STATE OF MICHIGAN

COURT OF APPEALS

SALLY ANN HUFFMAN a/k/a
SALLY ANN HOLLISTER,

Plaintiff-Appellee,

v

DENNIS HAROLD HUFFMAN,

Defendant-Appellant.

UNPUBLISHED
January 27, 1998

No. 191474
Eaton Circuit Court
LC No. 92-000439 DM

Before: MacKenzie, P.J., and Holbrook, Jr., and Saad, JJ.

PER CURIAM.

Defendant appeals as of right from an order amending the parties' judgment of divorce and suspending defendant's visitation with the parties' minor daughter. We affirm.

In essence, defendant argues that he was denied the effective assistance of counsel in the proceeding that culminated in his visitation rights being suspended. A claim of ineffective assistance of counsel is only viable in criminal proceedings and termination of parental rights proceedings. See *In re Simon*, 171 Mich App 443, 447; 431 NW2d 71 (1988). This Court has specifically found that litigants involved in divorce proceedings, including those which have custody and visitation issues, do not have a constitutional right to counsel and, therefore, no constitutional right to the effective assistance of counsel. *Haller v Haller*, 168 Mich App 198, 199-201; 423 NW2d 617 (1988). Therefore, defendant's arguments based on ineffective assistance of counsel are without merit.

Even if we were to accept defendant's argument that an ineffective assistance of counsel claim is viable in this context, we are not persuaded that defendant's trial counsel was ineffective. Contrary to defendant's assertions on appeal, counsel objected to the admission of two depositions that were conducted without the benefit of cross-examination. Also contrary to defendant's assertions on appeal, the record does not support the conclusion that defense counsel failed to attend the depositions due to his ineptitude. Rather, the record suggests that arrangements were made to have alternate counsel appear at the depositions but other circumstances resulted in no attorney representing defendant at the depositions.

Defendant also argues that trial counsel was ineffective for failing to call expert witnesses. This 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 Barnett*, 163 Mich App 331, 338; 414 NW2d 378 (1987); *People v Kvam*, 160 Mich App 189, 200; 408 NW2d 71 (1987). Decisions as to what evidence to present and whether to call or question witnesses are presumed to be a matter of trial strategy. *People v Mitchell*, 454 Mich 145, 163; 560 N.W.2d 600 (1997). Further, the record suggests that defendant's financial concerns played a role in the choice made by the defense regarding expert witnesses.

Defendant argues that his trial counsel was "asleep at the wheel," which he demonstrates by alleged instances in which defense counsel did not object to hearsay testimony. However, the record is replete with objections interjected by defendant's trial counsel during the course of the hearing. On this record, it cannot be said that defense counsel was "asleep at the wheel."

Defendant also argues evidence was erroneously admitted. Defendant admits that the arguments raised on appeal were not raised below. Consequently, these alleged errors are waived absent manifest injustice. *People v Asevedo*, 217 Mich App 393, 398; 551 NW2d 478 (1996). Defense counsel apparently acceded after voir dire to the admission of some of the evidence now argued to be erroneously admitted. Allowing defendant to attack that evidence now would, in essence, allow him to harbor an appellate parachute. *People v Bart*, 220 Mich App 1, 15; 558 NW2d 449 (1996). Although some of the evidence admitted was arguably inadmissible, in light of the trial court's clarification of the evidence it found persuasive at the hearing on defendant's motion for reconsideration, and our review of the record, we are not convinced that defendant suffered manifest injustice.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Donald E. Holbrook, Jr.
/s/ Henry William Saad