STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of ALEXA MARIE CASAS and ISAAC ANTONIO GARCIA, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

SHEILA ANN GARCIA,

Respondent-Appellant.

UNPUBLISHED
June 8, 2004

No. 252690
Saginaw Circuit Court
Family Division
LC No. 03-028280-NA

Before: Sawyer, P.J., and Gage and Owens, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(b)(ii) and (j). We affirm.

The trial court did not clearly err in determining that a statutory subsection in MCL 712A.2(b) was met by a preponderance of the evidence, and did not err in assuming jurisdiction over the children. MCR 3.972(C)(1); *In re Brock*, 442 Mich 101, 108-109; 499 NW2d 752 (1993). Jurisdiction was taken pursuant to respondent's admissions, and while some of those admissions involved failure to comply with voluntary services, which respondent was not required to complete, the bulk of the admissions involved respondent's continued propensity to place the children in danger, and that was the ground upon which the trial court found that their home was not safe.

Additionally with respect to jurisdiction, the petition upon which jurisdiction was based was not faulty, and the trial court did not err in relying on it. The petition stated the basis under which the case came within the provisions of the juvenile code, cited MCL 712A.19b(3)(b)(ii) as the statutory subsection warranting relief and alleged facts supporting it, and indicated that the relief initially sought was termination of respondent's parental rights at the initial disposition. MCR 3.961(B)(3), (4) and (6); *In re Hatcher*, 443 Mich 426, 434; 505 NW2d 834 (1993).

With respect to termination, the trial court did not clearly err in determining that the statutory subsections for termination of parental rights were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The trial

court signed a conditional order of termination at the June 9, 2003, adjudication trial, finding that there was not only a preponderance of the evidence warranting adjudication, but clear and convincing evidence warranting termination. However, the trial court agreed not to enter the termination order if respondent complied with all of the services ordered within three months, otherwise known as an Adrianson Agreement. By the time of the September 9, 2003, hearing, clear and convincing evidence showed that respondent had not substantially complied with services, was still using cocaine, and was no further along in making her children her first priority than she had been in June 2003. The trial court correctly entered the termination order on September 9, 2003.

Further, the evidence did not show that termination of respondent's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). In the absence of evidence showing that termination of respondent's parental rights was clearly contrary to the children's best interests, the trial court did not err in following the statute's mandate and terminating respondent's parental rights.

Finally, respondent was not denied effective assistance of counsel. To establish a claim of ineffective assistance of counsel, respondent was required to show that her attorney's performance was prejudicially deficient and that, under an objective standard of reasonableness, the attorney made an error so serious that counsel was not functioning as an attorney as guaranteed under the Sixth Amendment. *People v Pickens*, 446 Mich 298, 303; 521 NW2d 797 (1994). Because this issue was not raised in the trial court, appellate review is limited to the existing record. *People v Sharbnow*, 174 Mich App 94, 106; 435 NW2d 772 (1989).

Since the petition was not faulty and jurisdiction was properly assumed, respondent's argument that counsel failed to object to those matters does not demonstrate ineffective assistance of counsel. Counsel's failure to discredit witness Nancy Niven would not have made a difference, since Nancy Niven admitted the limitations of her knowledge. Respondent does not specify witnesses counsel should have called, but did not, or what difference their testimony could have made. Agreeing to enter into the Adrianson Agreement may not have been the best decision, but it was a matter of trial strategy and it is a general rule that this Court is reluctant to substitute its judgment for that of trial counsel in matters of trial strategy. *People v Cicotte*, 133 Mich App 630, 636-637; 349 NW2d 167 (1984).

Affirmed.

/s/ David H. Sawyer
/s/ Hilda R. Gage
/s/ Donald S. Owens