

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DEMETRIUS HILL, Minor.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

UNPUBLISHED
December 29, 2005

Petitioner-Appellee,

v

PATRICIA MARIE HILL,

Respondent-Appellant.

No. 263336
Wayne Circuit Court
Family Division
LC No. 88-272283-NA

Before: Owens, P.J., and Saad and Fort Hood, JJ.

PER CURIAM.

Respondent appeals as of right from the order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(g), (i), and (j). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court did not clearly err in finding that clear and convincing evidence established at least one ground for termination. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999).

The minor child was removed from respondent's care five days following his birth. Testimony revealed that respondent suffered from schizophrenia. According to Jack Fornier, a mental health psychologist, respondent was transferred to Kingswood Hospital after the birth of the minor child because she threatened to kill herself if she did not get her baby back. Respondent was prescribed various medications and, according to Fornier, made improvements. However, Fornier could not make a recommendation regarding whether respondent had the ability to parent the child and described respondent's prognosis as "guarded." Carla Butler, the caseworker, testified that respondent's parental rights to six other children had been previously terminated because of mental health issues and allegations of physical abuse. Respondent's parental rights to four children had been terminated in 2002, and before those terminations respondent was offered a treatment plan and numerous services but did not comply with the treatment plan or make herself available to participate in services. Although respondent argues that she is now rehabilitated, the evidence in this case establishes that her mental health issues, while somewhat improved, have not been resolved. Caseworker Butler testified that termination was in the child's best interests "[b]ased on the mother's current status of hallucinations and in

addition to her suicidal threats that just occurred approximately six weeks ago and due to the history of mother being unable to care for her six prior children.” Such testimony supports the trial court’s finding that there was a reasonable likelihood that the child would be harmed if returned to respondent’s custody.

Moreover, the evidence does not establish that consideration of the child’s best interests precludes termination of respondent’s parental rights. MCL 712A.19b(5); *Trejo, supra* at 353. Respondent argues that she and her child bonded during their five days together in the hospital. However, the child was removed as a newborn, and, therefore, was unlikely to feel any attachment to respondent. See *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001). This lack of a parent-child bond, considered with respondent’s ongoing serious mental health issues, supports the trial court’s best interests determination.

Finally, respondent contends that her trial counsel was ineffective. Because respondent did not move for an evidentiary hearing or a new trial, our review is limited to the existing record. *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000). To prove a claim of ineffective assistance of counsel, respondent must demonstrate that her counsel’s performance fell below an objective standard of reasonableness and the representation so prejudiced her as to deprive her of a fair trial. *People v Pickens*, 446 Mich 298, 309; 521 NW2d 797 (1994). In applying this test, this Court presumes that counsel’s conduct fell within a wide range of reasonable professional assistance, and respondent bears a heavy burden to overcome this presumption. *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999).

Respondent first argues that her trial counsel was ineffective because he failed to have a psychiatric examination done, to allow her to testify at trial, and to subpoena records from her treating physician. After reviewing the record before this Court, we find that respondent’s counsel’s performance with regard to these evidentiary and witness presentation decisions cannot be deemed objectively unreasonable. *Rockey, supra* at 78. This Court will not substitute its judgment for that of counsel regarding matters of trial strategy, and decisions regarding what evidence to present and whether to call or question witnesses are presumed to be matters of trial strategy. *Id.* at 76; *People v Rice (On Remand)*, 235 Mich App 429, 445; 597 NW2d 843 (1999).

Respondent also contends that her trial counsel was ineffective because he did not request the appointment of a guardian ad litem for her. Respondent argues on appeal that she “probably” did not understand the nature of the proceedings below. However, respondent does not specifically state what part of the proceedings she did not understand, and the existing record before this Court does not support respondent’s claim. Thus, respondent has failed to show that her counsel was ineffective.

Affirmed.

/s/ Donald S. Owens
/s/ Henry William Saad
/s/ Karen M. Fort Hood