

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of E. J. MILLER-WILLIAMS,
Minor.

UNPUBLISHED
No. 310102

Oakland Circuit Court
Family Division
LC No. 2011-789770-NA

Before: FORT HOOD, P.J., and K. F. KELLY and DONOFRIO, JJ.

PER CURIAM.

Respondent C. Foster appeals as of right from a circuit court order terminating her parental rights to the minor child under MCL 712A.19b(3). We affirm.

Petitioner sought termination of respondent's parental rights at the initial dispositional hearing under MCL 712A.19b(3)(g), (i), (j), and (l). Respondent pleaded no contest to the allegations against her, which indicated that her parental rights to three other children had previously been terminated due primarily to a longstanding substance abuse problem. The trial court took judicial notice of the other cases to establish a factual basis for the plea.

On appeal, respondent does not challenge the trial court's reliance on § 19b(3)(l) (the parent's rights to another child were previously terminated after the initiation of child protective proceedings) as a basis for termination. Where a respondent does not challenge the trial court's determination with respect to one or more of several statutory grounds, this Court may assume that the trial court did not clearly err in finding that the unchallenged grounds were established by clear and convincing evidence. See *In re JS & SM*, 231 Mich App 92, 98-99; 585 NW2d 326 (1998), overruled in part on other grounds by *In re Trejo Minors*, 462 Mich 341, 353; 612 NW2d 407 (2000); see also *City of Riverview v Sibley Limestone*, 270 Mich App 627, 638; 716 NW2d 615 (2006) (an appellant's failure to address an issue that must necessarily be reached to reverse the trial court precludes appellate relief).

Further, we find no clear error in the trial court's determination that termination of respondent's parental rights was in the child's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich at 356-357. Respondent acknowledged that she is a recovering drug addict and had used crack cocaine during her pregnancy, which left the child suffering from severe withdrawal symptoms. Although respondent did seek out and complete a substance abuse treatment program at Clearview, she admitted that it did not sufficiently prepare her for maintaining sobriety in the community and that she required additional treatment. She thus entered a six-month treatment program offered by the Salvation Army, but then dropped out after only three or four weeks and did not seek any further treatment. Respondent never obtained a

high school degree, had not held a job in years, did not have a legal source of income, and was incarcerated for a charge of assault with intent to commit murder. Further, respondent had not seen the child since birth, so there was never an opportunity for the child to establish any bond with respondent. Given these circumstances, the trial court did not clearly err in finding that termination of respondent's parental rights was in the child's best interests.

Respondent also contends that petitioner violated its statutory duty to provide her with reunification services. "Reasonable efforts to reunify the child and family must be made in all cases except" where certain aggravated circumstances exist. MCL 712A.19a(2)(c). One aggravated circumstance relieving petitioner of its obligation to reunify the parent and child is that "[t]he parent has had rights to the child's siblings involuntarily terminated." MCL 712A.19a(2)(c). Respondent does not dispute that her parental rights to her other children were previously involuntarily terminated. Thus, petitioner was not required to provide reunification services.

Respondent lastly argues that her attorney was ineffective for failing to refer her for a psychological evaluation to determine if she had any limitations that would need to be accommodated in developing a service plan and providing her with reunification services. "[T]he principles of effective assistance of counsel developed in the context of criminal law apply by analogy in child protective proceedings." *In re EP*, 234 Mich App 582, 598; 595 NW2d 167 (1999), overruled in part on other grounds by *In re Trejo Minors*, 462 Mich at 353 n 10. Respondent's failure to raise this issue below limits our review to errors apparent from the record. *People v Rodriguez*, 251 Mich App 10, 38; 650 NW2d 96 (2002); *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000). To establish ineffective assistance of counsel, a criminal defendant must "show that (1) his trial counsel's performance fell below an objective standard of reasonableness under the prevailing professional norms; and (2) there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different." *People v Horn*, 279 Mich App 31, 37-38 n 2; 755 NW2d 212 (2008)

This Court has held that the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq.*, requires a public agency such as petitioner "to make reasonable accommodations for those individuals with disabilities so that all persons may receive the benefits of public programs and services. Thus, the reunification services and programs provided by the [DHS] must comply with the ADA." *In re Terry*, 240 Mich App 14, 25; 610 NW2d 563 (2000). In this case, however, petitioner sought termination of parental rights at the initial dispositional hearing and, where a parent's rights to the child's siblings were previously involuntarily terminated, reunification services are not required. MCL 712A.19a(2)(c). Therefore, counsel's decision to forgo a psychological evaluation to determine whether respondent would need to be accommodated in developing a service plan was not objectively unreasonable.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Kirsten Frank Kelly
/s/ Pat M. Donofrio