STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of S.S.S. and S.K.S., Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

HOLLY STRASBERGER,

Respondent-Appellant,

and

SCOTT STRASBERGER,

Respondent.

UNPUBLISHED
August 20, 2002

No. 236587
Macomb Circuit Court
Family Division
LC No. 99-047728-NA

In the Matter of S.S.S. and S.K.S., Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

SCOTT STRASBERGER,

Respondent-Appellant,

and

HOLLY STRASBERGER,

Respondent.

No. 236644
Macomb Circuit Court
Family Division
LC No. 99-047728-NA

Before: Murray, P.J., and Fitzgerald and O'Connell, JJ.

PER CURIAM.

In these consolidated appeals, respondent Holly Strasberger (respondent mother), and respondent Scott Strasberger (respondent father), each appeal as of right from the trial court's order terminating their parental rights to the minor children. Respondent mother's parental rights were terminated under MCL 712A.19b(3)(b)(i), (i), (j) and (k)(ii), and respondent father's parental rights were terminated under MCL 712A.19b(3)(b)(ii) and (j). We affirm.

DOCKET NO. 236587 (Respondent Holly Strasberger)

Respondent mother asserts that she has a constitutional right to parent the minor children. Although parents do have a liberty interest in the management of their children, once a court finds a statutory ground for termination under MCL 712A.19b(3), that liberty interest no longer includes the right to the companionship, care, and custody of the children. *In re Trejo*, 462 Mich 341, 355-357; 612 NW2d 407 (2000).

Here, respondent mother has failed to establish any basis for disturbing the trial court's findings under MCL 712A.19b(3). Although we do not find record support for the trial court's determination, for purposes of § 19b(3)(i), that respondent mother's parental rights to her two older children were terminated on the basis of physical and sexual abuse, any error in this regard is harmless because only one statutory ground for termination is required. Giving due deference to the trial court's special opportunity to judge the credibility of the witnesses who appear before it, we conclude that the trial court did not clearly err in finding that §§ 19b(3)(b)(i), (j) and (k)(ii) were each established by clear and convincing evidence. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Respondent mother's reliance on *In re Newman*, 189 Mich App 61; 472 NW2d 38 (1992), is misplaced. Unlike the circumstances in *In re Newman*, there was nothing about the services provided here to preclude a finding that the statutory grounds for termination were established.[1] Further, the evidence did not clearly show that termination was not in the children's best interests. Thus, the trial court did not clearly err in terminating respondent mother's parental rights to the children. MCL 712A.19b(5); *In re Trejo*, *supra.*

Respondent mother's arguments regarding the guardian ad litem and the admissibility of Laura Henderson's testimony are not properly before us because they are outside the scope of the statement of question presented. *Meagher v McNeely & Lincoln, Inc*, 212 Mich App 154, 156; 536 NW2d 851 (1995). In any event, respondent mother has not established her standing to seek relief based on the guardian ad litem's duties or provided this Court with any legal authority to support her claim. See *Eldred v Ziny*, 246 Mich App 142, 150; 631 NW2d 748 (2001); *Fieger v Comm'r of Ins*, 174 Mich App 467, 471; 437 NW2d 271 (1988); MCL 712A.17d. Further, even assuming that it was evidentiary error for Henderson to give an opinion on whether parental

[1] Although the record reflects that some services were provided in the case at bar, we note that services are not mandated in all cases. See MCL 712A.18f(1)(b); *In re Terry*, 240 Mich App 14, 25 n 4; 610 NW2d 563 (2000). See also MCL 712A.19b(4) (authorizing termination at the initial dispositional hearing); MCL 722.638(2) (requiring that a petition request termination at the initial dispositional hearing in certain circumstances).

rights should be terminated, it is apparent that the error was harmless. See *In re IEM*, 233 Mich App 438, 455; 592 NW2d 751 (1999). See also MCR 5.901(B)(1) and MCR 5.902(A) (harmless error standard in MCR 2.613 applies to child protection proceedings); MCR 2.613(A) (error in admitting or excluding evidence not grounds for reversal unless the refusal to take the action appears inconsistent with substantial justice).

