STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of JOHN CLARK CASSELDINE and CYNTHIA LEE VONCANNON, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

KATHLEEN ANN CASSELDINE, a/k/a KATHLEEN ANNE BAKER,

Respondent-Appellant,

and

BENJAMIN EDWIN VONCANNON, a/k/a EDWARD VONCANNON,

Respondent.

UNPUBLISHED
December 26, 2000

No. 224405
Wayne Circuit Court
Family Division
LC No. 94-320705

In the Matter of CYNTHIA LEE VONCANNON, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

BENJAMIN EDWIN VONCANNON a/k/a EDWARD VONCANNON,

Respondent-Appellant,

No. 224812
Wayne Circuit Court
Family Division
LC No. 94-320705

and

KATHLEEN ANN CASSELDINE, a/k/a
KATHLEEN ANNE BAKER,

Respondent.

Before: Griffin, P.J., and Holbrook, Jr., and Murphy, JJ.

PER CURIAM.

In these consolidated appeals, respondents Kathleen Casseldine and Benjamin VonCannon appeal as of right from the December 1, 1999, order of the Family Division of the Wayne Circuit Court terminating their parental rights to the minor children[1] pursuant to MCL 712A.19b(3)(c)(i), (g), and (j); MSA 27.3178(598.19b)(3)(c)(i), (g), and (j), and MCL 712A.19b(3)(a)(ii), (c)(i), and (g); MSA 27.3178(598.19b)(3)(a)(ii), (c)(i), and (g), respectively. We affirm.

Docket No. 224405

Respondent Kathleen Casseldine argues the family court clearly erred in finding that the statutory grounds for termination of her parental rights under subsections (3)(c)(i) (conditions that led to adjudication continue to exist), (3)(g) (parent failed to provide proper care), and (3)(j) (child would be harmed if returned to parent), were established by clear and convincing evidence and that such termination would be in the children's best interests. We disagree.

To terminate parental rights, the family court must find that at least one of the statutory grounds for termination has been met by clear and convincing evidence. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993). Once a statutory ground is established, the court must terminate parental rights unless "there exists clear evidence, on the whole record, that termination is not in the child's best interests." MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Trejo Minors*, 462 Mich 341, 354; 612 NW2d 407 (2000). We review the family court's findings of fact under the clearly erroneous standard. MCR 5.974(I); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999).

A review of the record in the instant case reveals that respondent was involved with the family court on two prior occasions with regard to her son John Casseldine. The first petition for temporary wardship was dismissed, but a second petition was filed in May 1995, precipitated by respondent's addiction to heroin and prescription codeine. Respondent was ordered to enroll in a six-month inpatient drug treatment program, which she completed. The case was dismissed in

---

[1] The father of John Clark Casseldine is deceased; respondent Benjamin VonCannon's appeal pertains only to his daughter, Cynthia Lee VonCannon.

May 1997 after respondent completed two years of treatment and abided by the parent-agency agreement to the satisfaction of the family court. However, in July 1998, respondent's daughter Cynthia Lee VonCannon was born with cocaine and opiates in her system. Respondent admitted to using these drugs prior to Cynthia's birth and acknowledged she had been a drug user since the age of sixteen, with a history of treatment and relapses due to her addiction to cocaine and heroin. The children were consequently adjudicated temporary court wards in October 1998.

Respondent's parent-agency agreement required, among other things, that she establish and maintain a drug and alcohol free lifestyle, submit to random alcohol and drug screens, complete parenting classes, complete individual and domestic abuse counseling, maintain a legal source of income, obtain suitable housing, and visit the children. On appeal, respondent maintains that she has been rehabilitated: "although there may have been periods of time when her children were temporary court wards that she did not comply with each and every aspect of her parent-agency agreement, appellant did not have any positive drug screens in the four months before trial" and "was fairly consistent in her visitation, behaved appropriately during her visits, had employment and most importantly, was bonded with her children."

