

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

In the Matter of GRETA LAKATSH COWART,  
MYEESHA FAYE TUCKER, and MICHELA  
RENA TUCKER, Minors.

---

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CAROLYN TUCKER,

Respondent-Appellant,

and

GREGORY TUCKER,

Respondent.

---

In the Matter of GRETA LAKATSH COWART,  
MYEESHA FAYE TUCKER, and MICHELA  
RENA TUCKER, Minors.

---

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

GREGORY TUCKER,

Respondent-Appellant,

and

---

UNPUBLISHED  
November 25, 2003

No. 246834  
Oakland Circuit Court  
Family Division  
LC No. 01-646733-NA

No. 246873  
LC No. 01-646733-NA

CAROLYN TUCKER,

Respondent.

---

Before: Schuette, P.J., and Cavanagh and White, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the trial court order terminating their parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm in part and reverse in part.

### I. FACTS

The children first came to the attention of the court when a complaint was filed in January 2001. The complaint stemmed from an incident that occurred in December 2000, during which Greta and respondent mother got into an argument over money. Greta swore at her mother and respondent mother hit Greta in the forehead with an iron. Greta suffered a cut and was bleeding. At that time Greta, Myeesha, and Michela were living with their older sister, Selina.<sup>1</sup> Greta was a delinquent ward of the court and was placed with Selina through that matter. Myeesha and Michela were apparently living with Selina without any legal authority. Respondent father was incarcerated at the time. Following the preliminary hearing, the children were removed from the home and the court ordered that respondents' parenting time be supervised.

Adjudication occurred when respondent father pleaded no contest to the complaint on February 28, 2001, which alleged that respondent father was incarcerated in the Oakland County jail and had been arrested several times. Following respondent father's no contest plea, a bench trial was held with respect to the allegations against respondent mother.

All three children were excessively tardy and absent from school. Respondent mother did not maintain stable housing and had been arrested on several occasions. During the time that the children were in foster care, respondent father was in and out of jail numerous times, mostly as the result of domestic violence perpetrated against respondent mother.

After her removal from her parent's home, Greta was in residential placement at a facility referred to as "ICON." The facility was a residential placement for neglect wards. Greta was then moved to Project Rehab in Grand Rapids. On March 28, 2002, the court granted the FIA's motion to move Greta to a secure placement pending the filing of a delinquency petition. On April 22, 2002, the court held a preliminary hearing on a delinquency petition that had been filed with respect to Greta, alleging that Greta had been truant when she was placed at Project Rehab.

---

<sup>1</sup> Selina's name appears spelled various ways throughout the record, including "Salana" and "Sylena."

On May 9, 2002, the court dismissed Greta as a neglect ward, made her an PA 150 delinquent ward and authorized her placement in a secure setting.

The petition seeking termination of parental rights was filed September 11, 2002. The petition sought termination of respondents' parental rights to Greta, Myeesha, and Michela. The termination hearing was held January 27, 2003.

At the hearing, the foster care worker, Daneta Echols, testified that the conditions that brought the children into care included domestic violence, environmental neglect, physical abuse and substance abuse. At the time of the termination hearing, respondents were incarcerated for assaulting their daughter's boyfriend.

Echols testified regarding respondents' compliance with the case service plan. The parent/agency agreement addressed issues of parenting skills, domestic violence, drug assessments and substance abuse treatment. Respondent mother did not complete substance abuse treatment, parenting classes, or psychological counseling. Respondent mother also failed to follow through with finding Section 8 housing or employment. Respondent mother visited her children sporadically while they were in foster care.

Respondent father was frequently incarcerated. When respondent was not incarcerated he failed to find employment or to participate in psychological counseling. Respondent father was again incarcerated on March 25, 2002, and had remained incarcerated since that time.

Echols recommended termination of parental rights and testified that the conditions leading to adjudication remained unresolved and there was no reasonable likelihood that the conditions would be rectified. Neither respondent was in a better position to provide for the children than they had been in April 2001, when the dispositional hearing had been held. Following testimony of both respondent mother and respondent father, the trial court entered an order terminating the parental rights of both parents. They now appeal as of right.

## II. MCR 3.977(E)

The trial court in this matter committed plain error in terminating respondents' parental rights to the oldest minor child, Greta. At the time of the termination hearing, Greta was no longer under the jurisdiction of the court because the court had dismissed its jurisdiction over her in an earlier order that also addressed delinquency issues. Therefore, with respect to Greta, the petition was in essence a request for termination of parental rights at the initial dispositional hearing. However, the trial court failed to comply with MCR 5.974(D), which is now MCR 3.977(E), and did not reestablish jurisdiction over Greta. Therefore, the court was without authority to make dispositional orders, including terminating parental rights, with respect to the child. *In re AMB*, 248 Mich App 144, 176-177; 640 NW2d 262 (2001); *In re PAP*, 247 Mich App 148, 152-153; 640 NW2d 880 (2001). Accordingly, we must reverse the trial court's order terminating both respondents' parental rights to Greta and remand for further proceedings in compliance with the court rules.

