

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BENNIE JAMES HICKS III and
LA’PAMELA FAYE HICKS, Minors.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JAMIE RAQUEL JOHNSON,

Respondent-Appellant,

and

BENNIE JAMES HICKS, JR., a/k/a BENNIE
HICKS II,

Respondent.

UNPUBLISHED
November 17, 2005

No. 260923
Genesee Circuit Court
Family Division
LC No. 90-086075-NA

In the Matter of BENNIE JAMES HICKS III and
LA’PAMELA FAYE HICKS, Minors.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

BENNIE JAMES HICKS, JR., a/k/a BENNIE
HICKS II,

Respondent-Appellant,

and

No. 260924
Genesee Circuit Court
Family Division
LC No. 90-086075-NA

JAMIE RAQUEL JOHNSON

Respondent.

Before: Davis, P.J., and Fitzgerald and Cooper, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the order of the trial court terminating their parental rights to their minor children pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j), and, with respect to respondent mother, MCL 712A.19b(3)(m). We affirm.

“Once a statutory ground for termination is established by clear and convincing evidence, the trial court must terminate parental rights unless it finds from the whole record that termination clearly is not in the child’s best interests.” *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004). We review both findings of fact, that a ground for termination has been sufficiently proven and that the decision to terminate is in the child’s best interests, for clear error. *Id.*, 296. We review the lower court’s decisions regarding admission of evidence for an abuse of discretion, but even if the lower court abuses that discretion we will not reverse on that basis “unless the court’s ruling affected a party’s substantial rights.” *In re Caldwell*, 228 Mich App 116, 123; 576 NW2d 724 (1998).

The trial court properly took judicial notice of respondent mother’s previous voluntary release of parental rights to another child after proceedings had been initiated. The trial court did not err in finding that statutory grounds for termination under 712A.19b(3)(m) were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Respondent mother argues that the trial court’s termination of her parental rights was based on impermissible evidence. She correctly notes that where the basis for taking jurisdiction of the child is different from the basis on which termination is sought, the trial court must use only legally permissible evidence. *In re Gilliam*, 241 Mich App 133, 136-137; 613 NW2d 748 (2000). However, she raised no evidentiary objections on this ground in the trial court, so this issue is not preserved, and it is subject only to review for harmless error. *In re Snyder*, 223 Mich App 85, 92-93; 566 NW2d 18 (1997). Respondent father does not raise any evidentiary issues on appeal, thus abandoning them. Our review of the lower court record shows that during the entire time this case was pending, approximately 2½ years, neither respondent successfully engaged in treatment for substance abuse. They completed parenting classes and domestic relations counseling, but they failed to demonstrate that they could provide a stable, substance-free home for the children within a reasonable time given the ages of the children. Even if some of the evidence considered by the trial court was improperly admitted, it nevertheless overwhelmingly supports termination of respondents’ parental rights. Because termination is not “inconsistent with substantial justice,” we will not disturb the lower court’s order. *In re TC*, 251 Mich App 368, 370-371; 650 NW2d 698 (2002), citing MCR 2.613(A).

We also hold that the trial court did not err in determining that termination was not contrary to the best interests of the children. Respondents failed to demonstrate that they were either able or willing to overcome their substance abuse within a reasonable time, which was crucial to providing a stable home for the children. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

Affirmed.

/s/ Alton T. Davis
/s/ E. Thomas Fitzgerald
/s/ Jessica R. Cooper