

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of AMARION TASHAWN
WILBOURN, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

REGINA BOYD,

Respondent-Appellant.

UNPUBLISHED
February 10, 2009

No. 287173
Oakland Circuit Court
Family Division
LC No. 08-744327-NA

Before: Saad, C.J., and Davis and Servitto, JJ.

PER CURIAM.

Respondent appeals the trial court's order that terminated her parental rights to her minor child under MCL 712A.19b(3)(g), (i), (j), and (l). For the reasons set forth below, we affirm.

Respondent contends that her counsel was ineffective for recommending that she plead no contest to the allegations in the termination petition. According to plaintiff, if the allegations are true, they did not give rise to termination of her parental rights.

In reviewing a claim of ineffective assistance of counsel in a termination of parental rights case, this Court must determine (1) whether counsel's performance was objectively unreasonable and (2) whether the respondent was prejudiced by counsel's defective performance. *People v Mitchell*, 454 Mich 145, 164; 560 NW2d 600 (1997); *In re Simon*, 171 Mich App 443, 447; 431 NW2d 71 (1988). This requires a showing of a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001). Because respondent did not preserve this challenge by a motion for a new trial or an evidentiary hearing, our review is limited to mistakes apparent on the record. *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973); *People v Sabin (On Second Remand)*, 242 Mich App 656, 658-659; 620 NW2d 19 (2000).

The petition alleged that respondent's rights to four other children were terminated and that this child was at risk of harm. If those allegations are true, they provide clear and convincing evidence to terminate respondent's parental rights under MCL 712A.19b(3)(g), (i), (j), and (l). Petitioner was not required to allege a current risk of harm to the child. *In re Gazella*, 264 Mich App 668, 680; 692 NW2d 708 (2005). Indeed, as this Court explained in

Gazella, “[a] child may come within the jurisdiction of the court solely on the basis of a parent’s treatment of another child.” *Id.*

The evidence of respondent’s prior terminations is undisputed. Further, petitioner presented clear and convincing evidence at the best interests hearing that this child is at risk of harm if he remains in respondent’s care. Evidence also established that respondent did not benefit from any prior services. *Gazella, supra* at 676. Moreover, the court rejected respondent’s self-serving testimony as incredible. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Respondent lost four other children in termination cases, and there is no evidence that she failed to understand these proceedings. Even if respondent’s attorney offered her his legal recommendation that she plead no contest, this was nonetheless respondent’s decision and no evidence suggests that respondent failed to make an informed and voluntary choice. Respondent has failed to show that, but for counsel’s alleged error, the result of the proceeding would have been different. Accordingly, we reject respondent’s claim that she was denied the effective assistance of counsel.

Respondent also avers that the trial court erred when it found that it was in the child’s best interests to terminate her parental rights. MCL 712A.19b(5). We disagree. We review the trial court’s best interests determination for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

The record shows that respondent did not make any effort to regain custody of her child. Respondent failed to appear for two scheduled visits with her case worker and, despite numerous attempts to contact respondent to set up visitation and services, the worker was unable to reach respondent. Respondent also clearly demonstrated a lack of commitment or desire to care for her child: She lied to the hospital personnel, lied to case workers, and did not offer credible testimony during the hearing. Respondent repeatedly refused to acknowledge any responsibility for her actions and blamed her situation on other people. The evidence clearly demonstrates that the child would be at risk if returned to respondent. Accordingly, the trial court correctly held that termination of respondent’s parental rights would be in the child’s best interests.

Affirmed.

/s/ Henry William Saad

/s/ Alton T. Davis

/s/ Deborah A. Servitto