

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of HEARD/SUMNER, Minors.

UNPUBLISHED  
April 1, 2014

No. 316873  
Jackson Circuit Court  
Family Division  
LC No. 01-004458-NA

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Before: DONOFRIO, P.J., and SAAD and METER, JJ.

PER CURIAM.

Respondent mother appeals the trial court's order that terminated her parental rights. Specifically, she asserts that: (1) the trial court erred when it found statutory grounds for termination under MCL 712A.19b(3)(b)(i), (i), and (j); termination was not in the children's best interests; (3) her trial counsel was ineffective. These arguments are both frivolous and unconvincing, and for the reasons stated below, we affirm.

A. MCL 712A.19B(3)(J)

MCL 712A.19b(3)(j) reads, in full:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

\* \* \*

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent. [MCL 712A.19b(3)(j).]

When deciding whether it can terminate parental rights under MCL 712A.19b(3)(j), the court considers physical *and* emotional harm to the child. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011). A trial court will review a parent's childcare history to determine whether a child would be harmed if returned to the parent's home. *In re Archer*, 277 Mich App 71, 75-76; 744 NW2d 1 (2007).

Here, respondent received extensive services from the state to improve her parenting skills, after the termination of her parental rights to three of her other children. Despite receiving extensive services at the taxpayers' expense, respondent caused the death of her infant daughter

by drinking to excess and falling asleep on top of the child. She also allowed her youngest son to witness this aftermath of this horrific event, which caused him severe emotional harm. Also, witnesses testified that respondent's home was filthy and "unlivable" for young children. The trial court also relied on respondent's past failure to care for her other children, and reasoned, correctly, that the minor children involved in this proceeding would be harmed if they were returned to respondent's home.

Therefore, the trial court did not clearly err in finding a statutory ground for termination under MCL 712A.19b(3)(j). MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356–357; 612 NW2d 407 (2000).<sup>1</sup>

## B. BEST INTERESTS OF THE CHILDREN

A trial court's finding that termination is in a child's best interests is reviewed for clear error. MCR 3.977(K); *In re Trejo*, 462 Mich at 356–357. A trial court may consider the parent/child bond and the possibility of adoption when determining best interests,<sup>2</sup> as well as the child's need for permanence. *In re McIntyre*, 192 Mich App 47, 52; 480 NW2d 293 (1991). In addition, a trial court is permitted to consider a respondent's parental history in its determination of a child's best interests. See *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009). A trial court must determine the best interests of the child using evidence from the whole record. *In re Trejo*, 462 Mich at 353.

Respondent notes that the minor children were placed with their respective fathers, and asserts that the trial court failed to account for this placement when it found that termination was in the children's best interests. This assertion is belied by the record, which shows that the trial court explicitly addressed the fact that the minor children lived with their respective fathers.

In any event, respondent's argument has no merit. The case on which respondent relies, *In re Mason*, holds that "a child's placement with relatives weighs against termination under MCL 712A.19a(6)(a)," and that a child's placement with a relative is "an explicit factor to consider in determining whether termination was in the children's best interest." 486 Mich 142, 164; 782 NW2d 747 (2010). The definition of "relative" that applies to MCL 712A.19a(6)(a) is found in MCL 712A.13a(1)(j), which reads:

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<sup>1</sup> Because the trial court properly found a statutory ground for termination under MCL 712A.19b(3)(j), we need not address the remaining grounds under MCL 712A.19b(3)(b)(i) and (3)(i). See *In re Trejo*, 462 Mich at 360. And in light of the events described above, the trial court correctly terminated parental rights under MCL 712A.19b(3)(b)(i) (parent's act caused physical injury or harm to child or child's sibling, and court finds there is reasonable likelihood child will suffer injury in foreseeable future if placed in parent's home) and (i) (parental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect, and prior attempts to rehabilitate the parents have been unsuccessful) as well.

<sup>2</sup> *In re BZ Minors*, 264 Mich App 286, 301; 690 NW2d 505 (2004).

“Relative” means an individual who is at least 18 years of age and related to the child by blood, marriage, or adoption, as grandparent, great-grandparent, great-great-grandparent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, and the spouse of any of the above, even after the marriage has ended by death or divorce. [MCL 712A.13a.]

A “father” is thus not included in the many familial relationships that constitute a “relative” under MCL 712A.13a(1)(j). Here, as noted, the minor children were placed with their respective fathers. Accordingly, the trial court was not required to explicitly consider the minor children’s placement with their fathers.

In regard to the two older minor children, the trial court considered the fact that: (1) they did not have a bond with respondent; (2) their father’s girlfriend was willing to adopt them; and (3) they needed stability and permanence. Regarding respondent’s youngest son, the trial court considered his need for permanence and stability, his bond with respondent, respondent’s issues with alcohol, and the condition of respondent’s home.

The trial court thus properly determined that termination was in the children’s best interests.

### C. ALLEGED INEFFECTIVE ASSISTANCE OF COUNSEL

“[T]he principles of effective assistance of counsel developed in the context of criminal law apply by analogy in child protective proceedings.” *In re CR Minors*, 250 Mich App 185, 197-198; 646 NW2d 506 (2001). The questions presented by a claim of ineffective assistance of counsel are mixed questions of law and fact; findings of fact by the trial court, if any, are reviewed for clear error, and questions of constitutional law are reviewed de novo. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). However, because the issue is not preserved, our review is limited to mistakes apparent on the record. *People v Rodriguez*, 251 Mich App 10, 38; 650 NW2d 96 (2002). To prevail on a claim of ineffective assistance of counsel, a respondent must show that her trial counsel’s performance fell below an objective standard of reasonableness and that counsel’s representation so prejudiced the respondent that it denied her a fair trial. *In re CR*, 250 Mich App at 198. To show prejudice, a respondent must show a reasonable probability that, without counsel’s unprofessional errors, the result of the proceeding would have been different. *Id.*

Respondent fails to provide adequate legal or factual support for almost all of her ineffective assistance of counsel claims. “An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give issues cursory treatment with little or no citation of supporting authority.” *Houghton v Keller*, 256 Mich App 336, 339; 662 NW2d 854 (2003) (citation omitted). These issues are abandoned because “[a]n appellant’s failure to properly address the merits of his assertion of error constitutes abandonment of the issue.” *Id.* at 339-340 (citation omitted). We address respondent’s remaining claims below.

Respondent argues that her trial counsel was ineffective for failing to object to a police officer's testimony regarding the results of respondent's preliminary breathalyzer test taken the morning after she killed her daughter by sleeping on top of her. On appeal, respondent correctly notes that the Michigan legislature has limited the admissibility of preliminary breath tests in criminal cases under MCL 257.625a(2)(b). However, this was a civil case, and respondent provides no other support for her conclusion that the results of respondent's preliminary chemical breath test should not have been admitted in this case.

Finally, respondent's focus on her trial counsel's failure to request that she be given a psychological evaluation assumes that the evaluation would have been favorable to her. There is no evidence regarding what the results of a psychological evaluation would have been, and respondent never requested an evidentiary hearing to introduce such evidence. Accordingly, respondent has failed to meet her burden of establishing the factual predicate for her claim of ineffective assistance of counsel. *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999).

Affirmed.

/s/ Pat M. Donofrio  
/s/ Henry William Saad  
/s/ Patrick M. Meter