

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SAMANTHA NICOLE
CLIFFORD and ZACHARY WILLIAM
CLIFFORD, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

TERESA JO CLIFFORD,

Respondent-Appellant,

and

DENNIS CLIFFORD,

Respondent.

In the Matter of SAMANTHA NICOLE
CLIFFORD and ZACHARY WILLIAM
CLIFFORD, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DENNIS CLIFFORD,

Respondent-Appellant,

and

TERESA JO CLIFFORD,

UNPUBLISHED

May 11, 2006

No. 266520

St. Joseph Circuit Court

Family Division

LC No. 04-000869-NA

No. 266606

LC No. 04-000869-NA

Respondent.

Before: White, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the termination of their parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

Respondent-mother raises three issues on appeal. First, she argues that she was denied due process when the trial court terminated her parental rights based upon statutory grounds not cited in the petition. We disagree. Respondent has not preserved this issue because she failed to object below. This Court reviews unpreserved constitutional issues for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999). Respondent has not demonstrated that plain error occurred because respondent was given sufficient notice of the proofs that she would have to refute to prevent termination. A respondent's due process right to notice is not compromised where the petition lists the allegations with specificity, although the statutory provisions are not expressly enumerated. *In re Slis*, 144 Mich App 678, 684; 375 NW2d 788 (1985).

Next, respondent-mother argues that the court erroneously considered hearsay evidence when terminating her parental rights. We disagree. Respondent-mother improperly relies upon MCR 3.977(F), which requires legally admissible evidence only when termination is sought on the basis of circumstances different from those that led to the original assumption of jurisdiction. In this case, petitioner did not seek termination on the basis of new or different circumstances. Accordingly, MCR 3.977(F) did not apply. Instead, MCR 3.977(G) permitted the court to consider any relevant and material evidence. *In re Vasquez*, 199 Mich App 44, 50-51; 501 NW2d 231(1993).

Finally, respondent-mother argues that the trial court clearly erred in finding that statutory grounds for termination were established by clear and convincing evidence. We disagree. This Court reviews for clear error the trial court's determination that statutory grounds for termination were proven by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The trial court terminated respondent-mother's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g) and (j). Respondent-mother does not contest the termination of her parental rights pursuant to MCL 712A.19b(3)(c)(i). Since only one ground is necessary to support termination of parental rights, this Court's inquiry need go no further. *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999).

Moreover, the other grounds were established as well. The central issue in this case is whether respondent-mother would be in a position to provide proper care and custody and safely parent her children within a reasonable time. There was clear and convincing evidence that she could not. Respondent had a history of drug abuse dating back to when she was 17 years old. By her own admission, respondent began abusing methamphetamines daily in 2003. She had not provided suitable housing for many years. The maternal grandmother cared for the children frequently and then, upon respondent's first arrest, essentially full-time for months. When two

of the four minor children moved back with respondent in February 2004, it was only seven short months later that respondent was arrested again on charges related to delivering methamphetamines. This was her second methamphetamines related charge in less than two years. In sworn affidavits related to the arrest, it was clear that Zack and Samantha were exposed to the dangers of drug trafficking. At this point, respondent will have to complete her prison sentence and then go through the process of attempting to build a life that would be appropriate within which to raise children. This will clearly be a challenge considering respondent's history of drug abuse and incarceration. Based upon these facts, respondent will not be in a position to care for her children within a reasonable time considering their ages. Thus, the trial court did not clearly err when it terminated respondent-mother's parental rights pursuant to MCL 712A.19b(3)(g) and (j).

Respondent-father has also raised several issues on appeal. We find that none warrant reversal. First respondent argues that he was denied the effective assistance of counsel. To prevail on a claim of ineffective assistance of counsel, a respondent must show not only that counsel's representation was deficient, but also that there is a reasonable probability that but for counsel's errors, the result of the proceedings would have been different. *In re CR*, 250 Mich App 185, 198; 646 NW2d 506 (2002).

Respondent fails to establish how the claimed deficiencies in the performance of his counsel contributed to the trial court's ultimate decision to terminate his parental rights. Our review of the record demonstrates that respondent's claim that his counsel was unprepared because he was appointed six days before the termination hearing and had not met with respondent before the hearing is without merit. The record does not show that counsel was unprepared. Counsel made no claims in this regard; he was familiar with the facts, effectively questioned witnesses, and presented what defenses were available to respondent. Respondent also argues that his counsel failed to object to inadmissible hearsay. The testimony respondent now challenges was either not hearsay or its admission was harmless. Therefore, he failed to establish that he was prejudiced by his counsel's failure to object. Respondent also complains that his attorney failed to present any witnesses or a defense on his behalf. However, respondent does not identify any potential witnesses, or their expected testimony, which would have changed the outcome of the case. This Court will not search to discover and rationalize the basis of respondent's claims. *In re CR, supra* at 199. With respect to the defense that should have been offered, respondent states that the evidence present at trial was "six or more years old and there was no showing of what type of person the appellant/father was now." This purported defense was, for all practical purposes, raised by counsel. Further, although respondent refused to testify on his own behalf, he did answer the court's questions to the effect that he had no disciplinary tickets in seven years, had completed substance abuse courses, and had participated in two occupational classes while incarcerated. Respondent fails to identify what additional evidence could have been presented in support of his articulated defense. Considering the foregoing, we find no merit to respondent's claim that he was denied the effective assistance of counsel.

Finally, respondent contends that the statutory grounds for termination of his parental rights were not established by clear and convincing evidence. We disagree. The trial court terminated respondent-father's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). In finding that these statutory grounds had been established by clear and convincing evidence,

the court noted, in general, respondent's unstable social and criminal past. Respondent now argues that he is being punished simply because of his incarceration. We disagree. Respondent completely ignores the effect of his incarceration on his family. First, he was not available to protect or care for his children while their mother became addicted to methamphetamines. Further, during the six-year period of his incarceration, he did little if anything to maintain a relationship with his children. He did not provide for them emotionally or financially. There was no attempt by respondent to contact the agency to inquire about the well being of his children. Samantha, who was two years old when respondent went to prison, has no memory of her father. Further, there was no evidence that respondent-father had put any effort into preparing to care for his children upon his release. It was not simply that respondent father had been incarcerated for six years, but that remained incarcerated at the time of termination with no date certain for his release, that he had been imprisoned for a very violent crime, that there was drug abuse in his history, that he did not have any relationship with his children, and that he had no viable plan for the children upon his release. Based on these circumstances, the trial court did not err when it concluded that respondent would be unable to provide a safe, stable and nurturing environment for his children within a reasonable time. The court did not clearly err when it found that the grounds for termination were established by clear and convincing evidence.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Michael J. Talbot