However, the evidence adduced at the permanent custody hearing demonstrated that respondent only submitted nine out of the thirty-seven requested drug screens. She tested positive for drugs in May 1999, by which time her visits with her children had been suspended due to her non-compliance with the parent-agency agreement. Respondent thereafter missed her drug screens in July and September 1999, prior to the permanent custody hearing in December 1999. Although respondent did not have any positive drug screens in the four months prior to the permanent custody hearing, she submitted only eight out of the sixteen drug screens that were requested during that time. Moreover, she admitted she could not properly care for her children when she was on drugs.

Although respondent contends on appeal that she was consistent in her visitation with the children, she attended only eighteen out of the thirty-seven requested visits before they were suspended in April 1999. The referee agreed to reinstate respondent's visitation when she started submitting regular drug screens, but she never complied with that condition. Respondent attended an intake session for domestic violence in July 1999 but subsequently failed to attend any further sessions. Respondent did not follow through on the housing referrals and denied the foster care case manager access to her home, stating that it was not adequate or suitable for the return of her children. A psychological evaluation in June 1999 lead the clinician to conclude that respondent exercised poor judgment and insight as it related to her role as a parent. The clinician concluded that "the prognosis for the reunification of the mother with her children was poor based on her pattern of instability and her inconsistency in remaining drug free," and recommended the termination of respondent's parental rights. Moreover, at the time of the permanent custody hearing, respondent had two outstanding misdemeanor warrants which were properly noted by the family court. MCR 5.974(F)(2).

In light of these proofs, we find no clear error in the family court's determination that termination of respondent's parental rights pursuant to subsections (3)(c)(i), (g), and (j) was supported by clear and convincing evidence. Contrary to respondent's assertion, the family court's decision terminating her parental rights was based not on evidence of her criminal

history, but rather on her failure to comply with the court ordered treatment plan to overcome her drug addiction. Respondent's unresolved addiction severely hampered her ability to properly care for her children, particularly her son, who was diagnosed with attention deficit disorder and had a history of self-abusive behavior, depression, and physical aggression, thus requiring special care and attention. We further conclude the evidence did not establish that termination of respondent's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5). Therefore, the family court did not err in terminating respondent's parental rights to the minor children.

Docket No. 224812

Respondent Benjamin VonCannon argues on appeal that the trial court clearly erred in terminating his parental rights to his daughter, Cynthia Lee VonCannon, pursuant to subsections (3)(a)(ii) (desertion of child for ninety-one or more days), (3)(c)(i) (conditions that led to adjudication continue to exist), and (3)(g) (failure to provide proper care). Specifically, respondent contends that although "it may be true that he did not fulfill the terms of his parent-agency agreement, . . . it is questionable why domestic violence counseling, parenting classes and regular drug screens should have been included in that plan in the first place." Respondent argues there was no substantiation either that domestic violence occurred in the family unit or that respondent knew his live-in girlfriend, corespondent Kathleen Casseldine, was abusing drugs or that he used drugs himself. Respondent alleges that his parent-agency agreement was not rationally related to the problems that brought his child to the attention of petitioner in the first place: the fact that corespondent Casseldine took illegal drugs while carrying his child.

However, this issue regarding the propriety of the terms of respondent's parent-agency agreement has been waived because it was not appealed following the jurisdictional hearing. See *In re Hatcher*, 443 Mich 426, 436-438; 505 NW2d 834 (1993). In any event, a review of the record indicates that at the pretrial hearing, respondent stipulated to the court that he knew the corespondent mother, Kathleen Casseldine, had a history of drug abuse and that he should have known she was using drugs when his daughter was born. The record of this hearing further reflects respondent's counsel's representation that although respondent "denies that there's been any physical altercations . . . just normal squabbling between him and . . . the mother," respondent was "willing to go into counseling" with regard to the issue of domestic violence. Finally, at the pretrial hearing, counsel for respondent further stipulated to "drug screens for both the mother and my client even though there's no allegations of drug usage against my client he supports the mother in her efforts of reunification."

