STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of DALTON BUKOWSKI DEWYER, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

KATHERINE BUKOWSKI,

Respondent-Appellant.

UNPUBLISHED
September 3, 2009

No. 290484
Arenac Circuit Court
Family Division
LC No. 07-010068-NA

Before: Saad, C.J., and Whitbeck and Zahra, JJ.

PER CURIAM.

Respondent appeals from a circuit court order that terminated her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Contrary to respondent's contention, the trial court did not terminate her parental rights under MCL 712A.19b(3)(b)(i), (b)(ii), or (j). Rather, the court terminated her parental rights under § 19b(3)(c)(i). Respondent's failure to address § 19b(3)(c)(i) precludes appellate relief with respect to her claim that a statutory ground for termination was not established. *In re JS & SM*, 231 Mich App 92, 98-99; 585 NW2d 326 (1999), overruled in part on other grounds *In re Trejo*, 462 Mich 341; 612 NW2d 407 (2000). Regardless, the trial court did not clearly err in finding that this statutory ground for termination was established by clear and convincing evidence. MCR 3.977(J); *In re Trejo, supra* at 355. The child came into care because of respondent's drug abuse problem. The initial dispositional order was entered in May 2007. Respondent denied the extent of her problem, failed to take drug treatment seriously, and continued to test positive for illegal drugs through March 5, 2008. After that, respondent completed a second inpatient treatment program, but she was found to be in possession of drug paraphernalia in April 2008. Respondent did not follow through with outpatient treatment as recommended. While respondent asserted that she was told that she could obtain outpatient treatment elsewhere and that she began treating with a counselor at CMH, she had only been treating there a couple of months before she was incarcerated. At the time of the termination hearing, she was still incarcerated and was not due to be released until October 2008. Further, there was evidence that it would take approximately two years of sobriety for respondent to be

deemed to have recovered. Under the circumstances, the trial court did not clearly err in finding that respondent had a continuing substance abuse problem that was not likely to be rectified within a reasonable time given the child's age.

Respondent also argues that she was denied the effective assistance of counsel because her attorney failed to offer her attendance records for AA meetings into evidence. "[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 by *In re Trejo, supra* at 353 n 10. Because respondent failed to raise this claim below, our review is limited to the existing record. *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000).

To establish ineffective assistance of counsel, a criminal defendant must "show that (1) his trial counsel's performance fell below an objective standard of reasonableness under the prevailing professional norms; and (2) there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different. Counsel is presumed to have provided effective assistance, and the defendant must overcome a strong presumption that counsel's assistance was sound trial strategy." *People v Horn*, 279 Mich App 31, 37-38 n 2; 755 NW2d 212 (2008) (citations omitted). A defendant must also establish the factual predicate of her claim of ineffective assistance of counsel. *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999).

Respondent testified that she had attended AA meetings since January 2008. Regarding the attendance sheets, respondent testified, "My PO had them, and my lawyer had them, we had them here in April at the last court hearing." She further testified that she had the attendance sheets "in a different folder at my mom's house, they wasn't in this folder. I meant to get it. But he has seen them before." The record does not show that the attendance sheets were in counsel's control such that he could have produced them at the hearing. Rather, they were in respondent's control and she failed to bring them to court. Accordingly, respondent has not established the factual predicate for her claim or shown an error by defense counsel. Further, despite the fact that respondent claimed to have been attending AA meetings since January 2008, it is clear that she continued to use drugs as indicated by the positive drug tests in January, February, and March 2008. Therefore, it is not reasonably likely that the outcome would have been different had the attendance sheets been obtained and admitted into evidence.

Affirmed.

/s/ Henry William Saad
/s/ William C. Whibeck
/s/ Brian K. Zahra