

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of CHARLES EDWARD REID, JR.,
ANTHONY EDWARD REID, II, PAUL ANTHONY
W. REID, NATHANIEL DEVON REID, and ADELL
DESIA M. JOHNSON, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

EDWARDESIA DAVRIETTA REED,

Respondent-Appellant,

and

JAMES MARVIN JOHNSON and CHARLES
EDWARD REID,

Respondents.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CHARLES EDWARD REID,

Respondent-Appellant,

UNPUBLISHED

July 30, 1999

No. 214482

Wayne Circuit Court

Family Division

LC No. 83-236078

No. 214646

Wayne Circuit Court

Family Division

LC No. 83-236078

and

EDWARDESIA DAVRIETTA REED and JAMES
MARVIN JOHNSON,

Respondents.

Before: McDonald, P.J., and Kelly and Cavanagh, JJ.

PER CURIAM.

In No. 214482, respondent Edwardesia Reed appeals as of right from a family court order terminating her parental rights to her minor children, Charles Reid, Jr., Anthony Reid, Paul Reid, Nathaniel Reid, and Adell Johnson. In No. 214482, respondent Charles Reid appeals as of right from a family court order terminating his parental rights to Charles Reid, Jr., Anthony Reid, Paul Reid, and Nathaniel Reid. In a single order, the family court terminated the parties' parental rights pursuant to MCL 712A.19b(3)(c)(i) [conditions that led to adjudication continue to exist and are not likely to be rectified within a reasonable time], (g) [parent, without regard to intent, fails to provide proper care or custody for the children], (h) [parent is imprisoned and unable to provide care and custody within a reasonable time], (i) [parental rights to one or more siblings have been terminated due to neglect or abuse and prior attempts at rehabilitation have been unsuccessful], and (j) [there is a reasonable likelihood that the children will be harmed if returned to the parent]; MSA 27.3178(598.19b)(3)(c)(i), (g), (h), (i) and (j). We affirm.

A two-prong test applies to a family court's decision to terminate parental rights. First, the family court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b; MSA 27.3178(598.19b) has been met by clear and convincing evidence. *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993). This Court reviews the findings of fact under the clearly erroneous standard. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A finding of fact is clearly erroneous where the reviewing court is left with a definite and firm conviction that a mistake has been made. *Jackson, supra* at 25.

Once a statutory ground for termination has been met by clear and convincing evidence, the parent against whom termination proceedings have been brought has the burden of going forward with some evidence that termination is clearly not in the child's best interest. If no such showing is made and a statutory ground for termination has been established, the trial court is without discretion; it must terminate parental rights. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Huisman*, 230 Mich App 372, 384; 584 NW2d 349 (1998).

On appeal, respondent Edwardesia Reed argues that clear and convincing evidence was not presented that the statutory grounds for terminating her parental rights had been met.¹ We conclude that the referee did not clearly err in finding that §§ 19b(3)(c)(i),² (g),³ and (j) were all established by clear and convincing evidence.⁴ See *Miller, supra*; *Jackson, supra*. Furthermore, respondent Edwardesia Reed failed to show that termination of her parental rights was clearly not in the children’s best interests. See MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *Huisman, supra*.

In his sole issue on appeal, respondent Charles Reid contends that he was deprived of due process because he did not receive the effective assistance of counsel. Because he did not raise this issue in the trial court, appellate review of this claim is limited to the existing record. See *In re Schmeltzer*, 175 Mich App 666, 673; 438 NW2d 866 (1989). Applying the analogous principles of ineffective assistance of counsel as they have developed in the criminal context to the existing record, we conclude that respondent Charles Reid has not demonstrated any basis for relief due to ineffective assistance of counsel. See *People v Dixon*, 217 Mich App 400, 408; 552 NW2d 663 (1996); *In re Simon*, 171 Mich App 443, 447; 431 NW2d 71 (1988). Even if a motion for adjournment had been made and granted, the record does not provide any basis for concluding that the result of the proceeding would have been different. Thus, respondent’s ineffective assistance of counsel claim fails because the requisite prejudice has not been shown.⁵ See *People v Pickens*, 446 Mich 298, 338; 521 NW2d 797 (1994). Furthermore, we are not persuaded that the case should be remanded for a hearing on this claim.

