

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
October 12, 2026
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In re LOX, Minors.

No. 378301
Dickinson Circuit Court
Family Division
LC No. 24-000506-NA

Before: BORRELLO, P.J., and BAZZI and LIEVENSE, JJ.

PER CURIAM.

Respondent-father appeals by right the trial court’s order of disposition entered after a jury found statutory grounds for the court to exercise jurisdiction over his four minor children pursuant to MCL 712A.2(b)(1) (substantial risk of harm to child’s mental well-being) and (2) (unfit home by reason of neglect, cruelty, criminality, or depravity). Finding no errors warranting reversal, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

This case arises from respondent’s sexual abuse of his stepdaughter, AK, which initiated the child-protective proceedings at issue. In 2011, respondent married the mother of his four children.¹ Their mother has three other children, including AK. In March 2024, AK disclosed that respondent sexually abused her when she was between the ages of 13 and 15. The abuse was alleged to have occurred in the family home. Following AK’s disclosure, her mother reported the allegations to the police, who then notified petitioner, the Department of Health and Human Services (DHHS).

On June 13, 2024, petitioner filed a petition alleging that respondent’s sexual abuse of AK placed his minor children at risk of harm to their emotional and mental well-being. Petitioner requested the court to authorize the petition, place respondent’s children with their mother, and

¹ The children’s mother is not a respondent in the child-protective proceedings.

take jurisdiction over the children.² Following a preliminary hearing, the trial court authorized the petition and released the children to their mother under DHHS's supervision. The trial court also appointed trial counsel for respondent.

Respondent was eventually charged with first-degree criminal sexual conduct (CSC-I), MCL 750.520b(1)(b) (penetration of a related victim between the ages of 13 and 15), and second-degree criminal sexual conduct (CSC-II), MCL 750.520c(1)(b) (sexual contact with a related victim between the ages of 13 and 15), based on his abuse of AK. Petitioner filed an amended petition, which added allegations of the criminal charges and sought to terminate respondent's parental rights. The trial court adjourned the child-protective proceedings pending resolution of respondent's criminal trial. On April 16, 2025, respondent was convicted of both charges following a jury trial.

An adjudication trial to determine the trial court's jurisdiction over respondent's minor children was held before a jury on June 3, 2025. Before the trial commenced, trial counsel informed the court that respondent no longer wanted his representation, in part because respondent was "saying he needs special accommodation because of his closed head injury," and "just informed [trial counsel] of that, that he thinks he needs special assistance." Respondent contended that he informed trial counsel of his need for accommodations under the Americans with Disabilities Act (ADA)³ days before the trial. He explained that he was "not able to keep up with things" or keep track of details because of his disability. Respondent was also concerned about the fact that trial counsel did not have any witnesses to present at trial.

When asked by the trial court what accommodations he required, respondent stated that he wanted a memory aid or recorder so that when there was a break in the proceedings, he could "listen to things back and get caught up with everybody else." He explained that when he was in college, his professors would record their classes and give him a recording so that he could listen and catch up after the lecture. The trial court denied respondent's request for new counsel and declined to adjourn the trial. While the court generally did not have an issue with the use of a recording device, it noted that it did not "have the ability to simply provide [respondent] with some accommodations on the fly, when [it was] not even sure what the accommodation is, that is needed, because the issue has been improperly raised at this point." However, it stated that it would attempt to find a recorder after jury selection. Respondent conceded that if trial concluded the same day, "it won't even matter" whether he could understand the proceedings as they were ongoing.

The trial proceedings concluded the same day, and the court was unable to procure a recording device for respondent. The jury primarily heard testimony and evidence establishing respondent's criminal convictions, though the specifics of the abuse were not detailed. Trial counsel did not call any witnesses or present evidence at trial. The jury found statutory grounds

² Although petitioner only checked the box indicating that the minor children came within the provisions of MCL 712A.2(b)(2), it also alleged that respondent's conduct "place[d] his children at a risk of harm to their emotional and mental well-being," which forms the basis for jurisdiction under MCL 712A.2(b)(1).

³ 42 USC 12101 *et seq.*

for the court to exercise jurisdiction over respondent's minor children because they were "subject to a substantial risk of harm to their mental well-being," and "[t]he home or environment . . . by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of [respondent], is an unfit place for [the children] to live in." The trial court entered an order taking jurisdiction over the children under MCL 712A.2(b)(1) and (2).

