STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of JAMES RYAN MOLNAR and ELIZABETH RENEE MOLNAR, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

GERALD MOLNAR,

Respondent-Appellant.

UNPUBLISHED
May 5, 2009

No. 286987
Oakland Circuit Court
Family Division
LC No. 2003-685908-NA

Before: Cavanagh, P.J., and Fort Hood and Davis, JJ.

PER CURIAM.

Respondent-Appellant, Gerald Molnar, appeals as of right from the trial court's order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(b), (3)(c)(i), (3)(g), and (3)(j). We affirm.

Petitioner sought termination of respondent's parental rights after the minor daughter reported sexual abuse. A criminal case was brought against respondent, but he was acquitted. However, following a bench trial, the family court found evidence of abuse by a preponderance of the evidence and exercised jurisdiction over the minor children. The family court entered various orders requiring respondent to complete services to reunify with his children. Ultimately, a parent-agency agreement was executed. The agreement required respondent to: (1) complete parenting classes and demonstrate the skills acquired from a program of his choice; (2) maintain bimonthly contact with the caseworker; (3) sign necessary releases; (4) complete a sex offender assessment with an evaluator and follow the recommendations of the assessment; (5) obtain legal employment; (6) have suitable housing; (7) enroll in anger management counseling; and (8) provide a list of medications. Caseworker Katty Bedell reported that respondent made progress in completing the parent-agency agreement. After Bedell was transferred to preventive services, caseworker Louis Andraski examined the proof of compliance with the parent-agency agreement and concluded that respondent had not complied. Andraski opined that respondent provided certificates of completion for parenting and anger management classes, but did not demonstrate that he benefited from the classes. The caseworker concluded that respondent completed assessments with two evaluators, but failed to comply with their recommendations. Consequently, Andraski filed a petition for termination of parent rights because the case had been pending for nearly four years. The trial court terminated respondent's parental rights and

concluded that termination was not contrary to the children's best interests. Respondent appeals as of right.[1]

I. Polygraph Examination

Respondent alleges that the family court erred by failing to grant him a hearing regarding the validity, reliability, and relevance of the polygraph examination. We disagree. The trial court's decision whether to hold an evidentiary hearing is reviewed for an abuse of discretion. *People v Unger*, 278 Mich App 210, 216-217; 749 NW2d 272 (2008). An abuse of discretion occurs when the trial court chooses an outcome falling outside the range of reasonable and principled outcomes. *Id*. at 217; see also *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

Error may not be predicated upon the trial court's exclusion of evidence unless a substantial right of the party is affected, and an offer of proof is submitted when the evidence is excluded. MRE 103(a)(2); *Detroit v Detroit Plaza Ltd Partnership*, 273 Mich App 260, 291; 730 NW2d 523 (2006). An offer of proof is necessary to advise the trial court of the nature and purpose of the proposed evidence and provides a basis for the appellate court to determine if the trial court's ruling should be sustained. *Detroit Plaza, supra*. When a party fails to make an offer of proof regarding the substance of the evidence, the issue is not preserved for appellate review. *Id*. at 291-292. Further, absent some evidence of harm as a result of the ruling, the appellate court cannot conclude that the trial court's decision was an abuse of discretion. *Id*. at 292. To admit expert testimony in accordance with MRE 702, the trial court, in its role as gatekeeper, must ensure that both the methodology upon which the expert draws its conclusions and the data underlying the expert's theories are reliable. *Gilbert v DaimlerChrylser Corp*, 470 Mich 749, 779; 685 NW2d 391 (2004). Results of a polygraph examination are not admissible at trial, *People v Barbara*, 400 Mich 352, 359; 255 NW2d 171 (1977), because the polygraph technique has not received the degree of acceptance or standardization among scientists such that admissibility is permitted. *People v Ray*, 431 Mich 260, 265; 430 NW2d 626 (1988).

