

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JAYNIE ABUAWAD, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LUCAS ABUAWAD,

Respondent-Appellant.

UNPUBLISHED

June 3, 2008

No. 282275

Macomb Circuit Court

Family Division

LC No. 2006-000479-NA

Before: Davis, P.J., and Murray and Beckering, JJ.

PER CURIAM.

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

To terminate parental rights, a trial court must find that at least one of the statutory grounds for termination has been established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). If the trial court determines that a statutory ground for termination has been established, the trial court is required to terminate the respondent's parental rights unless the trial court finds that termination is clearly not in the child's best interests. MCL 712A.19b(5). In this case, respondent does not contend error by the trial court in its finding that a statutory ground for termination existed, or in the trial court's finding that termination was not contrary to the best interests of the child, and we find none.

Rather, respondent contends that he was denied effective assistance of counsel before the trial court. We disagree. First, we note that respondent has failed to preserve this issue by requesting an evidentiary hearing or a new trial. See *People v Sabin (On Second Remand)*, 242 Mich App 656, 658-659; 620 NW2d 19 (2000). This Court will review an unpreserved assertion of ineffective assistance of counsel at trial for error apparent on the record. *Id.* Respondent must establish that his attorney's performance fell below the standard of objective reasonableness, or that the representation so prejudiced him that he was denied a fair trial. See *In re CR*, 250 Mich App 185, 198; 646 NW2d 506 (2002). 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 674 (1984); *In re CR, supra* at 198. In doing so, respondent must overcome a strong presumption that counsel's performance was sound trial strategy. *Strickland, supra* at 694.

A review of the record establishes that respondent and his counsel were familiar with the case and each other. At respondent's request, new counsel was appointed to replace his previous counsel, and the new attorney thereafter appeared on respondent's behalf at April 18, 2007 and June 11, 2007 hearings before the trial court. Respondent attended both hearings and presumably had an opportunity to speak with his attorney at those hearings. After respondent was arrested on August 22, 2007, he apparently did not inform his attorney, who learned upon attending an August 30, 2007 hearing, that his client was incarcerated. Though respondent's request for adjournment of the October 5, 2007 hearing was denied by the trial court, counsel vigorously cross-examined witnesses and made objections and argument, demonstrating a strategy executed on respondent's behalf. There is no indication that counsel's performance was deficient or fell below a standard of objective reasonableness.

A review of the record also demonstrates no showing of a reasonable probability that, but for counsel's alleged error, the result of the proceeding would have been different. Rather, the record demonstrates that, regardless of strategy or argument employed below, the trial court was unlikely to rule in any way other than by terminating respondent's parental rights.

Respondent was incarcerated and facing trial on four felonies and a misdemeanor. Respondent had a lengthy criminal record and had just violated probation. Respondent's criminal activities were of a nature that would endanger any child in his care. Respondent had failed to comply with most aspects of the parent agency agreement. Respondent did not have independent housing, had little income, and had made no efforts to improve his housing or income situation. Respondent had four other children of whom he did not have custody and who he did not support financially. Respondent had stopped visiting regularly with the minor child and appeared not to have bonded with the child, or she with him. Respondent had previously lied to the trial court about his housing arrangement and had previously pressured the mother of the child to place the child for adoption for the purpose of obtaining money from the prospective adoptive parents. In light of the extensive and unfavorable record, it cannot be said that there was a reasonable probability that, but for any alleged error by counsel, the result of the proceeding would have been different.

Affirmed.

/s/ Alton T. Davis
/s/ Christopher M. Murray
/s/ Jane M. Beckering