STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of TIFFANIE SHERWOOD, STEPHANIE SHERWOOD and VANESSA SHERWOOD, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ELIZABETH SHERWOOD,

Respondent-Appellant,

and

MICHAEL SHERWOOD,

Respondent.

UNPUBLISHED
October 16, 1998

No. 205509
Marquette Juvenile Court
LC No. 95-004880 NA

Before: Saad, P.J., and Hood and Gribbs, JJ.

PER CURIAM.

Respondent-appellant's parental rights to her minor children were terminated pursuant to MCL 712.19b(3)(b)(ii), (c)(ii), (g) and (j); MSA 28.3178(598.19b)(3)(b)(ii), (c)(ii), (g) and (j). She appeals as of right, and we affirm.[1]

Respondent-appellant argues that the trial court's consideration of evidence that would not have been admissible at a trial, as authorized by MCR 5.974(F)(2), violated her right to due process; and further, that MCR 5.974 violates her equal protection rights to the extent that it allows the consideration of inadmissible evidence only when the child at issue is in foster care. Respondent-appellant also argues that the trial court's reliance on one of the children's out-of-court statements concerning abuse, without evaluating the statements for trustworthiness, violated her rights to due process and confrontation.

Because each of these arguments is premised on the trial court's consideration of allegedly inadmissible evidence, they can only apply to the court's findings concerning §§ 19b(3)(b)(ii), (g) and (j). When determining that there was sufficient evidence to find that termination was warranted on those grounds, the trial court relied on evidence that may not have been admissible at a trial. With respect to § 19b(3)(c)(ii), however, the trial court expressly indicated that there was sufficient legally admissible evidence to establish the allegation. It based its conclusion on the legally admissible evidence. Respondent-appellant has not advanced an argument that would provide a basis for overturning the trial court's decision with respect to this statutory ground. Because only one statutory ground is required in order to terminate parental rights, *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991), it is unnecessary to address respondent-appellant's arguments that termination on the other grounds violated her constitutional rights. This Court does not render advisory opinions on issues unnecessary to the disposition of the case. *People v Wilcox*, 183 Mich App 616, 620; 456 NW2d 421 (1990); *People v Turner*, 123 Mich App 600, 603-604; 332 NW2d 626 (1983). Moreover, courts will not and should not decide constitutional issues, which are not necessary to resolve a case. *Booth Newspapers v Univ of Michigan Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993).

Respondent-appellant next asserts that she should have been entitled to a jury trial, contrary to MCR 5.974(A)(3), which states that there is no right to a jury determination. She claims that a parent has a constitutional right to a jury trial at a proceeding to terminate parental rights. Respondent-appellant never requested a jury trial at the dispositional phase of the termination proceeding and never asserted that she had a constitutional right to a jury trial. The trial court therefore did not rule on this issue. It is not preserved for appeal, and we will not render an opinion on the hypothetical issue of whether respondent-appellant would have had a constitutional right to a jury trial if she had requested one.[2] *Adam v Sylvan Glynn Golf Course*, 197 Mich App 95, 98; 494 NW2d 791 (1992); *Wilcox, supra; Booth Newspapers, supra*.

Finally, respondent-appellant argues that she was denied the effective assistance of counsel. We disagree. Respondent-appellant's counsel litigated the case in accordance with existing court rules and case law. Counsel did not perform below an objective standard of reasonableness by failing to raise novel challenges to the constitutionality of the established procedures for termination of parental rights. *People v Mitchell*, 454 Mich 145, 157-158; 560 NW2d 600 (1997); *In re Simon*, 171 Mich App 443, 447; 431 NW2d 71 (1988).

Affirmed.

/s/ Henry William Saad
/s/ Harold Hood
/s/ Roman S. Gribbs

[1] It is unclear from the trial court's opinion whether grounds for termination were also found under subsection (c)(i). In light of our disposition of this appeal, we find it unnecessary to resolve this issue.

[2] We note that respondent-appellant specifically waived her right to a jury trial at the adjudicatory stage of the termination proceedings.