

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of Saxdon Myles, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LUTHER MYLES,

Respondent-Appellant.

and

BRENDY MYLES

Respondent.

UNPUBLISHED

June 16, 2000

No. 222643

Midland Circuit Court

Family Division

LC No. 99-000187-NA

Before: Murphy, P.J., and Collins and Owens, JJ.

MEMORANDUM.

Respondent Luther Myles appeals as of right from the termination of his parental rights to Saxdon Myles pursuant to MCL 712A.19b(3)(g) and (j); MSA 27.3178(598.19b)(3)(g) and (j). Respondent Brendy Myles' rights were terminated following a voluntary release. She does not appeal. We affirm.

The family division of the circuit court did not clearly err in finding that §§ 19b(3)(g) and (j) were established by clear and convincing evidence. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The evidence established a history of medical, educational and emotional neglect. In addition, respondent Luther Myles failed to show that termination of his parental rights was clearly not in the child's best interest. MCL 712a.19b(5); MSA 27.3178(598.19b)(5). Therefore, the

court did not err in terminating his parental rights to the child. *In re Hall-Smith*, 222 Mich App 470, 472-473; 564 NW2d 156 (1997).

Respondent Luther Myles also contends that he was denied effective assistance of counsel because, primarily as a result of his lack of cooperation with counsel, counsel was unprepared to conduct the dispositional hearing and should have moved to withdraw prior to the hearing. Respondent also contends counsel failed to present several witnesses. Counsel is presumed to have provided effective assistance and respondent bore a heavy burden to demonstrate that his counsel was ineffective. *People v Eloby (After remand)*, 215 Mich App 472, 476; 547 NW2d (1996). Respondent must show that “counsel’s performance fell below an objective standard of reasonableness, and that the representation so prejudiced the defendant [here: respondent] as to deprive him of a fair trial.” *People v Pickens*, 446 Mich 298, 303; 521 NW2d 797 (1994). Because a post-trial hearing on this issue was not held, our review is limited to errors apparent on the record. *People v Darden*, 230 Mich App 597, 604; 585 NW2d 27 (1998).

Respondent’s purported witnesses appear to be after-the-fact speculations rather than firm witnesses. Respondent’s purported documentary evidence consists primarily of documentation that is allegedly unfavorable to respondent Brendy Myles. Moreover, none of this evidence would have been admissible during the dispositional phase of the proceedings on the issue of whether one or more of the statutory grounds for jurisdiction had been proven by clear and convincing evidence. MCR 5.974(D)(3). In addition, much of this evidence would not have been admissible on the issue of whether termination of the father’s rights would clearly not be in the child’s best interest. We therefore conclude that respondent has failed to demonstrate that his counsel’s performance was substandard or that it caused him prejudice. *Pickens, supra*.

Affirmed.

/s/ William B. Murphy

/s/ Jeffrey G. Collins

/s/ Donald S. Owens