

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of KILE WORLD WHITMER, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CARL WORLD WHITMER,

Respondent-Appellant.

UNPUBLISHED

December 3, 1999

No. 217242

Wayne Circuit Court

Family Division

LC No. 96-346273

Before: Jansen, P.J., and Hoekstra and J. R. Cooper*, JJ.

MEMORANDUM.

Respondent appeals as of right a family court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(a)(ii), (b)(i), (c)(i), (g) and (j); MSA 27.3178(598.19b)(3)(a)(ii), (b)(i), (c)(i), (g) and (j). We affirm.

The family court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Further, respondent failed to show that termination of his parental rights was clearly not in the child's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Hall-Smith*, 222 Mich App 470, 472-473; 564 NW2d 156 (1997). Thus, the family court did not err in terminating respondent's parental rights to the child. *Id.*

Respondent further argues that he received the ineffective assistance of counsel because his attorney failed to present evidence that termination of his parental rights was not in the child's best interests. Where, as here, a claim of ineffective assistance of counsel depends on matters not of record, a respondent is required to make a testimonial record at the trial court level which evidentially supports the claim. See *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999).¹ Because defendant failed to do this, and because it is not apparent from the record that termination of respondent's parental rights

* Circuit judge, sitting on the Court of Appeals by assignment.

was clearly contrary to the child's best interests, ineffective assistance of counsel has not been established.

Affirmed.

/s/ Kathleen Jansen

/s/ Joel P. Hoekstra

/s/ Jessica R. Cooper

¹ “In analyzing claims of ineffective assistance of counsel at termination hearings, this Court applies by analogy the principles of ineffective assistance of counsel as they have developed in the criminal law context.” *In re Simon*, 171 Mich App 443, 447; 431 NW2d 71 (1988).