Accordingly, with respect to both respondents, we uphold the family court’s entry of the termination order based on the referee’s findings and recommendations. However, petitioner’s request for relief under MCR 7.215(E) is denied because petitioner has failed to establish that such relief is warranted.

Affirmed.

/s/ Gary R. McDonald

/s/ Michael J. Kelly

/s/ Mark J. Cavanagh

¹ Relying on *Town & Country Dodge, Inc v Dep’t of Treasury*, 118 Mich App 778, 789; 325 NW2d 577 (1982), aff’d 420 Mich 226 (1984), petitioner argues that respondent Edwardesia Reed waived this issue by failing to raise it in the lower court. However, *Town & Country Dodge* involved an appeal from a Tax Tribunal order. This Court has held that a parent’s failure to challenge factual findings in a termination proceeding below does not constitute a waiver. See *In re Rose*, 174 Mich App 85, 88; 435 NW2d 461 (1989), rev’d on other grounds 432 Mich 934 (1989).

² On appeal, Edwardesia Reed argues in her appellate brief that the condition that led to the adjudication was an accidental scalding of Nathaniel Reid while she was not home. However, except for her testimony at the termination hearing, the evidence in the record reflects that Nathaniel was burned when Anthony attempted to give him a bath without adult supervision. The referee noted in her report on the adjudication, based on Edwardesia Reed’s contemporaneous statement, that “she admits

to being neglectful by not getting the proper medical treatment.” This same finding is in the referee’s report on termination. Thus, it is clear that the condition that led to the adjudication for the three younger Reid children and Adell Johnson revolved around Edwardesia Reed’s medical neglect of Nathaniel, rather than an accidental injury. See *Jackson, supra* at 26 (“evidence of the mistreatment of one child is probative of the treatment of other children of the party”).

As for Charles Reid, Jr., he was first made a temporary court ward in 1988 as a result of the physical abuse of a sibling. He was later placed in a legal guardianship. The FIA took action to again make him a temporary court ward in September 1996, after his behavior caused the legal guardian to rescind her guardianship, but the referee also considered Edwardesia Reed’s history when recommending that Charles Reid join his siblings as a temporary court ward. Hence, the conditions that led to the adjudication appeared to revolve around Edwardesia Reed’s inability to properly care for Charles Reid.

³ In disputing that § 19b(g) was established by clear and convincing evidence, Edwardesia Reed points out that the evidence showed that she interacted appropriately with the children during visitation. However, this fact is not dispositive, as she had not even progressed to the point of having unsupervised visitation with the children at the time of the termination hearing.

⁴ The parties agree that § 19b(3)(h) is applicable to respondent Charles Reid only. Because only one statutory ground is required to terminate parental rights, *Jackson, supra* at 25, we need not determine whether termination of respondent Edwardesia Reed’s parental rights was also warranted under § 19b(3)(i).

⁵ Respondent Charles Reid asserts that if he had been present, he could have testified as to placement with a relative, disputed evidence about the mother, and presented firsthand evidence about his prison outdate. However, his inability to attend the hearing or participate by speakerphone would not have prevented him from communicating with his attorney before the hearing about any relative interested in providing for his children. His claim that he could have disputed evidence pertaining to Edwardesia Reed fails to establish any basis for relief because he does not have standing to contest the termination of her parental rights. Finally, in his appellate brief, he asserts that his earliest outdate is 2001. This corresponds to the evidence presented by petitioner at the February 13, 1998, hearing on his planned discharge date. Thus, he was not prejudiced by his inability to provide firsthand testimony regarding his outdate.