Moreover, the requirements of the parent-agency agreement were not unreasonable under the circumstances. The plan required that respondent participate in domestic violence counseling, drug assessment, parenting classes, individual family counseling, and also that he establish a legal source of income, suitable housing, and regular visitation with his child. These terms were appropriate given that respondent had lived with corespondent for a long period of time, admitted he knew of her drug history, and should have known she was using drugs while pregnant with his daughter, who was born at home with drugs in her system and was only taken to the hospital several weeks after her birth because she was suffering from withdrawal symptoms. Domestic violence in the relationship had been previously indicated in an evaluation

report concerning corespondent. Thus, respondent's belated claim concerning the appropriateness of the requirements imposed on him by the court through the parent-agency agreement is without merit.

In a related argument, respondent argues that he had a succession of different attorneys standing in for his assigned counsel and therefore his concerns regarding submission to the rehabilitative measures set forth above were not effectively raised or dealt with by counsel prior to the permanent placement hearing. To the extent respondent's argument can be regarded as an ineffective assistance of counsel claim, this Court applies by analogy the principles of ineffective assistance of counsel used in the criminal law context. *In re Simon*, 171 Mich App 443, 447; 431 NW2d 71 (1988). Thus, to establish a claim of ineffective assistance of counsel, respondent must show that counsel's performance fell below an objective standard of reasonableness and that because of such representation, he was prejudiced to the extent he was denied a fair trial. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994). To demonstrate prejudice, respondent must show that but for counsel's errors, there is a reasonable probability that the result of the proceeding would have been different. *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1998). Respondent must also overcome the strong presumption that counsel's actions constituted sound trial strategy. *Id*. at 687. Because respondent did not move for a new trial or an evidentiary hearing in the trial court, our review is limited to errors apparent on the record. *People v Wilson*, 196 Mich App 604, 612; 493 NW2d 471 (1992).

Respondent has not demonstrated that his counsel's alleged failure to address his concerns regarding the terms of the parent-agency agreement prior to the permanent custody hearing fell below an objective standard of reasonableness or that the representation so prejudiced him as to deprive him of a fair trial. First, respondent's acquiescence in the terms of the parent-agency agreement at the pretrial hearing repudiates his contention that the propriety of the agreement was not considered by respondent and his counsel prior to its implementation. Second, as previously discussed, the parent-agency agreement was reasonable under the circumstances. Third, there was ample factual and legal justification for the family court's termination of respondent's parental rights. Respondent made no attempt to abide by its terms, missing five out of nine scheduled visits with his daughter between October 8, 1998, and December 19, 1998, and eight out of eleven scheduled visits between December 15, 1998, and March 23, 1999. Respondent did not attend any visits with his daughter after March 16, 1999, and similarly ceased contact with petitioner and provided none of the requisite drug screens. He also failed to follow through on referrals for individual counseling, domestic violence classes, parenting classes, and drug assessment.

Respondent testified at the permanent custody trial that he did not comply with the court-ordered treatment plan because he did not have time to do so and that a lack of transportation prevented visitation with his daughter, because his car had been impounded and his driver's license suspended due to his extensive traffic violation record. He further admitted that he was still involved with corespondent Kathleen Casseldine and, in the event he was given custody of his daughter, corespondent would help care for her. Respondent denied the case worker access to his home, stating that it was not adequate. Despite his claim that he had a new job, the telephone number he gave to the case worker was wrong, and he never provided the worker with proof of income.

Taking into consideration the above evidence of record, we conclude that respondent's claim of ineffective assistance of counsel is without merit. In sum, we find no clear error in the family court's conclusion that termination of respondent's parental rights was warranted by clear and convincing evidence pursuant to subsections (3)(a)(ii), (c)(i), and (g). *In re Miller*, 182 Mich App 70, 83; 451 NW2d 576 (1990). The family court likewise did not err in determining that termination of respondent's parental rights was in the child's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Trejo Minors, supra*.

Affirmed.

/s/ Richard Allen Griffin
/s/ Donald E. Holbrook, Jr.
/s/ William B. Murphy