

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of CHARLES MICHAEL  
MASTERS, Minor.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

THERESA MASTERS,

Respondent-Appellant,

and

CHARLES MASTERS,

Respondent.

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In the Matter of KRISTY MARIE MASTERS,  
Minor.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

THERESA MASTERS,

Respondent-Appellant,

and

CHARLES MASTERS,

Respondent.

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UNPUBLISHED  
October 28, 2004

No. 253988  
Washtenaw Circuit Court  
Family Division  
LC No. 02-000136-NA

No. 253990  
Washtenaw Circuit Court  
Family Division  
LC No. 02-000137-NA

Before: Wilder, P.J., and Hoekstra and Owens, JJ.

PER CURIAM.

In these consolidated appeals, respondent Theresa Masters appeals as of right from the trial court's orders terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(ii), (g), (i), (j), and (l). We affirm.

Although respondent argues that the trial court clearly erred in terminating her parental rights under §§ 19b(3)(c)(ii), (g) and (j), she does not challenge the trial court's determination that §§ 19b(3)(i) and (l) were also proven. Accordingly, any claim that clear and convincing evidence was lacking for these later two statutory grounds is abandoned. The failure to brief the merits of an allegation of error is deemed an abandonment of an issue. *People v Kent*, 194 Mich App 206, 210; 486 NW2d 110 (1992). Because a court's decision to terminate parental rights need only be supported by a single statutory ground for termination, MCL 712A.19b(3); *In re Powers*, 244 Mich App 111, 119; 624 NW2d 472 (2000); *In re SD*, 236 Mich App 240, 247; 599 NW2d 772 (1999), and because §§ 19b(3)(i) and (l) alone support the trial court's termination decision, it is unnecessary to address respondent's arguments concerning §§ 19b(3)(c)(ii), (g), and (j), inasmuch as any error with regard to these subsections would be harmless. *In re Powers*, *supra*.

Nonetheless, we have considered the trial court's findings with respect to the children's nutritional and developmental deficiencies, as well as the ongoing marital conflict between respondent and the children's father and its effect on the children, for purposes of reviewing the trial court's best interest decision under MCL 712A.19b(5). We conclude that the trial court did not clearly err in terminating respondent's parental rights to the children. MCR 3.977(J); *In re JK*, 468 Mich 202, 209, 214; 661 NW2d 216 (2003). The evidence did not establish that termination was clearly not in the children's best interests. *In re Trejo*, 462 Mich 341, 344; 612 NW2d 407 (2000).

Finally, we reject respondent's claim that she was denied the effective assistance of counsel because she and the children's father were jointly represented by the same attorney before termination proceedings were initiated. We apply by analogy the principles of ineffective assistance of counsel developed in the criminal law context. *In re CR*, 250 Mich App 185, 197-198; 646 NW2d 506 (2001). Because respondent did not raise this issue in an appropriate motion in the trial court, our review is limited to mistakes apparent on the record. *People v Riley (After Remand)*, 468 Mich 135, 139; 659 NW2d 611 (2003). Here, it is not apparent that counsel's joint representation of respondent and her husband constituted ineffective assistance of counsel. The record does not disclose what advice, if any, counsel gave respondent about the possible implications of joint representation, or the advantages and risks involved. MRPC 1.7(b)(2).

Respondent argues that joint representation of respondent and her husband constituted ineffective assistance of counsel because counsel was unable to advise her to leave her husband. To succeed in a claim of ineffective assistance of counsel, the aggrieved party must demonstrate that but for the ineffective assistance, the results of the proceeding probably would have been different. *People v Toma*, 462 Mich 281, 302-303; 613 NW2d 694 (2000). Respondent fails to demonstrate that she would have followed counsel's advice where she exhibited on more than one occasion an unwillingness or inability to comply with advice of professionals and testified

that she did not want to leave her husband or ask him to leave. Moreover, respondent is unable to demonstrate that the result probably would have been different if she had left her husband where numerous witnesses testified that she did not have the ability to properly care for the children, and petitioner's expert in child welfare testified that neither parent had the capacity to care for the children alone. Respondent has not demonstrated that "'an actual conflict of interest adversely affected'" counsel's performance. *People v Smith*, 456 Mich 543, 556-557; 581 NW2d 654 (1998), quoting *Strickland v Washington*, 466 US 668, 692; 104 S Ct 2052; 80 L Ed 2d 674 (1984).

Affirmed.

/s/ Kurt T. Wilder  
/s/ Joel P. Hoekstra  
/s/ Donald S. Owens