

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of AUSTIN KURZAWA, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JOHN CASMERE KURZAWA, JR.,

Respondent-Appellant,

and

SHEREE KURZAWA,

Respondent.

UNPUBLISHED

January 13, 1998

No. 197583

Benzie Juvenile Court

LC No. 95-000217-NA

Before: Neff, P.J., and Jansen and Markey, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the juvenile court's termination of his parental rights to the minor child pursuant to MCL 712A.19b(3)(h); MSA 27.3178(598.19b)(3)(h) [parent imprisoned such that child will be deprived of normal home for more than two years]. We reverse.

Respondent-appellant, the noncustodial parent, was entitled to notice of the petition as well as the time and place of the adjudicative hearing on the petition once the petition requesting the juvenile court to assume jurisdiction over the child was filed. MCL 712A.12; MSA 27.3178(598.12); MCL 712A.13; MSA 27.3178(598.13); *In re Mayfield*, 198 Mich App 226, 231; 497 NW2d 578 (1993). While respondent-appellant may have eventually received notice of the original and amended petitions seeking the court's jurisdiction, the evidence indicates that he was not provided with notice regarding the time and place of the adjudicative hearing. Petitioner knew respondent-appellant's whereabouts and should have provided him with proper notice. The failure to provide respondent-appellant with

proper notice is a jurisdictional defect which requires reversal of the juvenile court's order terminating his parental rights. *Mayfield, supra* at 230-231.

Although the juvenile court's decision must be reversed for lack of proper notice, we will address the remainder of respondent-appellant's arguments.

Respondent-appellant's claim that the juvenile court abused its discretion in refusing to disqualify itself is not preserved because he did not seek review of the decision pursuant to MCR 2.003(C)(3)(b). *Welch v Dist Ct*, 215 Mich App 253, 258; 545 NW2d 15 (1996).

Clear and convincing evidence supported the juvenile court's findings under MCL 712A.19b(3)(h); MSA 27.3178(598.19b)(3)(h) and the findings were not clearly erroneous. MCL 712A.19b(3); MSA 27.3178(598.19b)(3); *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996). Because respondent-appellant failed to demonstrate that termination of parental rights was clearly not in the best interests of his child, the ultimate decision to terminate his parental rights was not clearly erroneous. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Hall-Smith*, 222 Mich App 470, 472-473; 564 NW2d 156 (1997).

By failing to move in the trial court for a new trial or an evidentiary hearing regarding his claim of ineffective assistance of counsel, respondent-appellant has failed to preserve that issue for appeal unless the record is sufficient to support respondent's claim. *People v Maleski*, 220 Mich App 518, 523; 560 NW2d 71 (1996). This Court's review is limited to the record. *Id.*

Respondent-appellant has not established that his counsel's representation fell below an objective standard of reasonableness nor has he overcome the presumption that his counsel's actions were sound trial strategy. Therefore, respondent-appellant has failed to demonstrate that he was denied the effective assistance of counsel. *People v Stewart (On Remand)*, 219 Mich App 38, 41; 555 NW2d 715 (1996); *People v Barclay*, 208 Mich App 670, 672; 528 NW2d 842 (1995) (citing *People v Pickens*, 446 Mich 298, 309; 521 NW2d 797 [1994]). Furthermore, respondent-appellant has not established that his counsel's failure to call witnesses was not sound trial strategy such that respondent-appellant was prejudiced by counsel's performance. *People v Mitchell*, 454 Mich 145, 162-166; 560 NW2d 600 (1997).

Reversed.

/s/ Janet T. Neff
/s/ Kathleen Jansen
/s/ Jane E. Markey