

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of WILLIAM A. DAVIS and MYA
KILDEE, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DAWN MARIE KILDEE,

Respondent-Appellant.

UNPUBLISHED

November 18, 2008

No. 286011

Ingham Circuit Court

Family Division

LC No. 07-001129-NA

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

PER CURIAM.

Respondent appeals as of right the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g), and (j). Because we conclude that there were no errors warranting relief, we affirm. This appeal has been decided without oral argument under MCR 7.214(E).

The trial court did not clearly err in finding that statutory grounds for termination of respondent's parental rights had been proven by clear and convincing evidence. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

Respondent does not contest the trial court's reliance on MCL 712A.19b(3)(j) in terminating her parental rights, and only one statutory ground must be established for this Court to affirm a termination of parental rights. *In re Trejo*, *supra* at 360. However, the trial court also did not clearly err with respect to MCL 712A.19b(3)(c)(i) and (g).

The issues that led to adjudication included respondent's substance and alcohol abuse, lack of housing and employment, failure to provide for the minor children while leaving them in the care of others, and failure to participate in services. Almost a year after the minor children were removed from respondent's care, all these issues remained. Respondent was twice referred for a substance abuse assessment. At the first assessment she failed to comply with the requirements that she participate in women's groups, AA/NA, and individual counseling. She did provide many of the required screens, which were negative for drugs or alcohol. At the second assessment, respondent denied having a substance and alcohol abuse problem, and no additional services were recommended. Therefore, although there was evidence that respondent

ceased abusing substances, it cannot be said that this condition was rectified, and respondent's refusal to engage in services designed to assist her was compelling evidence that the condition would not be rectified within a reasonable time.

Respondent was also offered services to help rectify the other conditions of adjudication even after the termination petition had been filed. The caseworker indicated that it was difficult to engage respondent in services, although the caseworker made additional efforts because of respondent's young age. At the time of the termination hearing respondent still did not have appropriate housing and did not have a legal source of income. She did complete parenting classes and, although she attended most of the visits with the children, she was not able to properly supervise both young children and keep them safe—even during supervised visitation. She was simply not aware of what was appropriate for each child's developmental stage. Although respondent argues on appeal that she could have benefited from additional services to assist her with her parenting skills, it is difficult, if not impossible, to benefit from services without being engaged in and committed to those services. See *In re Gazella*, 264 Mich App 668, 676; 692 NW2d 708 (2005) (noting that a parent must both participate in the services *and* benefit from them). Further, the psychologist who evaluated respondent expressed concerns about respondent's ability to care for herself and use good judgment, and did not believe respondent would make sufficient progress within the next 18 months to properly and safely parent the children. Thus, the trial court did not err in finding that the conditions of adjudication had not been rectified and were not likely to be rectified, and that respondent would not be able to provide proper care and custody to the children within a reasonable time considering the children's young ages.

The trial court also did not clearly err in its best interests determination. MCL 712A.19b(5);¹ *Trejo*, *supra* at 353. The trial court acknowledged respondent's love for the children, but no evidence of a parent-child bond had been presented. In fact, the evidence showed that respondent referred to Mya in a derogatory way, put her in charge of her younger brother, and was unable to grasp what was necessary, based on the children's developmental levels, to provide proper care and keep them safe. The trial court did not clearly err when it found that the minor children could not wait for respondent to mature sufficiently to properly care for them.

Finally, respondent was not denied the effective assistance of counsel when her attorney failed to request a recess to allow her the time to compose herself enough to be able to testify, and instead rested without respondent's testimony. To prevail on a claim of ineffective assistance of counsel, a respondent must show not only that counsel's representation was deficient, but also that there is a reasonable probability that, but for counsel's errors, the result of the proceedings would have been different. *In re CR*, 250 Mich App 185, 198; 646 NW2d 506 (2001). On appeal, respondent does not explain what her testimony would have been or how it might have affected the outcome of the proceeding. Hence, on this record, we cannot conclude

¹ We note that respondent's parental rights were terminated before the effective date of the amendment of MCL 712A.19b(5). See 2008 PA 199.

that, but for the alleged error of respondent's counsel, the outcome would have been different. See *Id.* at 198-199.

There were no errors warranting relief.

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Michael R. Smolenski