

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of DEVAN DEAN CHAMBERS,  
Minor.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DONNA CHAMBERS,

Respondent-Appellant.

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UNPUBLISHED

August 23, 2005

No. 260699

Monroe Circuit Court

Family Division

LC No. 03-017738-NA

Before: Zahra, P.J., and Cavanagh and Owens, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(i) (parental rights to sibling terminated and prior attempts to rehabilitate have been unsuccessful) and (l) (parent's right to another child involuntarily terminated), which was entered by the Monroe Circuit Court. We affirm.

Respondent argues that although her parental rights to the minor child's sibling were previously terminated, there were no prior attempts to rehabilitate respondent. Respondent further argues that the trial court erroneously found that respondent repeatedly refused to submit to substance abuse treatment. Respondent also claims that she attempted to obtain inpatient treatment but was "shuffled around by different agencies" and petitioner did not make adequate attempts to rehabilitate her.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1993). The trial court's decision is reviewed for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A finding of fact is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake was made. *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000). To be clearly erroneous, a decision must be more than maybe or probably wrong. *In re Sours Minors*, 459 Mich 624, 633; 592 NW2d 520 (1999). In applying the clearly erroneous standard, the Court should recognize the special opportunity the trial court has to assess the credibility of the witness. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The trial court did not clearly err in finding that MCL 712A.19b(3)(i) and (l) were met by clear and convincing evidence. MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). The evidence showed that respondent had her parental rights to her other child, Brianna, terminated in July 2004 because respondent failed to comply with the terms of her parent agency agreement, which included obtaining a substance abuse assessment, providing negative drug screens, and completing substance abuse treatment. Respondent continued to use cocaine and tested positive for cocaine on September 11, 2004, the day that the minor child Devan was born two months prematurely and testing positive for cocaine as well. It was clear from the record that respondent's parental rights to Brianna had been terminated because of respondent's continued cocaine use resulting in serious neglect of Brianna. The record also showed that respondent was provided the opportunity to obtain substance abuse treatment when Brianna was temporarily taken from her care, but respondent did not follow through. She did not contact the agencies to which she was referred for substance abuse assessments and treatment on a timely basis and did not obtain the required medical authorization number from Medicaid on a timely basis. Even after the trial court adjourned the termination trial so she could obtain treatment, respondent did not comply. Over an eight-month period that the trial court had temporary custody over Brianna, respondent did not even begin treatment on either an inpatient or outpatient basis. The evidence was clear and convincing that prior attempts to rehabilitate respondent were not successful and MCL 712A.19b(3)(i) was clearly met. With respect to MCL 712A.19b(3)(l), it was undisputed that respondent had her parental rights to another child, Brianna, involuntarily terminated in July 2004 and therefore this statutory ground was clearly met as well.

Respondent next argues that termination of her parental rights is not in the best interests of the minor child. She claims that had she been given an opportunity and received the needed treatment, termination would not have been necessary. Respondent's argument is not supported by the facts. Respondent's parental rights to Brianna were terminated as the result of respondent's substance abuse problem. Both the minor child Devan and respondent tested positive for cocaine when Devan was born and respondent admitted to using cocaine when she was pregnant with Devan. Respondent was given an opportunity to obtain treatment for her substance abuse problem pursuant to a parent agency agreement throughout the case involving Brianna. The trial court correctly found that respondent repeatedly chose the option of abusing illegal substances over the option of providing for her children and that termination of respondent's parental rights was in the best interests of the minor child. MCL 712A.19b(5).

Respondent also argues that she should have been provided more significant and appropriate services to assist her with her substance abuse problem. The law is clear that if petitioner requests termination in the initial petition, the need to develop and consider a case plan to reunite the family is eliminated and the trial court can terminate parental rights at the initial disposition hearing. MCL 712A.19b(4) and MCR 3.977(E). Respondent's parental rights to Brianna were terminated just a few months before Devan's birth. Respondent was provided a case service plan in the prior case and failed to comply with the terms of it. The FIA provided referrals and did what it could to get respondent into appropriate treatment and respondent did not follow through. Respondent did not even appear for the termination trial in Brianna's case. Considering this, as well as the Devan's need for permanency, the trial court did not clearly err when it terminated respondent's parental rights to Devan without giving respondent additional services and the opportunity to comply with the terms of a parent agency agreement. It is clear

from the record that the goal of the petition was termination and that MCL 712A.18f(3)(d) is not applicable because the plan was never reunification of respondent with Devan.

Finally, respondent argues that she was denied the effective assistance of counsel. The principles of ineffective assistance of counsel as they have developed in the criminal law context have been applied by analogy to claims of ineffective assistance of counsel at a termination of parental rights hearing. *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 in *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 674(1984). *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001). The defendant must show that (1) counsel made errors so serious that counsel was not performing as the “counsel” guaranteed by the Sixth Amendment, and (2) 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.*

Respondent argues that her counsel did not provide case law to the court that would support the position that the FIA must provide services before it can seek termination of respondent’s parental rights. However, the law is clear that the FIA is not required to provide services if the goal of the petition is termination. Respondent also argues that her counsel did not provide the trial court with an argument or testimony that termination of her parental rights was not in the best interests of the minor child. Again, the record is clear that respondent chose the option of abusing cocaine over the option of caring for her children and that termination of respondent’s parental rights is in the best interests of the minor child. Thus, respondent has not shown that her counsel made errors so serious that she was not performing as the “counsel” guaranteed by the Sixth Amendment or that her counsel’s deficient performance prejudiced her and that there was a reasonable probability that, but for her counsel’s error, her parental rights would not have been terminated.

Affirmed.

/s/ Brian K. Zahra  
/s/ Mark J. Cavanagh  
/s/ Donald S. Owens