Finally, we disagree with respondent mother that this case should be remanded to allow her to apply for membership in the Bad River Indian tribe. As a threshold matter, while we note that respondent mother's attorney conceded that proper notice had been given to the Bad River Indian tribe during the hearing, our consideration of this issue is appropriate because the failure to comply with notice requirements may be a basis for invalidating a state proceeding to terminate parental rights. See *In re TM (After Remand)*, 245 Mich App 181, 185; 628 NW2d 570 (2001); 25 USC 1914. Nonetheless, respondent mother has not established record support for her position that proper notice was not given to the Bad River Indian tribe. The evidence that actual notice was received by the Bad River Indian tribe alone is sufficient to satisfy the notice requirement of the Indian Child Welfare Act (ICWA), 25 USC 1901 *et seq.* *In re TM (After Remand)*, *supra* at 191; see also 25 USC 1912(a); MCR 5.980(A). Because notice was proper and the Bad River Indian tribe declined to intervene, the burden shifted to respondent mother to show that the ICWA still applied. *In re TM (After Remand)*, *supra* at 187. Because the record establishes that neither the mother nor the minor children were members of the Bad River Indian tribe, we find no basis for disturbing the trial court's determination that the ICWA did not apply. *Id.* at 186; 25 USC 1903(4). Respondent mother's newly raised claim that she should be afforded more time and assistance in applying for membership is insufficient to justify the requested relief.[2] Further, respondent mother's reliance on *In re IEM*, *supra*, is misplaced because the error in that case pertained to ICWA's notice requirements and, as previously discussed, there was no violation of the ICWA's notice requirements in this case.

DOCKET NO. 236644 (Respondent Scott Strasberger)

Respondent father first argues that the trial court should have applied the reasonable doubt standard in MCR 5.980(D), applicable to an Indian child. We reject this argument because, for the reasons previously discussed, the trial court correctly determined that the ICWA did not apply.[3]

Respondent father next argues that the trial court clearly erred by allowing hearsay testimony at the termination hearing. Initially, we note that the mere existence of hearsay at a termination hearing does not warrant reversal. *In re CR*, 250 Mich App 185, 207; 646 NW2d 506 (2002). In the case at bar, respondent father did not object to the challenged testimony on

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[2] In contrast to respondent mother's argument on appeal, we note that her attorney argued at the termination hearing that equity should be applied to enhance petitioner's burden of proof to the reasonable doubt standard for an Indian child. See MCR 5.980(D). We deem this argument abandoned because respondent mother does not raise it on appeal.

[3] Like respondent mother, we note that respondent father has failed to brief any issue with regard to whether the reasonable doubt standard should be applied based on equitable principles. Thus, we decline to consider this issue.

this ground at the termination hearing and, therefore, failed to preserve this issue for appeal.[4] Reviewing respondent father's unpreserved claim for plain error, *In re Snyder*, 223 Mich App 85, 92; 566 NW2d 18 (1997), we find no basis for reversal. Unlike the situation in *In re Gilliam*, 241 Mich App 133, 137; 613 NW2d 748 (2000), the statutory grounds for terminating respondent father's parental rights were supported by legally admissible evidence.

Finally, the trial court did not clearly err in finding that §§ 19b(3)(b)(ii) and (j) were each established by clear and convincing evidence. MCR 5.974(I); *In re Miller, supra*. Further, the evidence did not show that termination of respondent father's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *In re Trejo, supra*. Accordingly, we affirm the trial court's order terminating respondent father's parental rights.

Affirmed.

/s/ Christopher M. Murray
/s/ E. Thomas Fitzgerald
/s/ Peter D. O'Connell

[4] The objections made by respondent mother were insufficient to preserve this issue with respect to respondent father. See *People v Poindexter*, 138 Mich App 322, 331; 361 NW2d 346 (1984).