

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MAHDI HAYES, JR., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MAHDI E. HAYES, SR.,

Respondent-Appellant,

and

MENEFI NORTON,

Respondent.

UNPUBLISHED

August 19, 2004

No. 254078

Kent Circuit Court

Family Division

LC No. 96-032100-NA

Before: Hoekstra, P.J., and Cooper and Kelly, JJ.

MEMORANDUM.

Respondent-appellant appeals as of right the termination of his parental rights to the minor child. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent-appellant argues that he was denied the effective assistance of counsel. To prevail on a claim of ineffective assistance of counsel, respondent-appellant must show that his attorney's performance was deficient, that is, that it fell below an objective standard of reasonableness and the representation so prejudiced him that it denied him a fair trial. *In re CR*, 250 Mich App 185, 197-198; 646 NW2d 506 (2002). Because respondent-appellant failed to seek an evidentiary hearing below or move for a new trial based on ineffective assistance of counsel, this Court's review is limited to mistakes apparent on the record. *People v McCrady*, 213 Mich App 474, 478-479; 540 NW2d 718 (1995).

Respondent-appellant first argues that his attorney failed to make independent efforts to contact respondent during the pendency of the case. However, there was no evidence presented at the trial level as to what efforts, great or small, that were made by said attorney, save for the attorney's comments that such efforts had not resulted in any response from respondent-appellant. Respondent-appellant similarly bases his argument on alleged facts that are not part of

the record when he argues that his attorney should have known it was likely that respondent-appellant resided in the state of Illinois, and that the minor child and his custodial relatives were aware of respondent-appellant's location.

Respondent-appellant next argues that his attorney's performance was deficient when he failed to conduct any cross-examination or present any evidence on behalf of respondent-appellant, including evidence relating to the best interests of the minor child. However, respondent-appellant fails to specify what evidence should have been presented or elicited upon cross-examination, thereby precluding this Court from determining any deficiencies in the representation. On this record, we cannot say that respondent-appellant was denied the effective assistance of counsel.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Jessica R. Cooper
/s/ Kirsten Frank Kelly