

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DEVEN MICHAEL ALLISH and
ALENA THERESE HART, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

FRANCES ALLISH,

Respondent-Appellant,

and

JOHN HART,

Respondent.

UNPUBLISHED

January 27, 2009

No. 286354

Clinton Circuit Court

Family Division

LC No. 06-019246-NA

Before: Talbot, P.J., and Bandstra and Gleicher, JJ.

MEMORANDUM.

Respondent Frances Allish appeals as of right the order of the trial court terminating her parental rights to her minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

The trial court did not clearly err in finding that clear and convincing evidence supported termination under the statutory provisions. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *In re Fried*, 266 Mich App 535, 540-541; 702 NW2d 192 (2005); MCR 3.977(J). The record supports termination of respondent's parental rights under subsection (3)(c)(i), considering that respondent continued in the activities that led to adjudication, namely her use of illegal drugs and her continued association with a dangerous man with a history of drug use, criminal behavior, violence toward respondent, and mental illness. For the same reasons, the record also supports termination of respondent's parental rights under subsections (3)(g) and (j),

as well as the trial court's conclusion that termination was not contrary to the best interests of the children, MCL 712A.19b(5).¹

We also reject respondent's argument that the trial court abused its discretion by the admission of certain documents that respondent argues contain hearsay. During the adjudicative phase of child protective proceedings, only legally admissible evidence is permitted. See MCR 3.972(C); *In re Gillam*, 241 Mich App 133, 136; 613 NW2d 748 (2000). Once jurisdiction is established, however, the proceedings move to the dispositional phase and all relevant and material evidence is admissible, including the admission of hearsay. MCR 3.977(G)(2); *In re Gillam*, *supra* at 137.

It was during this second phase of the proceedings that the documents in question were admitted. Respondent argues that the hearsay was inadmissible even in the dispositional phase of the proceedings, however, because termination was sought under different grounds than those alleged in the original petition. Where the basis for taking jurisdiction of the child is different from the basis on which termination is sought, then the basis for terminating parental rights lacks the background of legally admissible evidence and the trial court must return to the admissibility standard used at the adjudication phase. *In re CR*, 250 Mich App 185, 201-202; 646 NW2d 506 (2002). In this case, however, a review of the record indicates that termination was sought on the same grounds upon which the trial court previously assumed jurisdiction. All relevant and material evidence therefore was admissible, including hearsay. MCR 3.977(G)(2); *In re Gillam*, *supra* at 137. The trial court's admission of the documents in question therefore does not constitute an abuse of the trial court's discretion.

We affirm.

/s/ Michael J. Talbot
/s/ Richard A. Bandstra
/s/ Elizabeth L. Gleicher

¹ MCL 712A.19b(5) was amended, effective July 11, 2008, to require that, in order to terminate parental rights, a court must affirmatively find that termination is in the children's best interests. However, because the order terminating respondent's parental rights was issued on June 20, 2008, the prior version of MCL 712A.19b(5), which read as referenced above, remains applicable to the determination whether termination of respondent's parental rights was appropriate in the instant case.