Respondent asserted that the trial court was obligated to conduct a hearing regarding the admission of polygraph evidence because it was time to revisit the *Barbara* decision, polygraph evidence was admissible in other contexts, and case law required the court to conduct a hearing. However, review of the lower court file reveals that respondent merely submitted the polygraph results. When the lower court excluded the polygraph results, respondent failed to make an offer of proof with scientific data or studies to indicate that, since the time the *Barbara* decision was rendered, polygraph examinations had achieved acceptance or standardizations among scientists

[1] As an initial matter, we note that respondent, as the appellant, was obligated to file the complete record on appeal, and we cannot consider record evidence for which there is no evidentiary support. *Band v Livonia Assoc*, 176 Mich App 95, 103-104; 439 NW2d 285 (1989). The exhibits were not contained in the lower court record, and a complete set of transcripts was not submitted with the record. Additionally, MCR 7.212(C)(6) and (C)(7) provide that the brief must delineate both favorable and unfavorable material facts with specific page references to the transcripts. Respondent's brief does not comport with the court rules. Despite these deficiencies, we nonetheless will address the merits of the issues raised on appeal.

as reliable evidence. In light of the complete absence of an offer of proof, the trial court did not abuse its discretion by failing to hold an evidentiary hearing. *Unger, supra*.

II. Prior Bad Acts

Respondent contends that the trial court erred in allowing petitioner to introduce evidence of prior unconvicted bad acts without establishing a nexus between the acts and the ability to parent. We disagree. An issue is preserved for appellate review when it is raised, addressed, and decided in the trial court. *Persinger v Holst*, 248 Mich App 499, 510; 639 NW2d 594 (2001). Respondent fails to identify, with citation to the record, the prior bad act in dispute and whether it was raised, addressed, and decided in the trial court. Additionally, he does not identify the type of hearing during which admission was sought. Consequently, respondent failed to demonstrate that this issue is preserved for appellate review. *Id*.

A trial court's ruling regarding the admission of evidence is reviewed for an abuse of discretion. *In re Utrera*, 281 Mich App 1, 15; 761 NW2d 253 (2008). The trial court abuses its discretion when it chooses an outcome falling outside the range of reasonable and principled outcomes. *Babcock, supra*. After jurisdiction over a child is assumed in the adjudicative phase, the court must hold a hearing to determine the appropriate disposition of the child. MCR 3.973; *In re AMAC*, 269 Mich App 533, 536-537; 711 NW2d 426 (2006). Generally, during the disposition hearing, the Rules of Evidence do not apply. *AMAC, supra* at 537. Rather, all relevant and material evidence is admissible, and evidentiary privileges are abrogated. *Id*.; see also MCR 3.973(E)(1) and (2). Furthermore, in a bench trial, the court is presumed to know the applicable law and the difference between admissible and inadmissible evidence. *People v Lanzo Constr Co*, 272 Mich App 470, 484-485; 726 NW2d 746 (2006). The judge's knowledge of the law allows him to ignore errors committed at trial and to decide a case solely upon the evidence properly admitted at trial. *People v Taylor*, 245 Mich App 293, 305; 628 NW2d 55 (2001). Error may not be predicated upon a ruling admitting evidence unless a substantial right of the party is affected. MRE 103(a).

In the present case, respondent failed to identify the prior bad act and the type of hearing during which the act was admitted. Review of the lower court record reveals that prior bad acts were referenced during the disposition hearing, and the Rules of Evidence do not apply. *AMAC, supra*. Furthermore, review of the trial court's decision regarding the merits of the termination reveals that the decision was premised on the factual findings addressing the completion of the parent-agency agreement. The trial court did not rely on prior bad acts as the reason for the termination. Accordingly, this claim of error does not provide respondent with relief.

III. Arbitrary and Capricious Demands

Respondent alleges that the family court imposed arbitrary and capricious demands by relying on the arguments of the lawyers and failing to hold hearings. We disagree. This Court reviews de novo the issue of whether a due process violation has occurred. *Thomas v Pogats*, 249 Mich App 718, 724; 644 NW2d 59 (2002). A respondent in a termination of parental rights case is entitled to procedural due process protections because a significant liberty interest is at stake – the parent's interest in the companionship, care, custody, and management of his children. *In re Brock*, 442 Mich 101, 109; 499 NW2d 752 (1993). Fundamental fairness is a requirement of due process, and the procedure required in a particular situation is determined by

evaluating the interests at stake, the private interest affected by the official action, the risk of an erroneous deprivation in light of the procedures employed, and the governmental interest. *Id*. at 111.

