

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of KEISHA MOEN, JAYDEN  
MOEN, BRIAN LEMERE, MICHAEL LEMERE,  
and NADIA MILLER, Minors.

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FAMILY INDEPENDENCE AGENCY,  
  
Petitioner-Appellee,

v

LAURA STURGEON,  
  
Respondent-Appellant,

and

THOMAS MOEN, BRAD LEMERE, and JOSEPH  
MILLER,  
  
Respondents.

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UNPUBLISHED  
May 13, 2004

No. 250274  
Mackinac Circuit Court  
Family Division  
LC No. 01-005526-NA

Before: Gage, P.J., and O'Connell and Zahra, JJ.

MEMORANDUM.

Respondent-appellant Sturgeon appeals as of right from the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

The termination of Sturgeon's parental rights followed a long, sad history of domestic abuse by respondent Miller, serious mental instability, homelessness, and an acknowledged inability to cope with the normal stress of parenting. Circumstances that led to the termination petition regarding the youngest child included renewed abuse by Miller which resulted in a cigarette burn to the infant, eviction from her residence, and another altercation with Miller that resulted in police intervention.

Sturgeon first argues that the trial court erred in admitting inadmissible hearsay and opinion testimony. We disagree. This issue was not raised in the trial court and is not preserved for appellate review. Therefore, our review is limited to plain error that affected Sturgeon's substantial rights. *In re Osborne (On Remand, After Remand)*, 237 Mich App 597, 606; 603

NW2d 824 (1999). The evidence challenged on appeal relates to allegations in the jurisdictional petitions that had been admitted by Sturgeon at the initial disposition hearing for her three older children and the separate initial disposition hearing for her youngest child. Because the court essentially based its decision on the same grounds that were established in the initial dispositions, the applicable court rule does not require the petitioner to present only legally admissible evidence. MCR 3.977(G)(2). This rule allows a petitioner to provide updates through reports, and does not require the level of validated expertise and first-hand knowledge mandated by the rules of evidence. All the challenged evidence was fair, reliable, and trustworthy. *In re Hinson*, 135 Mich App 472, 474-475; 354 NW2d 794 (1984). We find no plain error on this record.

Sturgeon next claims that she was denied her right to effective assistance of counsel and a fair trial because her attorney failed to object to inadmissible hearsay and opinion testimony and failed to move for rehearing or a new trial. We disagree. Because there was no improper admission of hearsay or opinion testimony, Sturgeon was not deprived of effective assistance by her attorney's failure to object. Sturgeon's second argument arises from her inexplicable failure to appear at the termination hearing. The trial court left open the possibility of reopening the proofs if Sturgeon's absence was due to an emergency or incapacity, but Sturgeon never made this showing on the record. Because the record does not provide Sturgeon's explanation for her absence, she fails to rebut the presumption that her attorney's failure to move for the reopening of proofs was a matter of strategy rather than incompetence. *Id.*

The record contains clear and convincing evidence to support the trial court's termination of Sturgeon's parental rights. *In re Trejo*, 462 Mich 341, 362-365; 612 NW2d 407 (2000). Further, the court did not clearly err in finding that termination of Sturgeon's parental rights was not clearly contrary to the children's best interests. *Id.*

Affirmed.

/s/ Hilda R. Gage  
/s/ Peter D. O'Connell  
/s/ Brian K. Zahra