

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MELIEK JACOB BEEMER,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MARK DUANE BEEMER,

Respondent-Appellant.

UNPUBLISHED
February 24, 2009

No. 287189
Midland Circuit Court
Family Division
LC No. 08-003231-NA

Before: Whitbeck, P.J., and O'Connell and Owens, JJ.

PER CURIAM.

Respondent Mark Beemer appeals as of right from the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(j) and (k)(ii). We affirm.

I. Basic Facts And Procedural History

Beemer appeals as of right from the July 23, 2008, order terminating his parental rights to one-year-old Meliek Jacob Beemer pursuant to MCL 712A.19b(3)(j) (child will be harmed if returned to parent) and (k)(ii) (parent abused sibling and abuse included penetration).

When petitioner, Department of Human Services (DHS), filed its original petition in this case on March 25, 2008, Beemer was living with Meliek, Meliek's mother, Mandey Iafrate, and Mandey Iafrate's other children, nine-year-old Haley Iafrate and six-year-old Jasmine Iafrate. The petition also listed Mandey Iafrate and David Iafrate, Jasmine and Haley's father. In the petition, DHS requested that Beemer be removed from the home and his parental rights terminated. On April 22, 2008, DHS filed a third amended petition requesting removal of the children from the home and the termination of Mandey Iafrate's and Beemer's parental rights.

The petition listed 13 complaints regarding this family made to DHS between January 30, 2000 and June 5, 2007. None of these complaints were substantiated. The complaints mainly consisted of complaints regarding the children made by Mandey Iafrate about David Iafrate or about Mandey Iafrate by David Iafrate. In the long list of complaints, Beemer was first mentioned on March 15, 2007, but it was not substantiated.

On March 24, 2008, DHS received another complaint that led to the filing of the petition in this case for the termination of Beemer's parental rights. Paragraphs 19 and 20 of the amended petition are the basis for the case against him. They are:

19. On March 24, 2008, the Midland County Department of Human Services received a complaint alleging that Mr. Beemer was sexually abusing Haley. There was a preponderance of evidence found in the case.

20. Haley was brought to Safe and Sound Child Advocacy Center where she was forensically interviewed. During her interview, Haley disclosed that Mark had sexually abused her. She stated that Mark would have sex with her when Ms. Iafrate was working the night shift. Haley indicated that Mr. Beemer would have sex with her, force her to perform oral sex on him, and that he had also sodomized her. Haley described how Mr. Beemer would clean both of their privates after assaulting her and described the substance being cleaned as "not pee, like white stuff." Haley then stated that Mr. Beemer told her "don't tell," and that it was "always a secret."

On May 27, 2008, Beemer pleaded no contest to paragraphs 19 and 20 of the amended petition. The parties agreed that the Protective Services Investigation Report (PSIR) dated March 24, 2008, would serve as the factual basis of the allegations. The trial court pointed to pages five and six of the report as factual support for the allegations. The trial court determined the report factually supported the allegations contained in the petition and offered other details, which also supported sexual abuse. The trial court accepted Beemer's plea, concluded that sexual abuse had occurred, and took the child under its jurisdiction.

On June 30, 2008, the trial court held a dispositional hearing for the termination of Beemer's parental rights. Bo Wallace, a Protective Services worker, testified that he investigated the complaints against Mandey Iafrate and Beemer. Wallace requested the termination of Beemer's parental rights because of Haley's sexual abuse and a concern that Meliek would be subject to harm and exposed to inappropriate sexual acts, behavior, and materials. Wallace also reported that Beemer had not participated in any counseling or taken any responsibility for the sexual abuse or the physical neglect that occurred in the home.

Mandey Iafrate testified at the hearing that she began dating Beemer in 2004 and that he lived with her until March 24, 2008, except for a couple of months in 2005. The children were in her custody when Beemer lived with her. She also testified that she did not believe Meliek was safe with Beemer because of what he did to Haley.

Tinesha Ann Vollman, Beemer's sister, testified that she lived with Beemer all of her life and had no concerns about Beemer being around her children.

The trial court issued an opinion and entered an order terminating Beemer's parental rights on July 23, 2008. The trial court found that clear and convincing evidence supported the termination of his parental rights pursuant to MCL 712A.19b(3)(j) and (k)(ii). The trial court stated that Beemer's no-contest pleas to the allegations that he sexually abused Haley provided clear and convincing evidence that there was likelihood that Meliek, if returned to Beemer's home, would be harmed. The trial court affirmed that Haley was Meliek's half-sibling and a parent's treatment of one child is probative of how he may treat another child. In addition, the

trial court concluded that Beemer's pleas of no contest supported termination pursuant to MCL 712A.19b(3) and (k)(ii).

