STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of ROBERT JOSEPH COTTRELL, KIMBERLY VIOLET HOLIDAY, DENISE ANN HOLIDAY and DAVID PAUL HOLIDAY, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

PAUL HOLIDAY and BEVERLY LEE COTTRELL,

Respondents-Appellants,

and

JAMES ROY COTTRELL,

Respondent.

UNPUBLISHED
October 22, 1999

Nos. 216800;217579
Wayne Circuit Court
Family Division
LC No. 85-246492

Before: O'Connell, P.J., and Talbot and Zahra, JJ.

PER CURIAM.

Respondents-appellants (hereinafter Holiday and Cottrell) appeal as of right from a family court order terminating their parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g) and (j); MSA 27.3178(598.19b)(3)(c)(i), (g) and (j). We affirm.

Holiday and Cottrell argue that petitioner failed to present clear and convincing evidence to terminate their parental rights and that termination was not in the best interests of the children. A review of the record indicates that the family court did not clearly err in finding that the 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). Further, Holiday and Cottrell failed to show that termination of their parental rights was clearly not in the children's best interests. MCL 712A.19b(5); MSA

27.3178(598.19b)(5); *In re Hall-Smith*, 222 Mich App 470, 472-473; 564 NW2d 156 (1997). Thus, the family court did not err in terminating their parental rights to the children. *Id.*

Cottrell further argues that the family court abused its discretion by denying her request for an adjournment. We disagree. The ruling on a motion for a continuance is discretionary and is reviewed for an abuse of discretion. *In re Jackson*, 199 Mich App 22, 28; 501 NW2d 182 (1993). The burden of proof is on the party asserting an abuse of discretion. *Id.* At the beginning of trial, an attorney substituting for Cottrell's appointed counsel requested an adjournment, asserting in part that Cottrell's appointed counsel had not yet arrived in court. The family court noted that the trial had been previously adjourned and denied the request. Prior to her cross-examination of a witness for appellee, the family court informed substitute counsel that Cottrell's appointed counsel had arrived in the courtroom and asked whether she would like a pause in the proceedings. Substitute counsel indicated that she was ready to proceed. The record shows that substitute counsel conducted extensive cross-examination of appellee's witnesses and represented Cottrell adequately. Under these circumstances, the family court did not abuse its discretion by denying the request for an adjournment.

Cottrell also argues that her counsel was ineffective for failing to subpoena a former case worker to testify at trial. In analyzing claims of ineffective assistance of counsel at termination hearings, we apply by analogy the principles of ineffective assistance of counsel as developed in the criminal law context. *In re Simon*, 171 Mich App 443, 447; 431 NW2d 71 (1988). Cottrell did not move for a new trial or an evidentiary hearing on this issue in the family court. Failure to so move precludes appellate review unless the record contains sufficient detail to support respondent's claims, and, if so, review is limited to the record. *People v Maleski*, 220 Mich App 518, 523; 560 NW2d 71 (1996).

To establish a claim of ineffective assistance of counsel, a respondent must show that counsel's performance fell below an objective standard of reasonableness and that the representation prejudiced the respondent so as to deny her a fair trial. *People v Pickens*, 446 Mich 298, 309; 521 NW2d 797 (1994). In order to show that counsel's performance was deficient, the respondent must overcome the strong presumption that counsel's assistance constituted sound trial strategy. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). To demonstrate prejudice, the respondent must show that there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different. *Id.* at 687-688; *People v Shively*, 230 Mich App 626, 628; 584 NW2d 740 (1998).

In *People v Bass (On Rehearing)*, 223 Mich App 241, 252-253; 565 NW2d 897 (1997), vacated in part on other grounds 457 Mich 865 (1998), we stated that

> [i]neffective assistance of counsel can take the form of a failure to call witnesses or present other evidence only if the failure deprives the defendant of a substantial defense. A defense is substantial if it might have made a difference in the outcome of the trial. Decisions concerning which witnesses to call, what evidence to present, or the questioning of witnesses are considered part of trial strategy. In order to overcome the presumption of sound trial strategy, the defendant must show that his counsel's failure to prepare for trial resulted in counsel's ignorance of, and hence failure to present, valuable

> evidence that would have substantially benefited the defendant. This Court will not second-guess defense counsel's trial strategy. [Citations omitted.]

We find that counsel's failure to subpoena the former caseworker did not prejudice Cottrell because the witness was not necessary to her defense. The foster care program manager testified that she had temporary supervision of the case and was familiar with the case file and had reviewed the notes of the former caseworker, who had left the agency. Because the evidence established that, despite Cottrell's compliance with part of the parent/agency agreement, the overall history of the family indicated that there had been an inability to provide a suitable environment for the children, the outcome of the proceedings would not have been different if counsel had subpoenaed the former caseworker for trial. Therefore, Cottrell was not denied the effective assistance of counsel.

Cottrell's argument that the family court clearly erred in finding that appellee made reasonable efforts toward reuniting her with the children is without merit. The juvenile code requires only that appellee offer services that will facilitate reunification and any additional services the court may order. MCL 712A.18f; MSA 27.3178(598.18f); MCL 712A.19; MSA 27.3178(598.19). Appellee is not required to offer every conceivable service that may be available before termination may be ordered.

The record indicates that Cottrell completed two sets of parenting classes previously, but failed to benefit from the classes, that Cottrell was referred for another set of parenting classes, but the classes were canceled, and that a referral for housing was given to Cottrell. Although the program manager acknowledged that no one from her agency had seen the house in which Cottrell and Holiday lived during the three months before trial, Holiday testified at trial that they had been living in a motel for about a month because they had been evicted from their home. Considering Cottrell's lengthy history of involvement with the court, the family court properly found that appellee made reasonable efforts toward reuniting Cottrell with the children.

Affirmed.

/s/ Peter D. O'Connell
/s/ Michael J. Talbot
/s/ Brian K. Zahra