

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JOHN MORAN, Minor

FAMILY INDEPENDENCE AGENCY,

UNPUBLISHED

February 13, 1998

Petitioner-Appellee,

v

No. 201637

Sanilac Juvenile Court

DIANE CABLE,

LC No. 96-032763-NA

Respondent-Appellant.

Before: Gage, P.J., and Murphy and Reilly, JJ.

PER CURIAM.

Respondent appeals as of right from the juvenile court order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(c)(i). We affirm.

Respondent first asserts that the juvenile court erred in assuming jurisdiction. The juvenile court's assumption of jurisdiction may be appealed by right to this Court, MCR 5.993(A)(1)(a), but that appeal must be filed within twenty-one days. MCR 7.101(B)(1)(a). Respondent failed to preserve the issue as it relates to the court's jurisdiction because such a challenge can only be made on direct appeal. *In re Powers*, 208 Mich App 582, 587; 528 NW2d 799 (1995). Furthermore, the petition was timely filed. MCR 5.974(F)(1)(a).

A trial court's decision regarding termination is reviewed in its entirety for clear error. *In re Hall-Smith*, 222 Mich App 470; 564 NW2d 156 (1997). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996). Further, regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *Miller, supra*.

Respondent admitted that the underlying conditions of neglect were caused by her abuse of alcohol. The record showed that she continued to abuse alcohol despite inpatient and outpatient treatment for alcoholism, and voluntarily withdrew from a dual-diagnosis program. The juvenile court did not clearly err in its findings that the conditions which led to the adjudication continued to exist, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child. MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(c)(i); *In re Dahms*, 187 Mich App 644; 468 NW2d 315 (1991).

Nor was respondent's counsel ineffective. In analyzing claims of ineffective assistance of counsel at termination hearings, this Court applies by analogy the principles of ineffective assistance of counsel as they have developed in the criminal law context. *In re Trowbridge*, 155 Mich App 785, 786; 401 NW2d 65 (1986). The failure by respondent to raise this claim below by moving for a new trial or an evidentiary hearing has precluded the development of a record sufficient to decide the issue. *In re Schmeltzer*, 175 Mich App 666, 673; 438 NW2d 866 (1989). The record we are able to examine shows only matters of trial strategy, which this Court will not second guess. *In re Trowbridge, supra*, 787.

Affirmed.

/s/ Hilda R. Gage

/s/ William B. Murphy

/s/ Maureen Pulte Reilly