The case then proceeded to the initial disposition, where petitioner sought termination of respondent's parental rights under MCL 712A.19b(3)(b)(i) (parent caused sexual abuse of child or sibling), (b)(ii) (parent failed to prevent sexual abuse of child or sibling), (h) (parent imprisoned for a period exceeding two years), (j) (reasonable likelihood of harm), (k)(ii) (abuse of child or sibling involving criminal sexual conduct), (k)(ix) (abuse of child or sibling under MCL 722.622), and (m)(i) (violation of MCL 750.520b and MCL 750.520c). The trial court heard testimony from the director of the Dickinson County Veteran Service Office, Denise Formolo, who explained how terminating respondent's parental rights could potentially impact the benefits for which his children were eligible. During her testimony, the issue of accommodations arose again. The trial court asked whether Formolo could share the reason for respondent's permanent and total disability if respondent gave her permission to do so. Respondent did not allow Formolo to answer the question, and the following exchange ensued:

The Court: So, you want me to accommodate your disability, but you don't want to tell me what the disability [is], is that what I'm understanding here [respondent]?

The Respondent: I've talked to zero attorneys for I don't know, three weeks now. I don't feel comfortable saying anything.

The Court: All right. Well, but you've told me repeatedly that you have a disability and you've told me that—you've told me what the disability is, but I'm not sure what the disability is, that you want me to accommodate and now we have the person here that can tell me what the disability is, but you're saying you don't know if you want her to tell me, because you haven't talked to an attorney. So, I just want the record to be very clear, that you're asking me to accommodate your disability, but I do not know what that disability is to accommodate it.

The court reiterated that while it was not trying to coerce respondent into disclosing his disability, it "cannot accommodate a disability that is unknown" The trial court continued the initial disposition to another date and found that "because [respondent] has been found guilty of conduct that is [an] aggravated circumstance, the Department is excused from making reasonable efforts." At the continued hearing, respondent moved for substitute counsel, contending that trial counsel made no effort to contact him or prepare his defense. The court granted respondent's request, finding a breakdown in the attorney-client relationship. It then noted that because the initial disposition was "being kicked down the road," it did not want to delay respondent's right to an appeal. It therefore appointed appellate counsel for respondent and entered an order of disposition placing his minor children with their mother and finding that petitioner was

“not obligated to provide a reunification plan or other services to the respondent father because of the aggravated circumstances.”⁴ This appeal ensued.

II. ADA ACCOMMODATIONS

Respondent first argues that the trial court erred by failing to provide him with ADA accommodations and failing to require that petitioner provide him accommodations in connection with its reasonable efforts toward reunification. We disagree.

“Whether the ADA has any effect on termination of parental rights proceedings . . . presents a question of law that we review de novo.” *In re Terry*, 240 Mich App 14, 23-24; 610 NW2d 563 (2000). Generally, “[w]e review for clear error a trial court’s decision regarding reasonable efforts.” *In re Sanborn*, 337 Mich App 252, 258; 976 NW2d 44 (2021).

The ADA prohibits discrimination as follows:

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. [42 USC 12132.]

Respondent contends that the trial court “never provided [him] any accommodations in compliance with the ADA during the jury trial or afterward.” However, this Court held in *Terry*, 240 Mich App at 25, “that termination of parental rights proceedings do not constitute ‘services, programs or activities’ within the meaning of 42 USC 12132.” Therefore, respondent “may not raise violations of the ADA as a defense to termination of parental rights proceedings” with respect to the trial court. *Id.* Further, we note that respondent acknowledged during the adjudication trial that if the proceedings ended the same day, his request for accommodations “won’t even matter.” Accordingly, respondent’s argument regarding the trial court’s failure to provide accommodations is meritless.

Respondent also asserts that “DHHS should have provided reasonable efforts, including modifications for [respondent’s] disability from the adjudication jury trial until July when the trial court found DHHS was excused from making reasonable efforts” based on aggravated circumstances. Respondent failed to preserve this issue by challenging the adequacy of his reunification services in the trial court, so it is subject to plain-error review. See *Sanborn*, 337

⁴ We note that respondent’s parental rights are still intact. At the initial disposition hearing, petitioner contended that it could succeed in establishing statutory grounds based on respondent’s criminal convictions but had yet to present testimony concerning best interests. At the continued hearing, no testimony was presented regarding statutory grounds or best interests, and the trial court granted respondent’s request for new counsel. Therefore, despite petitioner’s request to terminate at the initial disposition, a full termination hearing to establish statutory grounds and best interests has yet to occur.

