

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of AA, MA, AA, JL, AL, KL, and GL,
Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TAMMY ADAMS,

Respondent-Appellant.

UNPUBLISHED
December 1, 2000

No. 227142
Kent Circuit Court
Family Division
LC No. 93-033900-NA

Before: Cavanagh, P.J., and Talbot and Meter, JJ.

PER CURIAM.

Respondent Tammy Adams appeals by right from the family court's order terminating her parental rights to seven minor children under MCL 712A.19b(3)(c)(i) ("[t]he parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds . . . [that] the conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age"), and MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g) ("[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age").

This Court reviews for clear error a family court's finding that a statutory basis for termination has been met. MCR 5.974(I); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Once a statutory basis has been proven by clear and convincing evidence, see MCL 712A.19b(3); MSA 27.3178(598.19b)(3), the court must terminate parental rights unless the court finds that termination is clearly not in the best interests of the child. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *Trejo, supra* at 344, 355. A family court's finding on the best interests prong is also reviewed by this Court for clear error. *Trejo, supra* at 356-357, 365.

Respondent argues that (1) there was insufficient evidence overall to justify terminating her parental rights, and (2) because petitioner sought termination based on circumstances new or different from those listed in the original petition, petitioner was obligated to use legally admissible evidence to prove that termination was warranted. See MCR 5.974(E)(1). Respondent contends that she received ineffective assistance from her trial attorney, and that reversal is warranted, because the attorney failed to object to the hearsay evidence from the children that supported the termination of respondent's rights.

We disagree that there was insufficient evidence to justify termination and that the performance of respondent's trial attorney warrants reversal in this case. Indeed, even disregarding any possible hearsay, the evidence supporting termination was strong. First, a social worker testified that respondent *acknowledged* that she knew about physical and emotional neglect perpetrated by a primary caregiver of the children and that she did nothing to protect the children. This constituted an admission by a party opponent and was therefore admissible evidence. See MRE 801(d)(2). The social worker also testified that (1) respondent failed to obtain a driver's license even though she was asked to do so in order to live more independently; (2) during respondent's first visitation with the children, "it was clear that the children were very angry with their mom;" (3) respondent was oblivious to fights among the children during visits; (4) respondent and the children were not bonded; (5) each child had special emotional needs that respondent could not meet; (6) the behavior of each of the children improved after visitation with respondent ceased; (7) respondent never sought to reinstate visitation with the children or to improve her compliance with the parent-agency agreement in order to get her children back; (8) respondent had difficulty showing empathy for her children; and (9) respondent had moved from abusive relationship to abusive relationship and had trouble living independently. There was no indication that any of this testimony was hearsay.

Moreover, a different therapist testified that (1) the children's attendance in counseling improved drastically since they entered foster care; (2) certain of the children needed intensive therapy; (3) respondent was not aware of the children's needs and how to address them; (4) there was a connection between respondent's poor parenting skills and the children's poor mental health, because respondent was not providing them with the help they needed; and (5) respondent had not demonstrated an ability to live independently and had a tendency to gravitate toward unhealthy relationships that put her children at risk. Again, there was no indication that any of this testimony was hearsay.

In light of the aforementioned, non-hearsay evidence, the trial court did not clearly err in concluding that respondent could not adequately care for her children and that termination under MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g) was therefore warranted and in the best interests of the children.¹ Moreover, the non-hearsay evidence supporting termination was sufficiently strong that the attorney's failure to object to the hearsay testimony elicited could not reasonably have affected the outcome of the case. See *People v Nimeth*, 236 Mich App 616, 624-

¹ Because only one statutory basis is required in order to terminate parental rights, see *Trejo*, *supra* at 360, we need not decide whether termination was also proper under the additional grounds cited by the court.

625; 601 NW2d 393 (1999) (setting forth standard for ineffective assistance of counsel). Accordingly, reversal is unwarranted.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Michael J. Talbot

/s/ Patrick M. Meter