STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of AMBER JUNE CASE, MELISSA RAY CASE, and CHRISTOPHER HAROLD CASE, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

VERA CASE,

Respondent-Appellant,

and

MARK WAYNE CASE,

Appellee.

UNPUBLISHED
March 16, 2001

No. 224289
Mecosta Circuit Court
Family Division
LC No. 98-002946

Before: Wilder, P.J., and Hood and Cavanagh, JJ.

PER CURIAM.

Respondent appeals as of right from the family court order terminating her parental rights to the minor children under MCL 712A.19b(3)(b)(i), (j), (k)(iii), (k)(iv), (k)(v) and (k)(vi); MSA 27.3178(598.19b)(3)(b)(i), (j), (k)(iii), (k)(iv), (k)(v) and (k)(vi). We affirm.

Respondent first contends that the trial court erred when it ruled that termination of her parental rights was in the best interest of her children. We disagree. Once the trial court finds at least one statutory ground for termination by clear and convincing evidence, the court must order termination of parental rights, unless the court finds that termination is clearly not in the children's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000). This Court reviews the trial court's decision regarding the children's best interests for clear error. *Id.*

Evidence of mistreatment on one child is probative of treatment of other children. *In re Jackson*, 199 Mich App 22, 26; 501 NW 182 (1993). Here, respondent admitted that she had

severely shaken one of her children, the four-year old, causing him to strike his head on a door several times, resulting in a severe and fatal brain injury. Additionally, the four-your old had multiple contusions of different ages on his back and buttocks, patterned contusions on his right calf, multiple contusions on each arm and around the elbows, contusions on his anterior tibia regions and knees, and also suffered from severe malnutrition. Furthermore, respondent's initial concealment of the actual cause of the four-year old's injuries from medical professionals could have delayed proper medical treatment and her continued concealment of her complicity in the child's death for an entire year demonstrates respondent's willingness to put her own well-being over that of her children's. Based on this evidence of mistreatment, we find no error in the trial court's ruling that termination was in the best interest of the children. *In re Jackson, supra*.

Respondent next argues that the trial judge should have disqualified himself because he was biased against her. Because respondent failed to move for disqualification in the trial court pursuant to MCR 2.003, this issue is not preserved. *In re Jackson*, 199 Mich App 22, 29; 501 NW2d 182 (1993). In any event, we note that, absent actual personal bias or prejudice, a judge will not be disqualified. MCR 2.003(B)(1); *Cain v Dep't of Corrections*, 451 Mich 470, 495; 548 NW2d 210 (1996). A judge's opinions that are formed on the basis of facts introduced or events that occur during the proceedings do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. *Id*. at 496. Judicial rulings alone rarely establish disqualifying bias or prejudice. *Id*. Further, a party who challenges a judge for bias must overcome a heavy presumption of judicial impartiality. *Id*. at 497. Here, the record fails to show actual bias or prejudice on the part of the trial judge.

Respondent further contends that she was denied the effective assistance of counsel. Again, we disagree. The principles of effective assistance of counsel developed in the context of criminal law apply by analogy in termination of parental rights proceedings. See *In re Simon*, 171 Mich App 443, 447; 431 NW2d 71 (1988); *In re Trowbridge*, 155 Mich App 785, 789; 401 NW2d 65 (1986). Effective assistance of counsel is presumed, and the respondent bears a heavy burden of proving otherwise. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994); *People v Effinger*, 212 Mich App 67, 69; 536 NW2d 809 (1995). To establish ineffective assistance of counsel, respondent must show that counsel's performance was below an objective standard of reasonableness under prevailing norms and that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *Pickens, supra*; *Effinger, supra*.

Respondent first claims that her counsel was ineffective when he withdrew respondent's motion for adjournment on the day of trial. Counsel originally requested the adjournment after being presented with an amended petition that alleged two additional statutory grounds for termination. However, respondent's counsel only withdrew the motion for adjournment after the respondent indicated to him that it was her wish to have the trial begin. Further, the trial court questioned respondent regarding the motion to adjourn. During this questioning, respondent informed the court that she agreed with her counsel's decision and that it was her desire to withdraw the motion to adjourn. Therefore, this issue may have been waived by respondent. Cf *People v Carter*, 462 Mich 206, 214-219; ___ NW 2d ___ (2000); *People v Fetterley*, 229 Mich App 511, 520; 583 NW2d 199 (1998). Assuming this issue was preserved, however, the trial

court terminated respondent's parental rights on several grounds, including those listed in the original petition, to which respondent pleaded no contest. Because only one statutory ground is required to terminate parental rights, *In re* Trejo, *supra* at 350; *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991), it is unreasonable to conclude that counsel's failure to seek an adjournment affected the outcome of the case.

Respondent also claims that she was denied effective counsel when her counsel chose not to call an expert witness to testify to the deceased child's medical history and for failing to call several people who submitted letters on respondent's behalf as witnesses. Decisions regarding whether to call witnesses are presumed to be matters of trial strategy, and an appellate court will not substitute its judgment for that of counsel regarding matters of trial strategy, nor will it assess counsel's competence with the benefit of hindsight. *People v Bass*, 223 Mich App 241, 253; 581 NW2d 1 (1997) vacated in part on other grounds, 457 Mich. 865; 577 NW2d 667 (1998); *People v Julian*, 171 Mich App 153, 158-159; 429 NW2d 615 (1988); *People v Barnett*, 163 Mich App 331, 338; 414 NW 2d 378 (1987).

Respondent has failed to submit affidavits from potential expert witnesses indicating that they would have testified that a medical condition caused the deceased child to bruise easily. In addition, there was no medical evidence or diagnosis presented during this year-long proceeding to support this theory. Based on these facts, it was reasonable, and perhaps prudent, for respondent's counsel not to call any expert witnesses and we will not second-guess counsel in matters of trial strategy. *People v Stewart*, 219 Mich App 38, 42; 555 NW2d 715 (1996). The fact that the strategy chosen by defense counsel did not work does not constitute ineffective assistance of counsel. *Id*.

Similarly, respondent failed to present any affidavits indicating that the other potential witnesses would have testified on her behalf. Nonetheless, assuming they would have been willing to testify, we find the letters in question to be cumulative of what respondent's family members testified to at trial. Thus, defense counsel could have chosen not to call them for this reason alone. As such, respondent has failed to demonstrate a reasonable probability that the testimony would have altered the outcome of the trial. *See People v Avant*, 235 Micha App 499; 597 NW2d 864 (1999). Accordingly, respondent has not identified any injurious action or inaction by her counsel and, therefore, has failed to establish that she was denied the effective assistance of counsel.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Harold Hood
/s/ Mark J. Cavanagh