

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of NELSON EUGENE MCDONALD,
TRA'VONNEL U'DIONN MCDONALD, and
BRYANT LAMONT SHERMAN, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CARRIE ANN BROWN a/k/a CARRIE ANN
OREE,

Respondent-Appellant.

UNPUBLISHED
February 16, 2001

No. 225935
Wayne Circuit Court
Family Division
LC No. 89-282298

Before: Bandstra, C.J., and Griffin and Collins, JJ.

PER CURIAM.

Respondent, biological mother of the involved minor children, appeals as of right a family court order terminating her parental rights to the children pursuant to MCL 712A.19b(3)(a)(ii), (c)(i), (g), and (j); MSA 27.3178(598.19b)(3)(a)(ii), (c)(i), (g), and (j).¹ We affirm.

Respondent claims on appeal that given her unusual behavior and outbursts at trial her trial counsel's failure to move for an adjournment denied her effective assistance of counsel and unduly prejudiced her because the findings of fact in support of the decision to terminate her parental rights were not based solely on the record but were also influenced by respondent's demeanor on the day of trial. We disagree.

¹ The parental rights of Nelson McDonald, father of Nelson and Tra'Vonnel, and Michael Sherman, father of Bryant, were also terminated as to their respective children. Neither Mr. McDonald nor Mr. Sherman has appealed.

The principles of effective assistance of counsel developed in the context of criminal law apply by analogy in child protective proceedings. *In re Simon*, 171 Mich App 443, 447; 431 NW2d 71 (1988); *In re Trowbridge*, 155 Mich App 785, 786; 401 NW2d 65 (1986).

In order to establish a claim of ineffective assistance of counsel, respondent must establish that (1) the performance of her counsel fell below an objective standard of reasonableness under prevailing professional norms, and (2) a reasonable probability exists that, in the absence of counsel's unprofessional errors, the outcome of the proceedings would have been different. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994); *People v Avant*, 235 Mich App 499, 507; 597 NW2d 864 (1999). This Court will presume that respondent has received effective assistance of counsel and a heavy burden of proving otherwise rests on respondent. *People v Williams*, 240 Mich App 316, 331; 614 NW2d 647 (2000). Moreover, this Court will not avail itself of hindsight when considering a claim of ineffective assistance of counsel. *Id.*

Our review of the record leads us to conclude that respondent has failed to overcome the presumption of effective assistance of counsel. The transcript of the proceedings indicates that on the final day of trial respondent interrupted witnesses with outbursts and was duly warned by the referee that she would be excluded from the courtroom. Following one of these outbursts, when the referee raised the issue of respondent's sobriety and inquired of respondent whether she was under the influence of alcohol or drugs, she vehemently denied that this was the case and testified, "I'm not intoxicated. I'm just mad." Significantly, respondent does not claim on appeal that at the time of trial she desired an adjournment or asked her attorney to make such a request. Moreover, even if a motion for adjournment had been made, it is doubtful that it would have been granted given that the trial was in its late stages and the basis for the adjournment was respondent's own misconduct. See MCL 712A.17(1); MSA 27.3178(598.17)(1).

It is well established that a party may not assign as error on appeal something which his or her own counsel deemed proper at trial, since to do so would permit the party to harbor error as an appellate parachute. *Dresselhouse v Chrysler Corp*, 177 Mich App 470, 477; 422 NW2d 705 (1989); *Joba Construction Co, Inc v Burns & Roe, Inc*, 121 Mich App 615, 629; 329 NW2d 760 (1982). This Court will not substitute its own judgment for that of trial counsel on trial strategy. *People v McFadden*, 159 Mich App 796, 800; 407 NW2d 78 (1987). Under the present circumstances, both principles would be violated were we to find that respondent's trial counsel failed to provide effective assistance of counsel because she failed to move for an adjournment.

Beyond failing to show that her counsel's performance fell below an objective standard of reasonableness, respondent also has failed to demonstrate that the outcome of the proceedings would have been different but for counsel's allegedly unprofessional conduct. *Pickens, supra*. In his factfindings on the record, the referee made only two brief references to respondent's outbursts in court. The referee's report and recommendation contain no reference at all to the mother's erratic courtroom behavior. The ultimate decision by the court to terminate respondent's parental rights was based on respondent's failure to significantly address those problems which had led to the adjudication of this case in the first place, including long-standing and serious involvement with drugs, a history of mental health problems which led the children to fear respondent, failure to comply with the court-ordered treatment plan, and the fact that the

period of rehabilitation necessary for her to address the problem would be longer than the needs of the children could tolerate. In short, the record establishes that the statutory grounds for termination, aside from respondent's behavior in court, were established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000). Because respondent has failed to demonstrate that her parental rights would not have been terminated but for trial counsel's alleged errors, we conclude that her claim of ineffective assistance of counsel is without merit.

Affirmed.

/s/ Richard A. Bandstra
/s/ Richard Allen Griffin
/s/ Jeffrey G. Collins