MCL 712A.19 governs termination, review hearings, plans, agency reports, and efforts to reunify the child with the family. It provides that if a child remains under court jurisdiction, the court has the authority to enter necessary and proper orders. MCL 712A.19(1). A review hearing is to be held, MCL 712A.19(2), and at a review hearing, the court must review the compliance with the case service plan to address the services provided and the requirements to comply with the case service plan. MCL 712A.19(6). An agency report filed with the court is to be accessible to all parties, and the report shall be offered into evidence. MCL 712A.19(11).

Respondent seemingly takes issue with the fact that the family court judge adopted the parent-agency agreement and the recommendations offered by the evaluators. However, by statute, the case service plan or parent-agency agreement is the measure by which the court determines the progress made in the case and the next action to take. See MCL 712A.19(7). The court may then decide to order additional services to rectify the conditions that caused the children to come into the court's jurisdiction. *Id*. Accordingly, respondent's claim of error is without merit. The family court did not arbitrarily accept the arguments of lawyers and evaluators, but rather, followed the statutory requirements to determine if efforts were made to reunify the family by examining the parent-agency agreement and holding review hearings. MCL 712A.19.

IV. Access to the Children and Lack of Bonding

Respondent contends that he was inappropriately denied access to his children when the family court did not make a finding of sexual abuse or touching. Rather, the trial court merely found, by a preponderance of the evidence, that the daughter was more credible than respondent. We disagree. Parenting time orders are reviewed de novo, but this Court must affirm the trial court unless its findings of fact were against the great weight of the evidence, the court committed a palpable abuse of discretion, or the court committed a clear legal error. *Berger v Berger*, 277 Mich App 700, 716; 747 NW2d 336 (2008).

Respondent, as the appellant, had the duty to file the complete record on appeal, and this Court cannot consider record evidence for which there is no evidentiary support. *Band v Livonia Assoc*, 176 Mich App 95, 103-104; 439 NW2d 285 (1989). Irrespective of respondent's failure to provide the transcripts of the hearing wherein the minor child testified to abuse,[2] the argument is illogical. By finding the minor child's testimony credible, the family court concluded that she had been inappropriately touched, and thereby took jurisdiction. Furthermore, the Child Protection Law, MCL 722.638(2), provides that in a petition submitted because a parent is the

[2] Respondent filed a federal action against the reporters and investigators of abuse, but the litigation was dismissed. *Molnar v Care House*, 574 F Supp 2d 772, 801 (ED Mich 2008). According to this opinion, the minor child stated that respondent put his hands down her pants and "touched her vulva." *Id*. at 779. Therefore, by finding this statement credible, the family court concluded that sexual abuse had occurred.

suspected perpetrator of sexual abuse, the agency "shall" include a request for termination at the initial dispositional hearing. Thus, when termination is sought at the initial stage for sexual abuse, the agency is not required to provide services or allow visitation. Indeed, Bedell testified that it was petitioner's policy to provide services in incest cases only when expressly ordered by the family court. Taxpayer funds were not to be expended in instances of familial sexual abuse.

Despite petitioner's request for termination and its stance on the issue of visitation, the family court entered orders requiring petitioner to provide services. Specifically, the family court[3] ordered respondent to attend the Father's Resource Center, a program that allowed fathers to reunite with their children before a licensed therapist to ensure appropriate visitation. Two caseworkers testified that participation in this program would have effectively lifted the no contact or no visitation provision. In the findings of fact and conclusions of law, the family judge concluded that there was no merit to respondent's assertion that he could not participate in the program because of his age. In light of this factual finding, we cannot conclude that respondent was erroneously deprived of access to his children when he failed to avail himself of a program that would have provided visitation in a supervised, therapeutic setting. *Berger, supra*.

V. Gross Negligence by Attorneys

Respondent asserts that grossly negligent and incompetent lawyers blocked access to the minor children who were desperate to see him. There is no indication that this issue was raised, addressed, and decided in the lower court; it is not preserved for appellate review. *Persinger, supra*. Furthermore, an appellant's failure to properly address the merits of an assertion of error with citation to authority constitutes abandonment of the issue. *Woods v SLB Prop Mgt, LLC*, 277 Mich App 622, 626-627; 750 NW2d 228 (2008). A party may not merely announce a position to the appellate court and then require the Court to search for authority to sustain the position. *Goolsby v Detroit*, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984). Although respondent alleges that guardians ad litem and "lawyers" were grossly negligent he does not elaborate with the individual names. There is no indication that respondent moved to disqualify any lawyer on the basis of competency. Respondent does not identify any rules of professional conduct that may have been violated to support this issue. Therefore, the issue is unpreserved and abandoned on appeal. *Woods, supra*.

