

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of KEVONTE DEROME
MCNEELY and KEONDRE LAHAVAN
MCNEELY, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JERRY WAYNE MCNEELY,

Respondent-Appellant.

UNPUBLISHED

October 23, 2007

No. 276632

Kalamazoo Circuit Court

Family Division

LC No. 05-000178-NA

Before: Hoekstra, P.J., and Sawyer and Murray, JJ.

PER CURIAM.

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

The trial court did not clearly err in finding that the statutory grounds for termination of respondent's 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 conditions leading to adjudication were respondent's physical and educational neglect of the children caused by his refusal to provide them with proper shelter and care unless they conformed to his strict house rules. One year elapsed between initial disposition and termination, and during that time respondent obtained a psychological evaluation and counseling of his own choosing, but his entire focus during the 18 months following the children's removal was his own reputation and advancement of claims of discrimination, instead of the children's welfare and his improvement in parenting. He indicated no intention to change and adapt his parenting techniques. Respondent complied in form with the requirement that he obtain a psychological evaluation and counseling but demonstrated no substantial benefit. Therefore, there was no reasonable expectation that the adversarial relationship he had with the children or the children's neglect would be rectified, or that he would become able to properly parent them within a reasonable time. If returned to his care, the children would suffer the same harm of neglect they had previously experienced.

Further, the evidence did not show that termination of respondent's parental rights was clearly contrary to the children's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A complete review of the record showed no

evidence that the trial court's decision was based on cultural, class, or racial bias. Respondent did not express love for the children or exhibit distress at separation from them, and he initially refused to visit them for fear that facts about him might be distorted. He desired reunification because he was obligated to "keep his promise" to them. Long-term foster care as an alternative to termination was not in the children's best interests because respondent's self-serving actions throughout the entire proceeding and the children's clear testimony showed that allowing respondent parenting time or input regarding their upbringing would not be beneficial.

Lastly, respondent was not denied effective assistance of counsel. Respondent assigns to counsel three instances of error: (1) failure to interview, effectively subpoena, or present several witnesses; (2) refusal to confer privately with respondent; and (3) failure to present a legible copy of respondent's psychological evaluation.

The right to due process indirectly guaranteed respondent assistance of counsel in this child protective proceeding. *Reist v Bay Circuit Judge*, 396 Mich 326, 349; 241 NW2d 55 (1976). The right to counsel means the right to effective counsel. *People v Pubrat*, 451 Mich 589, 594; 548 NW2d 595 (1996). This right to effective assistance of counsel is explicitly guaranteed in criminal cases, and the principles surrounding it developed in the context of criminal law apply by analogy in child protective proceedings. *In re CR*, 250 Mich App 185; 646 NW2d 506 (2001).

To establish a claim of ineffective assistance of counsel, respondent is required to show that his 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). To demonstrate prejudice, respondent must show the existence of a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *Strickland v Washington*, 466 US 668, 694; 104 S Ct 2052, 80 L Ed 2d (1984). A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Id.*

Counsel made no error prejudicing respondent or adversely affecting the outcome of the proceeding. The proposed testimonies of Nanette Colling, Dr. Jamora, Dr. Dallas, Beverly Garvin, Theresa Berry, or the seven witnesses who attended the termination hearing would not have changed the outcome of the proceeding, and failure to effectively subpoena or present them as witnesses was a matter of trial strategy and did not constitute error. The testimony of the seven witnesses was deemed irrelevant after they were interviewed. The testimonies of Nanette Colling, Dr. Jamora, Dr. Dallas, and Beverly Garvin, which would have showed that respondent obtained an uncorroborated and subjective psychological evaluation and participated in counseling, and was physically ill at times during the proceeding, were not outcome determinative in light of the clear evidence that respondent did not make any progress during the 18 months of this proceeding toward modifying his parenting techniques. Respondent's actions during the proceeding outweighed any proposed testimony by a psychologist or counselor. Theresa Berry's proposed testimony that reunification was in the children's best interests was outweighed by respondent's clear lack of willingness to change, and the testimonies of the caseworker and children that return to respondent would be detrimental to the children.

Counsel's refusal to speak privately with respondent was warranted by respondent's manipulation, misrepresentation, and threatening behavior toward all three of his appointed

attorneys. It did not constitute prejudicially deficient representation or affect the outcome of the proceeding because respondent was easily able to understand the relatively simple issues in this case and had ample other means of communicating with counsel.

Failure to procure a more legible copy of respondent's psychological evaluation made no difference to the outcome of the proceeding and did not constitute prejudicially deficient representation. The trial court did not discount respondent's psychological evaluation because of its appearance, but because of its uncorroborated, subjective content.

Affirmed.

/s/ Joel P. Hoekstra
/s/ David H. Sawyer
/s/ Christopher M. Murray