

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SANDRA KAY LAFRANCE, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MICHELLE ELAINE LAFRANCE,

Respondent-Appellant,

and

ROBERT ARNOLD LAFRANCE, JR.,

Respondent.

UNPUBLISHED

July 24, 1998

No. 198542

Saginaw Juvenile Court

LC No. 96-023948 NA

FAMILY INDEPENDENCE AGENCY

Petitioner-Appellee,

v

ROBERT ARNOLD LAFRANCE, JR.,

Respondent-Appellant,

and

MICHELLE ELAINE LAFRANCE, a/k/a
MICHELLE ELAINE GRAY,

Respondent.

No. 198565

Saginaw Juvenile Court

LC No. 96-023948 NA

Before: Doctoroff, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Respondents Michele and Robert LaFrance appeal as of right the order terminating their parental rights to their daughter under MCL 712A.19b(3)(b)(ii) and (j); MSA 27.3178(598.19b)(3)(b)(ii) and (j). We affirm.

The minor child was born October 29, 1995, and was removed from the home on February 9, 1996. The petition for termination alleged that respondent Michelle LaFrance had been previously convicted of aiding and abetting in the sexual molestation of two other children, and that a third child was removed from the home due to neglect. Her parental rights were voluntarily terminated with regard to all three of these children in September 1989. Regarding the respondent father, the petition alleged that he had confessed in April 1987 to having sexually molested his fifteen-year-old sister over a period of seven years, that he had been convicted of third-degree criminal sexual conduct in Wisconsin, and was currently serving a prison term for fourth-degree criminal sexual conduct in this state in connection with an assault on a fifteen-year-old co-worker. After a jury found that the child was within the probate court's jurisdiction, the court terminated both parents' parental rights after finding that a statutory basis for termination existed under § 19b(3)(j) with regard to both parents and under § 19b(3)(b)(ii) with regard to respondent mother. Respondents raise several claims of error in connection with the proceedings.

A decision regarding termination of parental rights is reviewed in its entirety for clear error. MCR 5.974(I); *In re Hamlet (After Remand)*, 225 Mich App 505, 515; 571 NW2d 750 (1997). The court's findings are clearly erroneous if, on review, this Court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

In Docket No. 198542, respondent Michele LaFrance first contends that there was insufficient evidence to support the probate court's determination that a statutory basis for termination existed. We disagree. Although respondent contends that she never abused or neglected the minor child, actual abuse or neglect of a specific child need not be shown. *In re Futch*, 144 Mich App 163, 167-168; 375 NW2d 375 (1984). It is well established that neglect or abuse of one child is probative of how a parent may treat another child. *In re Powers*, 208 Mich App 582, 588-593; 528 NW2d 799 (1995); *In re LaFlure*, 48 Mich App 377, 392; 210 NW2d 482 (1973). In this case, there was clear and convincing evidence that the psychological and environmental factors that contributed to the loss of respondent mother's parental rights with regard to her other children continued to exist and posed a hazard for the minor child in this case. Moreover, respondent failed to demonstrate a commitment to the type of intensive psychotherapy that both experts testified was necessary in order for her to be a fit parent and respondent also refused to cooperate with the service plan. Thus, the trial court did not clearly err in finding that petitioner had proven the statutory grounds for termination by clear and convincing evidence.

Respondent also claims that a letter she wrote to respondent Robert LaFrance was improperly admitted as character evidence. The court's decision to admit or exclude evidence at a termination proceeding is reviewed for an abuse of discretion. MCR 5.972(C)(1); *In re Hill*, 221 Mich App 683, 696; 562 NW2d 254 (1997). The trial court did not abuse its discretion in admitting the letter because it was an admission that was probative of the credibility of respondent's testimony. MRE 402 and 801(d)(2)(A). Even if admission of the letter could be considered error, such error was harmless in view of the other evidence presented. *In re Snyder*, 223 Mich App 85, 92-93; 566 NW2d 18 (1997). Thus, respondent's claim of error in this regard is without merit.

Respondent next claims that MCL 712.19b(5); MSA 27.3178(598.19b)(5) is unconstitutional because it shifts the burden of proof to the parent. This identical argument was considered and rejected in *In re Hamlet (After Remand)*, *supra* at 522-523. Consequently, reversal is not required on the basis of this issue.

Finally, respondent claims that the trial court clearly erred in finding that termination was in the best interests of the child. We disagree. The court's decision was amply supported by the evidence. MCR 5.974(I); *In re Hamlet (After Remand)*, *supra* at 515.

In Docket No. 198565, respondent Robert LaFrance raises a number of issues based on the claim that his past behavior toward others cannot be considered predictive of his ability to parent his child. This argument lacks merit. Respondent has a history of sexual assaults, some of which involved minor children. In *In re Powers*, *supra* at 584, 591-593, this Court held that the doctrine of anticipatory abuse or neglect could be extended to include consideration of a parent's treatment of other children who were not his offspring. Furthermore, § 19b(3)(j) expressly permits termination of parental rights on the basis of the parent's conduct that may affect the safety of the child in the home. The evidence in this case unequivocally demonstrated that respondent has a history of criminal sexual behavior, and respondent admitted at trial that he had, at that time, received no treatment aimed at modifying his aberrant behavior. Consequently, we do not find that the trial court erred in regard to this matter.

Respondent also raises several issues with regard to alleged error in the jury instructions and the procedural separation of the jurisdictional phase of the proceedings from the dispositional phase. However, because there were no objections raised at trial, these issues are not preserved for review by this Court. MCR 2.516(C). Furthermore, we find that no manifest injustice will result from our failure to review these issues. *Janda v Detroit*, 175 Mich App 120, 126; 437 NW2d 326 (1989); *In re Gentry*, 142 Mich App 701, 705; 369 NW2d 889 (1985).

Respondent also claims that the verdict was tainted because the jury saw him on one occasion wearing handcuffs and a body chain. Again, there was no objection at trial and no indication in the record that this actually happened. We decline to consider the affidavit submitted by respondent in an attempt to add to the record with regard to this issue. It is well settled that the record on appeal may not be supplemented by ex parte affidavits. *Dora v Lesinski*, 351 Mich 579, 581; 88 NW2d 592 (1958); *Golden v Baghdoian*, 222 Mich App 220, 222 n 2; 564 NW2d 505 (1997). Moreover, any

error that may have occurred was harmless in view of the fact that respondent testified that he was currently serving a prison sentence.

Respondent also raises the claim that MCL 712.19b(5); MSA 27.3178(598.19b)(5) denies him due process of law. As discussed with regard to the previous docket number, this argument has been expressly rejected by this Court. *In re Hamlet (After Remand), supra* at 522-523.

Finally, respondent claims that the trial court abused its discretion when it denied his post-trial motion for an extra set of transcripts. The authority cited by respondent is inapposite because it relies on a court rule regarding criminal procedure that is inapplicable to this civil proceeding. Thus, respondent has waived review of this issue by failing to cite any authority that would support the granting of a request for multiple copies of transcripts at the county's expense in a civil proceeding. *In re Hamlet (After Remand), supra* at 521.

Affirmed.

/s/ Martin M. Doctoroff

/s/ E. Thomas Fitzgerald

/s/ Michael J. Talbot