STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of J.A.W., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JOEL WILLIAMS,

Respondent-Appellant,

and

ROCHELLE DIONNE PATRICK,

Respondent.

UNPUBLISHED
June 25, 2002

No. 229638
Wayne Circuit Court
Family Division
LC No. 98-363256

In the Matter of J.A.W., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ROCHELLE DIONNE PATRICK,

Respondent-Appellant,

and

JOEL ANDRE WILLIAMS,

Respondent.

No. 229722
Wayne Circuit Court
Family Division
LC No. 98-363256

Before: Neff, P.J., and Griffin and Talbot, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right the July 17, 2000 order terminating their parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (g) and (j). We affirm.

Respondent-mother Patrick argues that the trial court erred in denying her motion for an independent expert at the adjudicative trial. Because this issue pertains only to circumstances surrounding the adjudicative trial, it is an improper collateral attack on the trial court's jurisdiction. It is well established that a respondent in a child protective proceeding cannot collaterally attack the trial court's exercise of jurisdiction in an appeal from the order terminating the respondent's parental rights. *In re Hatcher*, 443 Mich 426, 444; 505 NW2d 834 (1993); *In re Bechard*, 211 Mich App 155, 159-160; 535 NW2d 220 (1995). Accordingly, Patrick is barred from challenging the trial court's jurisdiction in this appeal.

Patrick also argues that she was denied the effective assistance of counsel when her attorney failed to move for an adjournment after Patrick failed to appear for the termination hearing. "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). A criminal defendant claiming ineffective assistance of counsel must satisfy the two-part test articulated by the United States Supreme Court in *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984). *People v Pickens*, 446 Mich 298, 302-303, 309; 521 NW2d 797 (1994). First, the defendant must show that counsel made errors so serious that counsel was not performing as the "counsel" guaranteed by the Sixth Amendment. *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001). This requires overcoming the strong presumption that the counsel's performance was sound trial strategy. *Id.* Next, the defendant must show that the deficient performance prejudiced the defense, which requires a showing of a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *Id.* "Because the defendant bears the burden of demonstrating both deficient performance and prejudice, the defendant necessarily bears the burden of establishing the factual predicate for his claim." *Id.*; see also *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999).

Patrick cannot satisfy these criteria. She cannot show that her attorney's failure to move for an adjournment was a serious error because she cannot show that the trial court would likely have granted the motion. Adjournments in child protective proceedings are granted only for good cause. MCR 5.923(G)(2). Patrick has not shown any legitimate excuse for her failure to attend, so her absence would not constitute good cause. For the same reason, Patrick cannot show that the outcome of her case would have been different had her attorney moved for an adjournment. *Carbin, supra* at 600.

Respondent-father Williams argues that the trial court erred in finding statutory grounds for termination and that the trial court should have found that termination was not in the child's best interests. We disagree. The trial court did not clearly err in finding clear and convincing evidence of statutory grounds for termination. MCR 5.974(I); *In re Trejo Minors*, 462 Mich 341,

356-357; 612 NW2d 407 (2000). The evidence established that the child suffers from serious and permanent medical conditions, and that Williams never prepared himself to assume care of the child. Because record evidence did not establish that termination is not in the child's best interests, the trial court did not clearly err in terminating Williams' parental rights. MCL 712A.19b(5); *Trejo, supra* at 353-354, 356-357.

Affirmed.

/s/ Janet T. Neff
/s/ Richard Allen Griffin
/s/ Michael J. Talbot