

STATE OF MICHIGAN  
COURT OF APPEALS

---

In the Matter of MELISSA BURROWS, SARAH  
BURROWS and JENNIFER BURROWS, Minors.

---

FAMILY INDEPENDENCE AGENCY

Petitioner-Appellee,

v

KENNETH J. BURROWS and JANICE C.  
BURROWS,

Respondent-Appellant.

---

UNPUBLISHED

June 26, 1998

No. 204379

Tuscola Juvenile Court

LC No. 95-006076-NA

Before: Hood, P.J., and MacKenzie and Doctoroff, JJ.

PER CURIAM.

Respondents appeal as of right from a juvenile court order terminating their parental rights to the minor children under MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i). We affirm.

Respondents first contend that they were denied effective assistance of counsel because their attorney failed to present evidence that termination was clearly not in the children's best interest. See MCL 712A.19b(5); MSA 27.3178(598.19b)(5). We disagree. We apply by analogy the principles of ineffective assistance of counsel as they have developed in the context of criminal law. *In re Rogers*, 160 Mich App 500, 502; 409 NW2d 486 (1987). Effective assistance of counsel is presumed, and respondents bear a heavy burden of proving otherwise. To establish ineffective assistance of counsel, respondents must show that counsel's performance was below an objective standard of reasonableness under prevailing professional norms and there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different. *People v Effinger*, 212 Mich App 67, 69; 536 NW2d 809 (1995). Because respondents did not move for an evidentiary hearing on this issue, this Court's review is limited to mistakes apparent on the record. *People v Hurst*, 205 Mich App 634, 641; 517 NW2d 858 (1994).

It is not apparent from the record what specific evidence counsel failed to present in connection with this issue. Moreover, contrary to respondents' assertion, the record shows that counsel did elicit evidence, and also argued before the trial court that termination of respondents' parental rights was not in the children's best interests. Accordingly, respondents have not established ineffective assistance of counsel.

Respondents also argue that the trial court's findings of fact were clearly erroneous and that the termination of parental rights was not supported by clear and convincing evidence. We disagree. A decision regarding the termination of parental rights is reviewed in its entirety for clear error. *In re Hamlet (After Remand)*, 225 Mich App 505, 515; 571 NW2d 750 (1997). A court's finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. MCR 5.974; *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996).

The petition was filed in June, 1995 alleging that respondents' house was in "an unsafe and unsanitary condition." Specifically, garbage, empty bottles and old clothing were piled throughout the house, and there was rotten food and feces on the floor. The home had a strong odor of urine. The toilet did not flush, and there were mice and fleas in the home. Evidence was presented that the Department of Social Services (now the Family Independence Agency) had received complaints about the condition of the home as far back as 1989. Photographs taken in August and September, 1995 depicted piles of rubbish and food throughout the home as described in the original petition. A caseworker who visited the home in September and October, 1995 testified that the home was in substantially the same condition as it had been when the petition was filed, except that the kitchen had been cleaned for a brief period, and that the home still had a strong odor. Respondents' daughter Melissa testified that the home had been in this condition for as long as she could remember, with the exception of one occasion when some relatives came to visit. As noted by the juvenile court, the children suffered from asthma and other respiratory problems that were attributable to the unsanitary conditions, and that improved after the children were removed from the home. Respondents now argue that the decision to terminate was not supported by clear and convincing evidence because they were not given the opportunity to remedy the situation "due in part to the lack of guidance, unrelated major structural defects in the home, and virtual poverty." Given the severity and the persistence of the deplorable conditions in which the family had been living, we reject respondents' eleventh hour plea for another chance. On this record, we find that the court did not clearly err in ordering the termination of respondents' parental rights.

Affirmed.

/s/ Harold Hood  
/s/ Barbara B. MacKenzie  
/s/ Martin M. Doctoroff