STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of BIBLE VERSUS HALE and HUGH HALE, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

KENYETTA M. HALE,

Respondent-Appellant.

UNPUBLISHED
December 22, 2009

No. 292029
Wayne Circuit Court
Family Division
LC No. 99-384819

Before: Shapiro, P.J., and Jansen and Beckering, JJ.

PER CURIUM.

Respondent appeals as of right from the trial court's order terminating her parental rights to the minor children at the initial dispositional hearing pursuant to MCL 712A.19b(3)(g), (j), and (l). We affirm.

Respondent first argues that the trial court erroneously relied on the opinion testimony of Ellen Wend, who respondent maintains was not qualified under MRE 702 to provide an expert opinion. Although respondent refers to Wend, it appears from the substance of respondent's argument and the record citations in respondent's brief that she is actually challenging the trial court's decision to request an opinion from Robin Smith. Although respondent raised a hearsay objection to Smith's testimony, she did not object on the ground that Smith was not competent to offer an opinion. Therefore, this issue is not preserved. *People v Maleski*, 220 Mich App 518, 523; 560 NW2d 71 (1996). Accordingly, we review this issue for plain error affecting respondent's substantial rights. *Wolford v Duncan*, 279 Mich App 631, 637; 760 NW2d 253 (2008).

To the extent that Smith's opinion is analyzed under MRE 702, there was no plain error. That rule allows a witness to be qualified as an expert "by knowledge, skill, experience, training, or education." Although the record does not disclose Smith's educational background, it indicates that she has training and experience as a foster care caseworker and her opinion was limited to that area. Further, we believe that Smith's opinion was admissible under MRE 701, which allows a lay witness to offer an opinion or inferences that are rationally based on the witness's perceptions and are helpful to a clear understanding of the witness's testimony or the determination of a fact in issue. In this case, Smith was personally involved in the case as

respondent's caseworker. Her opinion was based on her perceptions from her personal involvement with the case. Accordingly, there was no plain error. Furthermore, a review of the referee's findings reveals that no undue significance was given to Smith's opinion. Thus, although we have concluded that her testimony did not constitute plain error, we are also satisfied that it did not affect respondent's substantial rights. Therefore, reversal is not warranted.

Next, respondent argues that the trial court erred in finding that the statutory grounds for termination were proven by clear and convincing evidence. Petitioner had the burden of proving a statutory ground for termination by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). We review the trial court's findings of fact under the clearly erroneous standard. MCR 3.977(J). A finding of fact is clearly erroneous when the reviewing court has a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Deference is accorded to the trial court's assessment of the credibility of the witnesses. *In re Newman*, 189 Mich App 61, 65; 472 NW2d 38 (1991).

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. It is undisputed that respondent's parental rights to another child were previously terminated in 2001, thereby supporting termination of respondent's parental rights to the two children at issue here pursuant to § 19b(3)(l). As to the other grounds, respondent again received services in 2004 and 2005 until jurisdiction was terminated in April 2005. However, from that time until the petition was filed in 2009, respondent continued to receive mental health counseling services and twice participated in Families First. And yet, despite these continued services, respondent showed no improvement. The child protective services (CPS) worker testified that respondent had been in treatment for drug usage "a few times" since she had the case, including in-patient treatment in both November 2008 and April 2009, and two witnesses testified that respondent admitted to using cocaine in "the winter and spring of 2008" as well as later in December 2008. There was testimony that her parenting was "inconsistent" and that she was, at times, emotionally unavailable to the children.

Most significantly, the children's father, who had been the one stabilizing influence in the children's and respondent's lives, died in December 2008. The CPS worker testified that "normally when [respondent] had a problem, she, um, would leave the kids with [the father] and she would take care of whatever she had to take care [of] and then come back and she'd be okay." With his passing, respondent lacked a support system and she was unable to properly care for the children on her own.

Respondent also had a relationship with a man who abused her to the point of requiring hospitalization. The testimony was that he was not a good influence on respondent, that her cocaine use was tied to his presence, and that one of the minor children would act more aggressively when he was present. Although there was some evidence that respondent had left this man, there was testimony that she had previously left him "two or three other times."

Thus, the evidence showed that despite years of services, respondent never made any real progress in addressing her mental health problems, history of substance abuse, and record of domestic violence. Because respondent had not benefited from years of services, there was no reasonable expectation that she would be able to provide proper care and custody within a

reasonable time, and there was a reasonable likelihood that the children would be harmed if returned to respondent's home. Therefore, termination was also appropriate under §§ 19b(3)(g) and (j).

Affirmed.

/s/ Douglas B. Shapiro
/s/ Kathleen Jansen
/s/ Jane M. Beckering