

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SHANNON ROBINSON,
ASHLEY ROBINSON, JALINA FOSTER,
SALINA FOSTER, and BREEONNA FOSTER,
Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LISA A. FOSTER,

Respondent-Appellant,

and

JAMES D. FOSTER and DEAN DARRIEN,

Respondents.

In the Matter of JALINA FOSTER, SALINA
FOSTER, and BREEONNA FOSTER, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JAMES D. FOSTER,

Respondent-Appellant,

and

LISA A. FOSTER,

UNPUBLISHED
November 9, 2004

No. 253786
Kent Circuit Court
Family Division
LC No. 01-051600-NA

No. 253854
Kent Circuit Court
Family Division
LC No. 01-051600-NA

Respondent.

Before: Griffin, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

In Docket No. 253786, respondent Lisa Foster appeals as of right from the trial court's order terminating her parental rights to the five minor children under MCL 712A.19b(3)(c)(i), (g), and (j). In Docket No. 253854, respondent James Foster appeals as of right from the same order, terminating his parental rights to the three Foster children, Jalina, Salina, and Breeonna, under MC 712A.19b(3)(c)(i), (g), (j), and (n)(ii). We affirm.

Respondent James Foster has not established any basis for disturbing the trial court's order terminating his parental rights.

First, the trial court properly rejected James Foster's claim that he was entitled to an adjudicative jury trial on the issue of jurisdiction before the court could proceed with the petition to terminate his parental rights. The trial court had jurisdiction over the Foster children based on Lisa Foster's plea of admission. An adjudication with respect to each parent is not necessary for the court to act in its dispositional capacity. See MCR 3.977(E); *In re CR*, 250 Mich App 185, 201; 646 NW2d 506 (2001).

Second, James Foster failed to properly preserve his claim that the trial court erred in allowing expert testimony regarding the truthfulness of his stepdaughter's allegations, or in allowing the expert to testify regarding an ultimate issue for the factfinder. The record indicates that Foster's attorney moved to strike volunteered testimony on the ground that the expert witness' conclusions were based on hearsay, and that the children's attorney responded by arguing that MRE 703 permits an expert witness to base an opinion on hearsay evidence. Examined in context, we do not construe the trial court's decision to overrule Foster's objection as approval of the witness giving testimony regarding the truthfulness of Foster's stepdaughter's allegations or the witness testifying to the ultimate issue whether the stepdaughter was sexually abused.

A party moving to strike evidence must state the specific ground for objection if the specific ground is not apparent from the context. MRE 103(a)(1). An objection to evidence on one ground is insufficient to preserve an appellate attack on a different ground. *People v Asevedo*, 217 Mich App 393; 398; 551 NW2d 478 (1996). Hence, we review this unpreserved evidentiary issue for plain error affecting James Foster's substantial rights. MRE 103(d); *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999); *In re Snyder*, 223 Mich App 85, 92; 566 NW2d 18 (1997).

Because there is no indication in the record that the trial court relied upon the expert witness' volunteered testimony as a basis to find a statutory ground to terminate James Foster's parental rights, Foster has not established that his substantial rights were affected by the testimony. "Unlike a jury, a judge is presumed to possess an understanding of the law, which allows him to understand the difference between admissible and inadmissible evidence or statements of counsel." *People v Wofford*, 196 Mich App 275, 282; 492 NW2d 747 (1992).

Absent proof to the contrary, a judge is presumed to follow the law. *People v Farmer*, 30 Mich App 707, 711; 186 NW2d 779 (1971).

Third, we agree that the trial court's reliance on § 19b(3)(c)(i) to terminate James Foster's parental rights was misplaced, because the condition that led to adjudication was Lisa Foster's neglect. Nevertheless, a trial court properly may terminate parental rights based on facts falling within §§ 19b(3)(g), (j), and (n) when termination is sought on the basis of new or different circumstances from those that led to the court's jurisdiction. MCR 3.977(F)(1)(b)(ii). In addition, only one statutory ground for termination is required, and the trial court did not clearly err in finding that §§ 19b(3)(g) and (j) were both proven by clear and convincing legally admissible evidence with respect to James Foster. MCR 3.977(J); *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The evidence that James Foster sexually and physically abused a stepdaughter, that he physically abused other children, and that he failed to participate in services that were made available to him support the trial court's findings with regard to these statutory grounds.

Fourth, James Foster has not shown clear error with respect to the trial court's assessment of the Foster children's best interests. The evidence did not establish that the termination of James Foster's parental rights was clearly not in the children's best interests. *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000).

Lisa Foster's sole claim on appeal is that the trial court improperly, and contrary to the children's best interests, terminated her parental rights. Section 19b(3)(c)(i) was applicable to Lisa Foster because her pleas of admission were the bases for the two adjudications that led to the trial court's jurisdiction over the children. While Lisa Foster completed certain aspects of her treatment plan, the evidence established that she continued to give priority to her relationship with James Foster over the needs of her children and that she would not be able to protect the children from James Foster if they were returned to her. The trial court did not clearly err in finding that the statutory grounds for terminating Lisa Foster's parental rights were established by clear and convincing evidence. MCR 3.977(J); *In re JK*, *supra*.

Finally, Lisa Foster has not established that the trial court clearly erred in its assessment of the children's best interests. Neither the evidence that the children expressed a desire to maintain a relationship with her, nor the independent living plan for the older children, established that termination of Lisa Foster's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *In re Trejo*, *supra*.

Affirmed.

/s/ Richard Allen Griffin

/s/ Kurtis T. Wilder

/s/ Brian K. Zahra