

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JOCELYN SWANIGAN and
LASHONDA SWANIGAN, Minors.

DEPARTMENT OF SOCIAL SERVICES,

Petitioner-Appellee,

v

CHARLOTTE SWANIGAN,

Respondent-Appellant.

UNPUBLISHED

February 27, 1998

No. 198006

Genesee Juvenile Court

LC No. 94-098124-NA

Before: Markey, P.J., and Doctoroff and Smolenski, JJ.

MEMORANDUM.

Respondent appeals by right a juvenile court order that terminated her parental rights to the two minor children under MCL 712A.19b(3)(c)(i) and (g); MSA 27.3178(598.19b)(3)(c)(i) and (g). We affirm.

Respondent first claims she was denied the effective assistance of counsel. We disagree. The record of the hearing held below does not support this claim.

An indigent parent who is involved in a hearing that may result in the termination of his or her parental rights is entitled to appointed counsel. *Reist v Bay County Circuit Judge*, 396 Mich 326, 346; 241 NW2d 55 (1976); *In re Simon*, 171 Mich App 443, 447; 431 NW2d 71 (1988). Recognizing that the right to counsel includes the right to competent counsel, this Court applies by analogy the principles of ineffective assistance of counsel used in the criminal context. *In re Trowbridge*, 155 Mich App 785, 786; 401 NW2d 65 (1986).

Respondent argues that her counsel's failure to call any witnesses constitutes ineffective assistance of counsel. The failure to call witnesses is a matter of trial strategy and constitutes ineffective assistance only when the failure deprives defendant of a substantial defense. *People v Hoyt*, 185 Mich App 531, 537-538; 462 NW2d 793 (1990). In the case at bar, respondent fails to identify any

witnesses that her counsel should have called or the substance of any testimony that potentially would have altered the result of the hearing and, therefore, she fails to support her claim.

Respondent also argues that counsel failed to adequately pursue the issue of her mental health. The caseworker was aware of respondent's mental health issues and attempted to have them addressed. There was testimony that respondent was required to participate in a mental health treatment program and that respondent refused to participate regularly in the treatment program. There is nothing on the record to support respondent's claim that her counsel was ineffective in addressing this issue.

Next, the juvenile court did not clearly err in finding that statutory grounds for termination were established by clear and convincing evidence. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989), *aff'd in part, rev'd in part* 433 Mich 331; 445 NW2d 161 (1989). Further, the court did not commit clear error in ruling that termination of respondent's parental rights was in the best interests of the children. *In re Hall-Smith*, 222 Mich App 470, 472-473; 564 NW2d 156 (1997); see also MCL 712A.19b(5); MSA 27.3178(598.19b)(5); MCR 5.974(E)(2).

Affirmed.

/s/ Jane E. Markey

/s/ Martin M. Doctoroff

/s/ Michael R. Smolenski