

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DAVID LOVE MARTINEZ, JR.,
Minor

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TABITHA HOLMES MARTINEZ,

Respondent-Appellant,

and

DAVID LOVE MARTINEZ,

Respondent.

UNPUBLISHED

May 8, 1998

No. 204705

Wayne Juvenile Court

LC No. 92-304112

Before: Corrigan, C.J., and Hoekstra and Young, Jr., JJ.

PER CURIAM.

Respondent mother appeals by right the order terminating her parental rights to her minor child under MCL 712A.19b(3)(b)(ii), (c)(i), (g) and (j); MSA 27.3178(598.19b)(3)(b)(ii), (c)(i), (g) and (j). We affirm.

Respondent argues that the juvenile court clearly erred in determining that statutory grounds for termination of her parental rights existed under MCL 712A.19b(3)(b)(ii), (c)(i), (g) and (j); MSA 27.3178(598.19b)(3)(b)(ii), (c)(i), (g) and (j).¹ We disagree. This Court reviews the court's decision to terminate parental rights in its entirety for clear error. *In re Hamlet (After Remand)*, 225 Mich App 505, 515; 571 NW2d 750 (1997). The court's decision is clearly erroneous if we are left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The juvenile court did not clearly err in finding grounds for termination of respondent's rights in this case. Although respondent made some progress toward completing the goals of her treatment plan, she did not substantially comply with the plan because she failed to make progress on the issues that led the court to assume jurisdiction over the minor child. The trial court assumed jurisdiction in this case because respondent father physically abused the child and respondent failed to protect the child. Respondent failed to complete individual counseling to treat a personality disorder that contributed to her inability to protect her child. She also maintained a relationship with respondent father during the five years the child remained a ward of the court. Further, respondent refused to participate in in-home services designed to ensure that she would provide a safe and stable home for her child. We are not left with a definite and firm conviction that the court made a mistake in finding, based on this evidence, that (1) a reasonable likelihood existed the child would suffer abuse or harm if returned to respondent's home, and (2) no reasonable likelihood existed that respondent would be able to protect her child and provide proper care and custody within a reasonable time. Accordingly, we conclude that the trial court did not clearly err in finding grounds for termination under MCL 712A.19b(3)(b)(ii), (c)(i), (g) and (j); MSA 27.3178(598.19b)(3)(b)(ii), (c)(i), (g) and (j).

Respondent next argues that her trial counsel's failure to present evidence regarding the child's best interests denied her the effective assistance of counsel. We disagree. A respondent in a termination of parental rights proceeding has a right to the effective assistance of counsel. *In re Rogers*, 160 Mich App 500, 502; 409 NW2d 486 (1987); *In re Trowbridge*, 155 Mich App 785, 786; 401 NW2d 65 (1986). To establish ineffective assistance of counsel, respondent must prove that counsel's performance fell below an objective standard of reasonableness and that the representation prejudiced her so as to deprive her of a fair hearing. *Rogers, supra* at 502; cf. *People v Pickens*, 446 Mich 298, 338; 521 NW2d 797 (1994). Because respondent did not raise this issue in an appropriate motion before the juvenile court, however, our review is limited to deficiencies apparent on the record. Cf. *People v Barclay*, 208 Mich App 670, 672; 528 NW2d 842 (1995).

We initially note that the record supports respondent's claim that counsel was apparently unaware that under MCL 712A.19b(5); MSA 27.3178(598.19b)(5), the court must terminate a respondent's parental rights if the respondent does not present evidence from which it can conclude that termination is clearly not in the child's best interests. *In re Hall-Smith*, 222 Mich App 470, 474-473; 564 NW2d 156 (1997). The record, however, is devoid of either evidence or an offer of proof of evidence demonstrating that termination was clearly not in the minor child's best interests. We therefore conclude that respondent was not denied the effective assistance of counsel because she has failed to demonstrate that the representation prejudiced her so as to deprive her of a fair hearing. Cf. *Pickens, supra* at 338.

Affirmed.

/s/ Maura D. Corrigan
/s/ Joel P. Hoekstra
/s/ Robert P. Young, Jr.

¹ The relevant statutory provisions provide that the court may terminate a person's parental rights under the following circumstances:

The child or sibling of the child has suffered physical injury or physical or sexual abuse under . . . the following circumstances:

* * *

(ii) A parent who had the opportunity to prevent the physical injury or physical or sexual abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home. [MCL 712A.19(b)(3)(b); MSA 27.3178(598.19b)(3)(b).]

The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds . . . the following:

(i) The conditions that led to the adjudication continue 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.19(b)(3)(c); MSA 27.3178(598.19b)(3)(c).]

The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the age of the child. [MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g).]

There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent. [MCL 712A.19b(3)(j); MSA 27.3178(598.19b)(3)(j).]