VI. Coerced Evaluations

Respondent contends that he was required to pay for "evaluation after evaluation" in the search for a negative opinion, and the requirement that he pay was offensive to fundamental fairness. This issue was not raised, addressed, and decided in the lower court, and therefore, it is not preserved for appellate review. *Persinger, supra*. Additionally, the record does not substantiate the claimed error. Irrespective of the evaluators' failure to classify respondent as a

[3] Oakland Circuit Court Judge Daniel Patrick O'Brien presided over the adjudicative phase and found sexual abuse based on a preponderance of the evidence. This judge ordered the agency to provide services. The case was transferred to Oakland Circuit Court Judge Leo Bowman. This judge presided over the disposition phase and rendered the decision to terminate parental rights.

pedophile, petitioner's witnesses opined that there were many negatives surrounding respondent; he engaged in repeated negative conduct, did not assume any responsibility for his conduct, and therefore, did not have any motive to change his conduct. Consequently, it was recommended that respondent participate in additional services because he refused to account for his behavior. The contention that additional evaluations were ordered to obtain a negative opinion is not in accordance with the record evidence.

With regard to the payment requirement, respondent repeatedly asserted that he had sufficient financial means such that he did not need to obtain employment. The testimony established petitioner's policy that taxpayer funds are not expended in incest cases. Consequently, to reunify with his children, respondent was required to pay for the services ordered by the court.[4]

VII. Disability

Respondent asserts that the trial court failed to recognize his physical disability and to tailor a remediation plan to address his disability. We disagree. Respondent does not cite to any location in the lower court record wherein he asserted that he was disabled and prevented from completing the parent-agency agreement because of his disability. Moreover, after the family court ordered respondent to obtain legal employment, he did not assert that it was impossible to comply because of his health problems. Therefore, this issue is not preserved for appellate review. *Persinger, supra*.

VIII. Agency Cooperation

Respondent next alleges that the trial court erred in failing to recognize that he had to repeatedly question caseworkers regarding the requirements necessary to regain contact with his children. We disagree. A trial court's decision to terminate parental rights and the best interests decision must be proven by clear and convincing evidence. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). The appellate court reviews the decision for clear error. *Id*. A decision is clearly erroneous if, although there is evidence in support, the reviewing court is left with a definite and firm conviction that a mistake has been made following examination of the entire record. *Id*. When determining whether to dismiss jurisdiction or terminate parental rights, the family court must apprise itself of all relevant circumstances including the reason that jurisdiction was assumed. See *In re LaFlure*, 48 Mich App 377, 390-391; 210 NW2d 482 (1973).

Review of the trial court's opinion and order terminating parental rights reveals that the family court did address deficiencies on the part of petitioner. Specifically, the judge expressed disappointment with the caseworkers for failing to seek court intervention to require respondent to timely fulfill court ordered services. The judge noted that judicial intervention might have shortened the length of the case that lasted for four years. Additionally, the judge expressed concern that Bedell may have tacitly approved respondent's enrollment in an on-line parenting

[4] Although respondent contended that he and his fiancé had sufficient financial means, he did not provide any support for the children.

course. However, despite the acknowledgement of agency deficiencies, the court nonetheless concluded that the delay and subterfuge by respondent exceeded any problems caused by the agency. More importantly, the family court found that respondent did not satisfactorily complete the parent-agency agreement. *JK, supra*. This issue does not entitle respondent to appellate relief.

IX. Completion of the Parent-Agency Agreement

Next, respondent asserts that the termination was against the great weight of the evidence when caseworker Bedell advised that he had completed the parent-agency agreement. We disagree. A trial court's decision to terminate parental rights must be proven by clear and convincing evidence. *JK, supra*. We review the lower court's decision for clear error. *Id*. This standard of review expressly recognizes that it is the findings and decisions of the lower court that are dispositive, not the opinion of the caseworker.

