

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of K.G., N.A., and A.A., Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ALBASEER GARRISON,

Respondent-Appellant,

and

BASSAM ABAYAA and ANTON ALI,

Respondents.

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In the Matter of K.G., N.A., and A.A., Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ANTON ALI,

Respondent-Appellant,

and

ALBASEER GARRISON and BASSAM  
ABAYAA,

Respondents.

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UNPUBLISHED  
February 23, 2010

No. 293844  
Genesee Circuit Court  
Family Division  
LC No. 04-117966-NA

No. 293864  
Genesee Circuit Court  
Family Division  
LC No. 04-117966-NA

Before: Fitzgerald, P.J., and Cavanagh and Davis, JJ.

PER CURIAM.

In these consolidated appeals, respondents Albaseer Garrison and Anton Ali appeal as of right from a circuit court order terminating Garrison's parental rights to all three children, and Ali's parental rights to the Ali children pursuant to MCL 712A.19b(3)(a)(ii), (c)(i), (c)(ii), (g), and (j). We affirm.

#### I. Docket No. 293844

Respondent Garrison argues that trial counsel was ineffective because he failed to request an adjournment when she did not return for the second day of the termination hearing until after the proceedings ended. Because respondent Garrison did not raise an ineffective assistance of counsel issue in a motion for a new trial or request for an evidentiary hearing, our review is limited to errors apparent on the existing record. *People v Rodriguez*, 251 Mich App 10, 38; 650 NW2d 96 (2002); *People v Hedelsky*, 162 Mich App 382, 387; 412 NW2d 746 (1987). Further, we may not consider the affidavit submitted with respondent Garrison's brief on appeal. *People v Seals*, 285 Mich App 1, 20-21; 776 NW2d 314 (2009); *People v Horn*, 279 Mich App 31, 38; 755 NW2d 212 (2008).

"[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*, 462 Mich 341, 353 n 10; 612 NW2d 407 (2000). Thus, to establish a claim of ineffective assistance of counsel, respondent Garrison must show that (1) trial counsel's performance fell below an objective standard of reasonableness under 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. *Horn*, *supra* at 37-38 n 2. Counsel is presumed to have provided effective assistance, and respondent Garrison must overcome a strong presumption that counsel's assistance was sound trial strategy. *Id.* She must also establish the factual predicate for her claim of ineffective assistance of counsel. *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999).

The hearing on the supplemental petition for termination was conducted over two days. Respondent Garrison appeared and testified the first day, but the proceeding ended before her attorney could examine her. Respondent Garrison did not appear on the second day until after the proceedings ended. Although respondent Garrison contends that her attorney should have requested an adjournment due to her absence, an adjournment in a child protective proceeding may be granted only "(1) for good cause, (2) after taking into consideration the best interests of the child, and (3) for as short a period of time as necessary." MCR 3.923(G). In the general civil context, the absence of a witness constitutes good cause for an adjournment, but "only if the court finds that the evidence is material and that diligent efforts have been made to produce the witness or evidence." MCR 2.503(C)(2). The decision whether to move for an adjournment is a matter of trial strategy. Cf. *People v Traylor*, 245 Mich App 460, 463; 628 NW2d 120 (2001). "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." *People v Rockey*, 237 Mich App 74, 76-77; 601 NW2d 887 (1999).

The record indicates that respondent Garrison was absent from the second day of the hearing and that her attorney did not know why she had not appeared and could not offer an opinion with respect to if and when she might be expected to appear. A motion to adjourn due to the absence of a witness is properly denied where the movant fails to provide an adequate explanation for the witness' absence. *Tisbury v Armstrong*, 194 Mich App 19, 20-21; 486 NW2d 51 (1991). Because the record does not contain any information indicating that there was good cause for an adjournment, respondent Garrison has failed to establish that her attorney's failure to request an adjournment fell below an objective standard of reasonableness. Therefore, respondent Garrison's ineffective assistance of counsel claim cannot succeed.

## II. Docket No. 293864

Respondent Ali argues that the trial court erred in terminating his parental rights because the evidence did not clearly prove each element of the statutory grounds for termination or show that termination was in the children's best interests. We review the trial court's findings regarding the statutory grounds for termination and the children's best interests for clear error. MCR 3.977(J); *In re Trejo*, *supra* at 356-357.

Even if we agreed with respondent Ali's arguments that §§ 19b(3)(a)(ii) and (c)(ii) were not sufficiently established, any error in relying on those statutory grounds was harmless because the trial court did not clearly err in finding that §§ 19b(3)(c)(i), (g), and (j) were each established by clear and convincing evidence. See *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000). The crux of the allegations against respondent Ali were that he had been an absentee father who made no significant effort to obtain custody of his children after they entered foster care, a situation that was clearly and convincingly supported by the evidence. He had no contact with the children during the pendency of the case and did not even appear for the termination hearing to request an opportunity to be a father to his children. In light of this history, there was no reasonable expectation that this situation would be rectified, or that respondent Ali would be able to provide proper care and custody within a reasonable time given the ages of the children. In addition, it was reasonably likely that the children would be harmed if placed in the custody of respondent Ali, a virtual stranger who had shown no interest in being a custodial parent.

Further, considering that respondent Ali had shown no interest in obtaining custody of the children, and the children's need for permanence and stability, the trial court did not clearly err in finding that termination of respondent Ali's parental rights was in the children's best interests. MCL 712A.19b(5); *In re Trejo*, *supra* at 356-357.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Mark J. Cavanagh

/s/ Alton T. Davis