Mich App at 258 (noting that unpreserved issues in termination of parental rights proceedings are reviewed under the plain-error standard).

DHHS “has obligations under the ADA that dovetail with its obligations under the Probate Code.” *Id.* at 263 (quotation marks and citation omitted). One of these obligations is “an affirmative duty to make reasonable efforts to reunify a family before seeking termination of parental rights.” *In re Hicks/Brown*, 500 Mich 79, 85; 893 NW2d 637 (2017). In connection with these reasonable efforts, DHHS must make reasonable modifications necessary to accommodate a respondent’s disability under the ADA. *Sanborn*, 337 Mich App at 263-264. However, it is well-settled that the duty to reunify a family does not exist where “certain aggravating circumstances exist.” *Id.* at 259 (quotation marks and citation omitted). See also *Hicks/Brown*, 500 Mich at 85 n 4 (recognizing that MCL 712A.19a(2) provides exceptions to DHHS’s duty to make reasonable efforts toward reunification).

In this case, the trial court found that aggravating circumstances existed based on respondent’s criminal sexual conduct under MCL 722.638(1)(a)(ii). See MCL 712A.19a(2)(a) (providing an exception to the reasonable-efforts requirement where there is a judicial determination of aggravated circumstances under MCL 722.638). While respondent acknowledges that the aggravated circumstances excused petitioner from making reunification efforts, he contends that he should have been provided with modified services between the adjudication trial and the trial court’s finding of aggravated circumstances. However, this Court has observed that “[t]he time for asserting the need for accommodation in services is when the court adopts a service plan” *Terry*, 240 Mich App at 27. Because petitioner sought termination based on aggravated circumstances, no case service plan was required and thus petitioner’s obligation to provide reunification services, along with any reasonable accommodations, did not arise.

Further, respondent cannot establish that he was prejudiced by any lack of accommodations. See *Sanborn*, 337 Mich App at 258 (noting that, under the plain-error standard, an error affects substantial rights if it affected the outcome of the proceedings). “When challenging the services offered, a respondent must establish that he or she would have fared better if other services had been offered.” *Id.* at 264. Respondent’s request for accommodations in the trial court centered on his impaired memory, for which he requested a memory aid or recording device to review the proceedings independently. The record does not contain any reference to modified services that DHHS could have provided to accommodate respondent’s disability. Nor is there any indication that respondent’s request for a recording device would have aided his interactions with DHHS. Further, when presented with an opportunity to clarify the reason for his disability and the need for accommodations, respondent declined to allow testimony on the subject. Without any explanation of what services DHHS should have offered to accommodate respondent’s needs, he cannot establish plain error on this basis. See *id.* at 266 (“Without an identification of services to accommodate mother’s intellectual disability, we are left to speculate what other services the DHHS could have offered.”).

III. INEFFECTIVE ASSISTANCE OF COUNSEL

Respondent also argues that he was denied the effective assistance of counsel at the adjudication trial because trial counsel failed to (1) request ADA accommodations, (2) cross-

examine witnesses presented by petitioner, (3) present evidence or witnesses, and (4) object to the jury's receipt of respondent's register of actions in the criminal case during deliberations. We disagree with each contention.

"Claims of ineffective assistance of counsel are mixed questions of fact and law." *In re Lovitt*, 351 Mich App 237, 243; 34 NW3d 645 (2024). The trial court's factual findings are reviewed for clear error and questions of law are reviewed de novo. *Id.* "Clear error exists if the reviewing court is left with a definite and firm conviction that the trial court made a mistake." *Id.* (quotation marks and citation omitted). In the absence of an evidentiary hearing, our review "is limited to mistakes that are apparent on the record." *People v Mack*, 265 Mich App 122, 125; 695 NW2d 342 (2005).⁵

"The principles applicable to claims of ineffective assistance of counsel in the arena of criminal law also apply by analogy in child protective proceedings; therefore, it must be shown that (1) counsel's performance was deficient, falling below an objective standard of reasonableness, and that (2) the deficient performance prejudiced the respondent." *In re Martin*, 316 Mich App 73, 85; 896 NW2d 452 (2016). "To establish prejudice, a party claiming ineffective assistance must show that but for counsel's deficient performance, a different result would have been reasonably probable." *Lovitt*, 351 Mich App at 251 (quotation marks and citation omitted). "The effective assistance of counsel is presumed, and a party claiming ineffective assistance bears a heavy burden of proving otherwise." *Id.* (quotation marks and citation omitted).

