

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SAVANNAH ELECE JACKSON,
Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

AMANDA JACKSON,

Respondent-Appellant.

UNPUBLISHED
March 2, 2001

No. 225759
Oakland Circuit Court
Family Division
LC No. 98-613706-NA

Before: Saad, P.J. and Griffin and R. B. Burns*, JJ.

PER CURIAM.

Respondent appeals as of right from the family court order terminating her parental rights to the minor child under MCL 712A.19b(3)(a)(ii), (c)(i) and (g); MSA 27.3178(598.19b)(3)(a)(ii), (c)(i) and (g). We affirm.

Respondent argues that the family court's order terminating her parental rights deprived her of her constitutional right to parent her child. We disagree. It is well established that parents have a significant interest in the companionship, care, custody, and management of their children, which has been characterized as an element of "liberty" to be protected by due process. *In re Brock*, 442 Mich 101, 109; 499 NW2d 752 (1993). Although it is the policy of this state to keep children with their natural parents whenever possible, *In re Springer*, 172 Mich App 466, 474; 432 NW2d 342 (1988); MCL 712A.1; MSA 27.3178(598.1), the purpose of child protective proceedings is the protection of the child, and the juvenile code is intended to protect children from unfit homes rather than to punish their parents. *In re Brock, supra* at 107-108.

The family court did not clearly err in finding that one of the statutory grounds for termination, MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g), was established by clear and convincing evidence. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Further, the evidence did not establish that termination was clearly not in the child's best

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Trejo*, 462 Mich 341; 612 NW2d 407 (2000). Thus, the family court did not impermissibly deprive respondent of her right to parent the child since there was clear and convincing evidence to terminate respondent's parental rights under the juvenile code. *Id.*

Respondent failed to argue that the family court clearly erred in terminating her parental rights pursuant to MCL 712A.19b(3)(a)(ii) and (c)(i); MSA 27.3178(598.19b)(3)(a)(ii) and (c)(i). The failure to brief the merits of an allegation of error is deemed an abandonment of an issue. *In re JS & SM*, 231 Mich App 92, 98; 585 NW2d 326 (1998), overruled on other grounds *In re Trejo*, *supra* at 353. Therefore, we may assume that the family court did not clearly err in finding clear and convincing evidence that termination of respondent's parental rights was warranted under those provisions. *Id.* at 98-99.

Respondent argues that the family court's questioning of witnesses at the termination hearing denied her a fair trial. There was no objection below. In the absence of objection, this Court may review the matter if manifest injustice results from the failure to review. *People v Paquette*, 214 Mich App 336, 340; 543 NW2d 342 (1995). Here, there is no manifest injustice because the referee properly questioned the witnesses to clarify testimony and/or to elicit additional relevant information. MRE 614(b); *People v Cheeks*, 216 Mich App 470, 480; 549 NW2d 584 (1996).

Respondent also argues that she was denied the effective assistance of counsel. In analyzing claims of ineffective assistance of counsel at termination hearings, this Court applies by analogy the principles of ineffective assistance of counsel as developed in the criminal law context. *In re Simon*, 171 Mich App 443, 447; 431 NW2d 71 (1988). Respondent did not move for a new trial or an evidentiary hearing on this issue in the family court. Failure to so move precludes appellate review unless the record contains sufficient detail to support respondent's claims, and, if so, review is limited to the record. *People v Maleski*, 220 Mich App 518, 523; 560 NW2d 71 (1996).

To establish a claim of ineffective assistance of counsel, respondent must show that counsel's performance fell below an objective standard of reasonableness and that the representation prejudiced respondent to the extent that it denied her a fair trial. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994). In order to show that counsel's performance was deficient, respondent must overcome the strong presumption that counsel's assistance constituted sound trial strategy. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). To demonstrate prejudice, respondent must show that there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different. *Id.* at 687-688; *People v Shively*, 230 Mich App 626, 628; 584 NW2d 740 (1998).

Respondent argues that her counsel was ineffective for failing to object to opposing counsels' repeated references and questions regarding her other children. We disagree. Although respondent's other children were not involved in the instant case, evidence of the mistreatment of one child is probative of the treatment of other children of the party. *In re Jackson*, 199 Mich App 22, 26; 501 NW2d 182 (1993). Evidence regarding respondent's other children and their circumstances was relevant to the termination of her parental rights to the child at issue in this case. Moreover, counsel may have decided not to object to the references

regarding other children to avoid highlighting the issue. Given these circumstances, we reject respondent's claim that counsel's performance was deficient.

Respondent also argues that the conduct of petitioner's counsel at the termination hearing denied her a fair trial. We disagree. Again, counsel's questioning regarding respondent's other children and their circumstances was relevant to whether termination of her parental rights to the child at issue in this case was proper. Respondent's argument that petitioner's counsel made comments that were not supported by the record is without merit.

Finally, respondent argues that the child's attorney demonstrated impermissible bias against her at the termination hearing. However, respondent did not object to counsel's conduct at the termination hearing. When reviewing an appeal asserting improper conduct of an attorney, the appellate court should first determine whether the claimed error was in fact error and, if so, whether it was harmless. *Badalamenti v William Beaumont Hospital-Troy*, 237 Mich App 278, 290; 602 NW2d 854 (1999) (quoting *Reetz v Kinsman Marine Transit Co*, 416 Mich 97, 102-103; 330 NW2d 638 [1982]). If the claimed error was not harmless, the court must then determine if the error was properly preserved by objection and a request for an instruction or a motion for mistrial. *Id.* If the error was preserved, there is a right to appellate review. *Id.* If not, the court must then determine if a new trial is required because the error denied a party a fair trial. *Id.* We believe that the claimed errors were not in fact errors.

In this case, an attorney was appointed as the child's guardian ad litem. While MCL 712A.17c(7); MSA 27.3178(598.17c)(7) and MCR 5.915(B)(2) require the appointment of an attorney to represent children in protective proceedings brought under the probate code, MCR 5.916(A) permits the appointment of a guardian ad litem for a child "if the court finds that the welfare of the party requires it." *In re Shaffer*, 213 Mich App 429, 433; 540 NW2d 706 (1995). The staff comments pertaining to the foregoing court rules recognize the differing roles of an attorney and guardian ad litem, but note that the attorney may serve the function traditionally assigned to the guardian, which is "to promote and protect the interests of a child involved in a judicial proceeding through assuring representation of those interests in the courts" *Id.*, 433-434 (quoting 2 Court Rules of Michigan Annotated [ICLE, 2d ed], pp 5-101 - 5-102).

The guardian ad litem, as the child's attorney, zealously advocated for the child's best interests. As noted previously, evidence of the mistreatment of one child is probative of the treatment of other children of the party. *In re Jackson*, *supra*. Therefore, counsel's references to respondent's other children and their circumstances were relevant to the instant proceedings. In addition, we disagree with respondent's argument that counsel's references to her circumstances, including her young age and relationships with men, were irrelevant and prejudicial. The family court may apprise itself of all relevant considerations. *In re Jackson*, *supra*.

Affirmed.

/s/ Henry William Saad
/s/ Richard Allen Griffin
/s/ Robert B. Burns