

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

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In the Matter of CHRISTOPHER ROCHA and  
NATHANIEL LARENZ GONZALEZ, Minors.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

NATALIE MARIE GONZALEZ,

Respondent-Appellant,

and

DAVID ROCHA,

Respondent.

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UNPUBLISHED  
September 18, 2003

No. 241747  
Wayne Circuit Court  
Family Division  
LC No. 00-387096

Before: Owens, P.J., and Griffin and Schuette, JJ.

PER CURIAM.

Respondent-appellant Natalie Gonzalez (hereinafter “respondent”) appeals as of right from the trial court’s order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g), (j), and (k)(iii). We affirm.

The trial court’s jurisdiction over the oldest child was established pursuant to respondent’s no contest plea to allegations that the child received serious burn injuries and allegations of substance abuse by respondent. The child was initially placed in a relative’s home. Following a permanency planning hearing in April 2001, the child was placed in respondent’s home, with in-home services, based on reports by service providers that respondent had made progress with her treatment plan. At the time of this change in the child’s placement, the hearing referee did not know that respondent was pregnant. Further, while there was evidence that some of respondent’s drug screens showed low creatinine levels, which was indicative of possible adulteration, respondent’s substance abuse therapist did not report that respondent had admitted to cocaine use in December 2000.

On July 18, 2001, when respondent gave birth to her younger son, both respondent and the child tested positive for cocaine. Following a dispositional review hearing on July 30, 2001,

the younger child was removed from respondent's home. The older child's foster care worker subsequently filed a supplemental petition requesting termination of respondent's parental rights to the child. A protective services worker then filed a separate petition requesting both that the court take jurisdiction of the younger child and terminate respondent's parental rights to that child. The referee conducted a joint hearing on the two petitions, following which she concluded that respondent's parental rights to both children should be terminated. A judge approved the referee's report and recommendation, and a different judge affirmed the referee's recommendation pursuant to MCR 5.991.<sup>1</sup>

On appeal, respondent claims that the referee incorrectly admitted evidence at the July 30, 2001, dispositional review hearing that related to "the adjudication as to a new child and new petition." However, this claim is not properly before us because respondent does not cite the factual basis for her argument or otherwise demonstrate evidence to which she objected on the same ground she now raises on appeal. An appellant may not leave it to this Court to search for a factual basis to sustain or reject a position. *People v Norman*, 184 Mich App 255, 260; 457 NW2d 136 (1990).

Furthermore, we conclude that the particular question presented by respondent is moot because, even if we were to find evidentiary error, it did not affect respondent's existing rights, inasmuch as respondent's parental rights were terminated based on later proceedings, after July 30, 2001. See *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998) (an issue is moot when it does not rest on existing rights). If respondent wanted to challenge the removal of the older child from her home, she could have filed an appeal as of right. *In re EP*, 234 Mich App 582, 591; 595 NW2d 167 (1999), overruled on other grounds by *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000). Absent some showing that evidentiary error affected the termination decision, we conclude that respondent's claim presents no basis for relief.

Finally, we are unpersuaded that respondent has demonstrated any basis for finding evidentiary error, given that the evidence at the July 30, 2001, hearing was offered for purposes of the referee's dispositional review for the older child. The admissibility of evidence depends on the purpose for which it is offered. *People v Sabin (After Remand)*, 463 Mich 43, 56; 614 NW2d 888 (2000); *Wilson v Ex-Cell-O Corp*, 12 Mich App 637, 641; 163 NW2d 492 (1968). Dispositional hearings do not depend on legally admissible evidence. MCR 5.973(B)(5); *In re CR*, 250 Mich App 185, 201; 646 NW2d 506 (2002). The evidence regarding respondent's positive cocaine test was plainly related to respondent's treatment plan, inasmuch as respondent was required to refrain from drug use. The evidence was also probative whether the older child should be returned to foster care or relative placement, given that a parent's treatment of one child is probative of how a parent may treat other children. *In re Powers*, 208 Mich App 582, 588; 528 NW2d 799 (1995). A trial court must be aware of the total circumstances of the case before it. *In re LaFlure*, 48 Mich App 377, 391; 210 NW2d 482 (1973).

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<sup>1</sup> The court rules governing child protective proceedings were amended and renumbered, effective May 1, 2003. We refer to the court rules in effect at the time of the lower court proceedings.

Respondent next argues that termination of her parental rights under MCL 712A.19b(3)(c)(i), (g), (j), and (k)(iii)<sup>2</sup> was not supported by clear and convincing evidence. Giving deference to the referee's superior opportunity to determine credibility issues, we hold that the referee did not clearly err in finding that subsections (c)(i), (g), and (j) were each established by clear and convincing evidence with regard to the older child.<sup>3</sup> The evidence regarding respondent's deceit and failure to refrain from drug use support the referee's findings and decision. MCR 5.974(I) [now MCR 3.977(J)]; *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

With regard to the younger child, respondent does not challenge the referee's determination that the child came within the court's jurisdiction. Therefore, we do not consider that issue. See *Eldred v Ziny*, 246 Mich App 142, 150; 631 NW2d 748 (2001). On review, we are satisfied that the referee did not clearly err in finding that subsections (g) and (j) were both established with regard to the younger child. MCR 5.974(D) and (I); *In re Miller*, *supra*.

Respondent also argues that, even if a statutory ground for termination was established, it was not in the children's best interest to terminate her parental rights. Again, we find no clear error. The evidence did not establish that termination of respondent's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *In re Trejo*, *supra*.

Finally, while we affirm the order terminating respondent's parental rights, we deny petitioner's request for an exceptional issuance of this Court's judgment under MCR 7.215. Petitioner has not established any basis for avoiding the consequences of a routine issuance of this Court's judgment. See *In re JK*, 468 Mich 202; 661 NW2d 216 (2003).

Affirmed.

/s/ Donald S. Owens  
/s/ Richard Allen Griffin  
/s/ Bill Schuette

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<sup>2</sup> Although the referee cited subsection (c)(ii) in her report and recommendation, the substance of the referee's decision indicates that the referee was relying on subsection (c)(i), not (c)(ii). Further, the record does not support respondent's position that her parental rights were terminated under subsection (k)(v).

<sup>3</sup> In view of our disposition, it is unnecessary for us to address defendant's argument that k(iii) was not proven as an alternative basis for affirmance.