The trial court stated that the determination of the child's best interests could be based on the same facts that established the statutory grounds for termination. The trial court found, by clear and convincing evidence, that Beemer sexually abused Meliek's half-sibling, Haley. Although Beemer did not abuse Meliek, the fact that he abused another minor child indicated he might abuse his own children. The trial court found the sexual abuse that occurred was of the highest order and very damaging to Haley. The trial court also found that it was in Meliek's best interests not to have any threat of sexual abuse hovering over his childhood. The trial court entered an order terminating Beemer's parental rights; it did not terminate Mandey Iafrate's parental rights at this time.

II. Ineffective Assistance Of Counsel

A. Standard Of Review

Beemer's sole argument on appeal is that he was denied the effective assistance of counsel because he did not understand the consequences of his no-contest plea to the petition's allegations of sexual abuse and because his counsel did not present any evidence that termination of his parental rights would not be in the child's best interests.

This Court generally reviews de novo whether Beemer was denied effective assistance of counsel.¹ However, because Beemer did not move for an evidentiary hearing or new trial in the trial court, our review is limited to errors apparent on the existing record.² In order for this Court to reverse on the basis of ineffective assistance, Beemer bears a heavy burden of proving otherwise.³ Beemer must show that his counsel's performance fell below an objective standard of reasonableness and so prejudiced Beemer that he was denied a right to a fair trial.⁴ Beemer must also overcome the presumption that the challenged action was trial strategy.⁵ To establish prejudice, Beemer must show that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different.⁶

B. No-Contest Plea

A no-contest plea is the functional equivalent of a guilty plea.⁷ When reviewing a claim of ineffective assistance of counsel arising out of a no-contest plea, the relevant inquiry is

¹ *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002).

² *People v Noble*, 238 Mich App 647, 661; 608 NW2d 123 (1999).

³ *Id.* at 661-662.

⁴ *Id.* at 662.

⁵ *People v Stewart*, 219 Mich App 38, 42; 555 NW2d 715 (1996).

⁶ *Noble*, *supra* at 662.

⁷ *People v New*, 427 Mich 482, 493; 398 NW2d 358 (1986).

whether the plea was made voluntarily and understandingly.⁸ This Court does not question whether counsel's advice was right or wrong, but whether the advice was within the range of competence required of attorneys in these cases.⁹

The record reveals that the trial court properly advised Beemer of his rights and the allegations against him, and that he made his no-contest plea knowingly, voluntarily, and understandingly. The trial court specifically informed Beemer that the proceedings were considered one continuous proceeding and that it was very important for him to understand that his plea would become evidence in the case and could be used against him. Beemer affirmed that he understood his rights, he understood that he waived those rights by pleading no contest to the allegations in the petition, and he still wished to enter a plea. Based on this record, there is no evidence that Beemer was denied the effective assistance of counsel arising out of his plea. In addition, Beemer is not able to prove prejudice because there was no evidence to conclude that DHS would not have established the statutory grounds for his termination.

C. Child's Best Interests

Beemer has not identified what evidence his attorney should have presented or what she should have argued to establish that termination was not in the child's best interests.¹⁰ In support of his claim on appeal, it is not enough for Beemer to assert an error and leave it up to this Court to discover and rationalize the basis for his claims and search for authority to sustain or reject his claims.¹¹ By failing to indicate what evidence his counsel should have presented at the best interests hearing that would possibly have altered the outcome, Beemer failed to prove that there was a reasonable probability that, but for counsel's unprofessional errors, the result would have been different. Thus, Beemer also failed to establish his claim of ineffective assistance of counsel with respect to the best interests hearing.

Affirmed.

/s/ William C. Whitbeck
/s/ Peter D. O'Connell
/s/ Donald S. Owens

⁸ *People v Thew*, 201 Mich App 78, 89; 506 NW2d 547 (1993).

⁹ *Id.* at 89-90.

¹⁰ Although not determinative of this issue, we note that in his brief Beemer cites MCR 3.977(E) in support of his contention that "[t]he court rule requires that evidence that termination is clearly *not* in the child's best interest be clear and convincing." (Emphasis added). However, MCL 712A.19b(5), which was recently amended, 2008 PA 199, effective July 11, 2008, requires that the trial court find that termination of parental rights *is* in the child's best interests. Because the determination of the child's best interest is an issue of substantive law rather than regulation of the operation or administration of the courts, the statute controls. See *People v Watkins*, 277 Mich App 358, 363-364; 745 NW2d 149 (2007).

¹¹ *In re CR*, 250 Mich App 185, 199; 646 NW2d 506 (2001).