More importantly, during respondent's testimony, he acknowledged that he did not comply with the terms of the parent-agency agreement. Initially respondent testified that he complied with the agreement. However, although he completed the court ordered evaluations, he admitted that he did not comply with the evaluators' follow up recommendations. Additionally respondent alleged that he attended therapy with his own psychiatrist, but it was ultimately learned that he was not participating in therapy, but rather, only obtained quarterly medication reviews. A parent's failure to comply with the parent-agency agreement evidences that the parent will fail to provide proper care and custody for the child. *JK, supra* at 214. Under these circumstances, the opinion of the caseworkers was irrelevant, and respondent does not challenge the ultimate rulings of the family judge regarding noncompliance, termination, and best interests.

X. Judicial Disqualification

Respondent contends that it was erroneous for Judge Bowman to preside over this case when, as a district court judge, he was a defendant in an action filed by counsel for respondent. We disagree. As an initial matter, we note that respondent failed to provide the complete record on appeal with regard to this issue. The transcript of the hearing before Judge Bowman or an order of disqualification is not contained in the lower court record, and generally, this issue could not be addressed on appeal. See *Band, supra*. However, the circuit court chief judge entered an opinion and order denying the request for disqualification. Accordingly, we will address the chief judge's decision.

This Court reviews the chief judge's decision regarding a motion for disqualification, MCR 2.003, for an abuse of discretion. *Meagher v Wayne State Univ*, 222 Mich App 700, 725; 565 NW2d 401 (1997). The factual findings on a motion for disqualification are reviewed for an abuse of discretion, but the application of the facts to the law is reviewed de novo. *Van Buren Twp v Garter Belt, Inc*, 258 Mich App 594, 598; 673 NW2d 111 (2003). A party seeking disqualification must overcome a heavy presumption of judicial impartiality. *Id*. Specifically, it must be proven that the judge harbors both personal and extrajudicial bias or prejudice against a party or the party's attorney. *Id*.

Respondent asserted that, in the federal action, the presiding judge questioned why Judge Bowman would not follow the law and that the case was "settled by consent order." On the

contrary, the guardian ad litem filed documentation indicating that the federal lawsuit was dismissed when respondent's counsel failed to file a response to the defendant's jurisdictional challenge. According to the opinion issued by the chief judge, Judge Bowman indicated that he had no recollection of the federal case and determined that he could remain impartial. The chief judge concluded that respondent failed to overcome the heavy presumption of judicial impartiality, and we cannot conclude that holding constituted an abuse of discretion. *Meagher, supra*.

XI. Respondent's Evidentiary Rules

Respondent next contends that the lower court erred in applying one set of evidentiary rules to petitioner and a different set of rules for respondent. However, respondent has failed to preserve this issue by citing specific instances with *page* references to the transcript. MCR 7.212(C)(6). Again, respondent has abandoned this issue. *Woods, supra*.

For purposes of completeness, our review of the record reveals an instance where respondent sought to admit a report from his completion of anger management classes. However, the report was not admitted over objection by counsel. However, it appears that the objection was not premised on hearsay, but rather, on respondent's failure to produce the author of the report for cross-examination. MCR 3.973(E)(3). Therefore, we cannot conclude that the family court imposed a different set of evidentiary rules upon respondent.

XII. Children's Wishes

Respondent contends that the lower court erred in blocking proofs of the children's desire to see him until their mother advised them that he was not cooperating with services. This issue is without merit. Review of the lower court record reveals that respondent called the children to testify at the best interests hearing over the objection of the guardian ad litem. At that time, the children expressly testified to their past feelings about respondent, their current feelings about seeing respondent, and information provided by their mother. Additionally, two evaluators addressed the issue of the children's desire to see their father. The record does not support this claim of error.

XIII. Termination of Parental Rights and Best Interests Determination

Finally, we note that respondent does not take issue with the trial court's ultimate decisions regarding termination and best interests. For purposes of completeness, we will address the merits of the trial court's decision. The family court's decision to terminate respondent's parental rights was not clearly erroneous. *JK, supra*. The family court issued a lengthy opinion and order concluding that respondent engaged in questionable tactics to circumvent the process and failed to comply with the conditions of the parent-agency agreement. We cannot conclude that those factual findings were clearly erroneous. *Id*. The family court's determination regarding the children's best interests is also reviewed under the clearly erroneous standard. *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005). Once a ground for termination is established, the family court must order termination of parental rights unless the court concludes that termination is clearly not in the children's best interests. *Id*. We cannot conclude that the family court's determination with regard to the children's best interests was clearly erroneous in light of the limited public relationship respondent sought with his children.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood
/s/ Alton T. Davis