## III. DUE PROCESS

However, we find the respondents' other claims to be without merit. We first address the issues raised by respondent Carolyn Tucker with respect to Myeesha and Michela. Respondent first argues that her due process rights were violated because the court allowed the prosecutor to ask leading questions of the worker. The trial court did not abuse its discretion in allowing the leading question, which was merely aimed at developing the testimony under MRE 611(c)(1). *In re Susser Estate*, 254 Mich App 232, 240; 657 NW2d 147 (2002).

Respondent also argues that her due process rights were violated because the trial court was biased against her. Respondent has not overcome the presumption that the trial court was fair and impartial. *Susser, supra* at 237. Rulings against a litigant, even if erroneous, do not themselves constitute bias or prejudice sufficient to establish a denial of due process. *Id.* Moreover, while the trial court did challenge respondent with discrepancies in the testimony, the cited instances do not rise to the level to indicate partiality.

#### IV. STATUTORY GROUNDS FOR TERMINATION

With respect to Myeesha and Michela, the trial court did not clearly err in finding that the statutory grounds were established by clear and convincing evidence with respect to respondent Carolyn Tucker. MCR 5.974(I), now MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Further, the evidence did not show that termination of respondent's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The evidence established that respondent Carolyn Tucker was incarcerated at the time of the termination trial for committing assault with intent to do great bodily harm against an adult daughter's boyfriend. She had committed the offense over a year after the children had been removed from the home and would not be released from prison for at least ten more months from the time of the termination trial. Myeesha and Michela were aged fourteen and eleven respectively at the time of trial. They needed permanence and stability that respondent had been unable to provide in the nearly two years since the beginning of the proceedings.

Next, we address the issues raised by respondent Gregory Tucker with respect to Myeesha and Michela. Respondent has abandoned any argument that there was insufficient evidence to support the statutory grounds by failing to brief the issue. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002). In any event, we find no clear error considering that respondent Gregory Tucker was incarcerated throughout most of the proceedings and would not be released for at least an additional ten months at the time of the termination hearing. Further, the evidence did not show that termination of respondent's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *Trejo, supra* at 356-357. Moreover, we have reviewed the record carefully and when taken in context, the trial court's findings clearly show that it properly considered all the evidence when determining the children's best interests and did not impermissibly shift the burden of proof or production on the issue to the parents. *Trejo, supra* at 353.

#### V. INEFFECTIVE ASSISTANCE OF COUNSEL

Respondent also claims that he received ineffective assistance of counsel. Respondent's claim that counsel was ineffective in allowing him to plead no contest at the adjudication is an improper collateral attack on the trial court's assumption of jurisdiction, which should have been

raised in a direct appeal. *In re Hatcher*, 443 Mich 426, 439; 505 NW2d 834 (1993); *In re Powers*, 208 Mich App 582, 587-588; 528 NW2d 799 (1995). In any event, the claim is without merit because respondent has not alleged and there is no evidence that his plea was unknowing or involuntary. *People v Watkins*, 247 Mich App 14, 31; 634 NW2d 370 (2001); *People v Thew*, 201 Mich App 78, 89-90; 506 NW2d 547 (1993). The trial court properly complied with MCR 5.971, which is now MCR 3.971, when taking respondent's plea.

Respondent has likewise failed to establish that counsel was ineffective by failing to appear at several hearings. The trial court appointed new counsel for respondent, who appeared at the termination hearing. Although respondent indicates that counsel only had five weeks to prepare for the hearing, he does not allege that counsel was unprepared and does not allege that counsel made any errors in representing him at trial. Accordingly, respondent has failed to establish that counsel's performance fell below an objective standard of reasonableness or that the representation so prejudiced him as to deprive him of a fair trial. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994).

Respondent has cited no authority in support of his position that the trial court violated his due process rights by failing to order a psychological evaluation. *In re Powers*, 208 Mich App 582, 588; 528 NW2d 799 (1995). The trial court did not abuse its discretion in considering respondent's lack of progress in other areas of the parent/agency agreement before ordering a psychological evaluation be performed. See MCR 5.923(B), now MCR 3.923(B). Respondent has not shown that his lack of progress was due to some undiagnosed psychological condition.

Affirmed in part, reversed in part. We do not retain jurisdiction.

/s/ Bill Schuette  
/s/ Mark J. Cavanagh  
/s/ Helene N. White