Respondent first argues that trial counsel was ineffective for failing to request ADA accommodations during the trial. As discussed above, respondent's claim that the trial court was required to provide him with accommodations is meritless because the proceedings did not constitute services, programs, or activities under the ADA. And again, respondent acknowledged that his request for accommodations would not matter if the trial concluded the same day, which it did. Accordingly, he cannot establish ineffective assistance on this basis. See *People v Isrow*, 339 Mich App 522, 532; 984 NW2d 528 (2021) ("Failure to raise a futile objection or advance a meritless argument does not constitute ineffective assistance of counsel.").

We note that respondent's remaining arguments are insufficiently briefed. While he asserts that several claims of error constitute ineffective assistance of counsel, his analysis is conclusory. Respondent does not explain why his claimed errors amount to deficient performance resulting in prejudice, nor does he support his argument with caselaw. Accordingly, while we briefly address the nature of his arguments below, we deem the issues abandoned on appeal. See *In re Rippy*, 330 Mich App 350, 362 n 5; 948 NW2d 131 (2019) (noting that insufficiently briefed issues may be deemed abandoned).

Respondent maintains that trial counsel was ineffective for failing to cross-examine the children's mother or the Children's Protective Services (CPS) case worker. In support, he argues only that "[d]uring the jury trial, [trial counsel] did not ask [mother] a single question," and trial counsel "also did not ask the ongoing CPS worker . . . any questions." While true that trial counsel

⁵ Respondent moved to remand for an evidentiary hearing in this Court, which we denied. See *In re Lox*, unpublished order of the Court of Appeals, entered April 22, 2026 (Docket No. 378301).

did not cross-examine these witnesses, respondent does not identify why the failure to cross-examine them amounted to deficient performance, what questions trial counsel should have asked, or how the lack of cross-examination resulted in prejudice.⁶ Regardless of whether these two witnesses were cross-examined, the jury would have learned that respondent was convicted of CSC-I and CSC-II against AK, making it improbable that any cross-examination would have produced a different result. Without more, respondent cannot overcome the presumption that he received the effective assistance of counsel. See also *People v Putman*, 309 Mich App 240, 248; 870 NW2d 593 (2015) (noting that the party claiming ineffective assistance is tasked with establishing the factual predicate of the claim).

Respondent also argues that trial counsel was ineffective for failing to call witnesses to testify on his behalf. Trial counsel did not call any witnesses at the adjudication trial and respondent contends that he “could have called several witnesses that would have testified about AK’s allegations and refuted some of her claims in the criminal case, including Trevor and Jeff who lived with [respondent].”⁷ Respondent does not provide any further explanation regarding the content of Trevor and Jeff’s purported testimony, or how the outcome of the proceedings would have been different if their testimony was presented. Given that a party claiming ineffective assistance of counsel bears the burden of proving that trial counsel’s performance was deficient, respondent’s vague reference to allegedly exculpatory testimony is insufficient to rebut the presumption that trial counsel performed effectively. See *Lovitt*, 351 Mich App at 251; *Putman*, 309 Mich App at 248.

Finally, respondent argues that trial counsel was ineffective for failing to “object to sending in the register of actions of [respondent’s] criminal case to the jury for purposes of jury deliberations, before the jury had even asked for it.” Respondent does not appear to be challenging the admissibility of the register of actions itself, instead focusing on the fact that the jury was permitted to reference it during deliberations. He does not cite any caselaw or further explain why allowing the jury to reference an admitted exhibit during deliberations constituted deficient performance that resulted in prejudice. Accordingly, respondent cannot meet his burden of establishing ineffective assistance of counsel.

⁶ We also note that the children’s mother and CPS worker presented limited testimony. Given the brevity of their testimony, declining to cross-examine them could have been a reasonable strategic choice to prevent the introduction of damaging testimony against respondent. Notably, the petition contained allegations that were not introduced at trial, including that respondent had issues with alcohol abuse and that he physically abused the children’s mother.

⁷ Respondent does not identify who Trevor and Jeff are in his brief on appeal, but a review of the lower court record reveals that Trevor is respondent’s brother and Jeff is respondent’s friend.

Affirmed.

/s/ Stephen L. Borrello

/s/ Mariam S. Bazzi

/s/ Andrew J. Lievens