned one of respondent's witnesses.

The record does not support respondent's assertion of judicial bias. First, the trial court properly exercised its discretion to restrict respondent's cross-examination of Ms. Harris, a witness who completed a psychological examination of respondent, to relevant testimony. MRE

611. By his own admission, counsel asked the questions at issue in order educate himself as to what a Sentence Completion Test was (in other words, to conduct discovery), and not to determine how respondent's performance on that test contributed to the witnesses opinion and recommendation. In that respect, the trial court did not abuse its discretion in precluding questions that were irrelevant and resulted in a needless consumption of time. *Chmielewski v Xermac, Inc*, 457 Mich 593, 614; 580 NW2d 817 (1998).

Second, the trial court did not abuse its discretion when it precluded respondent from calling Dr. Vigor as a witness. The previous day, the trial court adjourned the proceedings because respondent did not have further witnesses present to continue. Respondent asserted that Dr. McClung had not responded to a subpoena issued by respondent. In continuing the matter to the next day, the trial court specifically asked counsel to identify the remaining witnesses to be called. Counsel identified respondent and Dr. McClung as the remaining witnesses. Counsel did not identify Dr. Vigor as a witness. We find no abuse of discretion in the trial court's exercise of control over its trial schedule by holding counsel to the representations of witnesses to be called that counsel made on the record. MRE 611. The fact that the trial court may have exhibited some impatience with counsel's efforts to circumvent the trial court's procedures or enforce counsel's previous representations does not indicate a deep-seated favoritism or antagonism that would make fair judgment impossible. *Gates v Gates*, 256 Mich App 420, 440; 664 NW2d 231 (2003).

Third, it is apparent from the record that the trial court questioned Dr. McClung not because of bias, but instead in an effort to test the witness's conclusions against the evidence in the case. Further, the trial court properly explained to Dr. McClung her limited role as a witness, after the doctor questioned the necessity for the termination proceeding. The trial court's inadvertent reference to having heard testimony from "psychiatrists" rather than "psychologists" is also not indicative of any bias, particularly where seconds later the trial court properly referred to the testimony as having been presented by a psychologist. In sum, the record does not support respondent's claim that the trial court was biased against her.

Next, respondent contends that reversal is required because the trial court never determined whether she had a disability under the Americans with Disabilities Act ("ADA"), 42 USC 12101 *et seq*., and should have been afforded reasonable accommodations for her disability. Because respondent did not raise any ADA claim in the trial court, this issue is unpreserved and, therefore, is subject to review for plain error. *In re Egbert R Smith Trust, supra* at 285; *In re AMB*, 248 Mich App 144, 195; 640 NW2d 262 (2001).

Here, respondent relies on authority recognizing that the Department of Human Services ("DHS"), in meeting its statutory duty to provide reasonable services toward reunification, must make reasonable accommodations for individuals with disabilities. See *In re Terry*, 240 Mich App 14, 25-26; 610 NW2d 563 (2000). However, the DHS was not involved in this case, which instead involved a court-structured plan as part of a legal guardianship. Moreover, the plan devised by the court explicitly directed that any parenting classes or services provided to respondent were to be appropriate for her cognitive ability and suitable to her specific needs. Accordingly, there is no basis for finding that respondent's rights under the ADA were violated.

Given our conclusion that there is no merit to respondent's claim of judicial bias or to her ADA claim, we also reject respondent's related claim that counsel was ineffective for failing to raise these issues. *In re CR*, 250 Mich App 185, 197-198; 646 NW2d 506 (2002).

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Kathleen Jansen
/s/ Kurtis T. Wilder