

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MAKYLA ELIZABETH
MERRITT, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ETHERIA HOLLIS,

Respondent-Appellant,

and

MATTHEW MERRITT,

Respondent.

UNPUBLISHED
February 12, 2008

No. 281216
Cass Circuit Court
Family Division
LC No. 06-000204-NA

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

PER CURIAM.

Respondent Hollis appeals as of right from a trial court order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i) and (g). 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 § 19b(3)(c)(i) was proven by clear and convincing evidence. *In re Archer*, 277 Mich App 71, 73; ___ NW2d ___ (2007). The child became a court ward primarily because respondent had mental health issues that adversely affected her parenting abilities. Petitioner made reasonable efforts to facilitate reunification. Respondent was provided with supervised visitation to enable her to develop a bond with her child and to practice childcare skills, and was given a referral for a psychological evaluation to determine what other services would benefit her. Respondent attended two family visits and completed the psychological evaluation, but then left the state and never completed any other aspect of the service plan during the year the child was in foster care and verbally instructed the foster care worker to cease initiating contact with her. Consequently, the evidence did not clearly show that termination of respondent's parental rights was not in the child's best interests. *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000); MCL 712A.19b(5).

We reject respondent's argument that she is entitled to a new hearing due to ineffective assistance of counsel. A respondent has a right to the effective assistance of counsel in child protective proceedings. *In re CR*, 250 Mich App 185, 197-198; 646 NW2d 506 (2002). "[T]he principles of effective assistance of counsel developed in the context of criminal law apply by analogy in child protective proceedings." *In re EP*, 234 Mich App 582, 598; 595 NW2d 167 (1999), overruled in part on other grounds in *In re Trejo*, *supra* at 353 n 10. Because respondent failed to raise this claim below in a motion for a new trial or request for an evidentiary hearing, our review is limited to mistakes apparent from the record. *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000).

Decisions regarding what evidence to present and whether to call or question witnesses, whether to cross-examine witnesses, and whether to give a closing argument and what arguments to make, are all matters of trial strategy. *In re Ayres*, 239 Mich App 8, 23; 608 NW2d 132 (1999); *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999); *People v Hopson*, 178 Mich App 406, 412; 444 NW2d 167 (1989); *People v Harlan*, 129 Mich App 769, 779; 344 NW2d 300 (1983). "This Court will not substitute its judgment for that of counsel regarding matters of trial strategy, nor will it assess counsel's competence with the benefit of hindsight." *Rockey*, *supra* at 76-77. "Defendant is entitled to relief only in those instances where his attorney's omission deprived defendant of a substantial defense." *Hopson*, *supra* at 412. "A substantial defense is one that might have made a difference in the outcome of the trial." *People v Kelly*, 186 Mich App 524, 526; 465 NW2d 569 (1990).

The record discloses that respondent's counsel did not cross-examine the foster care worker or present other evidence. However, there is nothing in the record to suggest that counsel failed to elicit any information beneficial to respondent's case. Further, there is no indication that any evidence existed that respondent made more progress in services than disclosed by the caseworker's court reports and testimony. Respondent's counsel made few remarks in closing argument, but did state that respondent "does not want her parental rights terminated[.]" Considering the record of respondent's minimal participation in the service plan and apparent lack of interest in the proceedings, there is no reasonable probability that a lengthier or more impassioned argument would have altered the outcome of the hearing. See *People v Watkins*, 247 Mich App 14, 30; 634 NW2d 370 (2001).

Respondent next contends that the trial court erred in finding that the DHS made reasonable efforts to facilitate reunification. Contrary to respondent's contention, the trial court's finding was not clearly erroneous. The record showed that the initial goal was for reunification and a service plan was developed to facilitate this goal. Respondent was given supervised visitation to develop a bond with her baby and practice childcare skills and was given a referral for a psychological evaluation to determine what additional services should be made available for her benefit. Respondent attended two family visits and completed the psychological evaluation. No other services could be provided because respondent left the state and did not return. She was directed that she should seek mental health treatment, counseling, and parenting classes on her own if she wished to work toward reunification. The foster care worker was not required to go to Georgia, investigate where such services might be obtained, and then compel respondent to participate.

Respondent's claim that petitioner improperly shifted the burden of proof is without merit, it being based on a single question and answer taken out of context. It is undisputed that

petitioner has the burden of proof to prove a statutory ground for termination by clear and convincing evidence. MCR 3.977(A)(3) and (G)(3). Petitioner argued below that “we believe we’ve met our burden regarding the Respondent Mother” and the trial court recognized that petitioner had the burden of proof. There was no error.

Affirmed.

/s/ Michael J. Talbot

/s/ Mark J. Cavanagh

/s/ Brian K. Zahra