

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JUSTIN GENTZ and JESSICA
GENTZ, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LORI GENTZ,

Respondent-Appellant,

and

DUANE STURDAVANT and VAUGHN GENTZ,

Respondents.

UNPUBLISHED

March 24, 2000

No. 220052

Kent Circuit Court

Family Division

LC No. 92-000145-NA

Before: Wilder, P.J., and Sawyer and Markey, JJ.

PER CURIAM.

Respondent-appellant appeals by right from the family court order terminating her parental rights to the minor children under MCL 712A.19b(3)(a)(ii), (c)(i) and (g); MSA 27.3178(598.19b)(3)(a)(ii), (c)(i) and (g). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Respondent-appellant first argues that reversal is required because the trial court failed to comply with MCR 5.971 when accepting her plea to the permanent custody petition. However, because respondent-appellant did not move to withdraw her plea in the trial court, this issue is not preserved. *In re Campbell*, 170 Mich App 243, 250; 428 NW2d 347 (1988).

We reject respondent-appellant's argument that reversal is required because the trial court failed to comply with § 43 of the Adoption Code, MCL 710.43; MSA 27. 3178(555.43). The termination petition was brought pursuant to § 19b(3) of the juvenile code, not the Adoption Code. The mere fact that respondent-appellant ultimately consented to the termination of her parental rights did not transform the proceeding into one brought under the Adoption Code. Contrary to what respondent-appellant argues, a respondent can consent to termination of her parental rights under the juvenile code. *In re Toler*, 193 Mich App 474, 477; 484 NW2d 672 (1992).

Finally, respondent-appellant argues that she was denied the effective assistance of counsel because her attorney failed to explain the consequences of her plea or ascertain whether she understood that she was agreeing to permanently give up her parental rights, failed to ensure that the court explain the consequences of her plea and determine that the plea was knowingly, voluntarily and understandingly made as required by MCR 5.971, and provided unsound advice by recommending that she consent to the termination of her parental rights.

To establish a claim of ineffective assistance of counsel, respondent must show that her counsel's performance was prejudicially deficient and that, under an objective standard of reasonableness, counsel made an error so serious that counsel was not functioning as an attorney as guaranteed under the Sixth Amendment. *People v Pickens*, 446 Mich 298, 303; 521 NW2d 797 (1994). Because this issue was not raised in the trial court, appellate review is limited to the existing record. *People v Sharbnow*, 174 Mich App 94, 106; 435 NW2d 772 (1989); *People v Armendarez*, 188 Mich App 61, 74; 468 NW2d 893 (1991).

The existing record does not support respondent-appellant's claim that counsel failed to explain the consequences of her plea or ascertain whether she understood that she was agreeing to permanently give up her parental rights. Also, the colloquy between counsel and respondent-appellant at the plea proceeding demonstrates that the requirements of MCR 5.971 were substantially followed. See *In re Campbell*, *supra* at 251. Further, contrary to what respondent-appellant asserts, the trial court specifically found that respondent-appellant's plea was "freely, voluntarily and understandingly" made. Finally, respondent-appellant has not overcome the presumption that the decision to consent to the termination of her parental rights was reasonable strategic choice under the circumstances. Accordingly, respondent-appellant has not shown that she was denied the effective assistance of counsel. *Pickens*, *supra*; *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994); *In re EP*, 234 Mich App 582, 598; 595 NW2d 167 (1999).

We affirm.

/s/ Kurtis T. Wilder
/s/ David H. Sawyer
/s/ Jane E. Markey