

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

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In the Matter of GRAYLING TARONE  
HUBBARD, JR., MARTHA ANTIA CARTRIE  
HUBBARD, BRIDGETT YVETTE HUBBARD,  
and DEMETRIA ROSETT HUBBARD, Minors.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ARRLANDA CARTRIECE SIMMS,

Respondent-Appellant.

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UNPUBLISHED

April 13, 2001

No. 226459

Wayne Circuit Court

Family Division

LC No. 88-271542

Before: Doctoroff, P.J., and Holbrook Jr and Hoekstra, JJ.

PER CURIAM.

Respondent Arrlanda Simms appeals as of right from an order of the Wayne Circuit Court, Family Division, terminating her parental rights to her children Grayling Hubbard, Jr. (born 1/18/92), Martha Hubbard (born 11/26/92), Bridgett Hubbard (born 11/15/93), and Demetria Hubbard (born 3/12/97), pursuant to MCL 712A.19b(3)(a)(ii), (b)(i), (b)(ii), (c)(i), (g), and (j); MSA 27.3178(598.19b)(3)(a)(ii), (b)(i), (b)(ii), (c)(i), (g), and (j).<sup>1</sup> We affirm.

We review a family court's decision to terminate parental rights for clear error. MCR 5.974(I); *In re Trejo Minors*, 462 Mich 341, 356; 612 NW2d 407 (2000). If a family court determines that the petitioner has proven by clear and convincing evidence one or more statutory grounds for termination, the court must terminate parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *Trejo, supra* at 351-354.

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<sup>1</sup> The court also terminated the parental rights of the child's father, Grayling Hubbard, Sr. He has not appealed the termination.

Here, we find no error in the family court's conclusion that petitioner had proven at least one statutory ground for termination by clear and convincing evidence. Respondent's children were placed in the court's protective custody after the father physically abused two of the children to the extent that they required medical attention. Respondent had an extensive history of drug addiction, and petitioner presented evidence that sometime prior to the termination hearing in July 1999, respondent relapsed into drug abuse. In addition, the court was forced to terminate respondent's visitation in December 1998, due to respondent's disruptive behavior and her inability to control the children. After visitation was terminated, respondent made no effort to regain her visitation rights, and in fact, she effectively abandoned the children by making no contact with petitioner or her own lawyer for several months prior to the hearing in July 1999. Based on this evidence, we agree with the family court that termination was warranted.

We also agree that termination was not clearly against the best interests of the children. Petitioner presented uncontroverted evidence indicating that all four of the children suffered from severe behavioral and psychiatric disorders that resulted directly from respondent's neglect and Hubbard's abuse of the children. The evidence also showed that contact between respondent and the children only served to exacerbate these conditions. Accordingly, we find no error in the family court's conclusion that termination was not clearly against the children's best interests.

Respondent also argues that she received ineffective assistance of counsel because her attorney failed to question or object to witnesses at the termination hearing, failed to present any witnesses or evidence on respondent's behalf, and failed to make any argument against termination of respondent's parental rights. Because respondent failed to preserve this issue by moving for a new trial or an evidentiary hearing at the family court, our review is limited to the existing record. *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000).

A party in a child protective proceeding is entitled to assistance of counsel, and the principles of effective assistance of counsel in the context of criminal proceedings apply by analogy to child protective proceedings. *In re EP*, 234 Mich App 582, 597-598; 595 NW2d 167 (1999), overruled on other grounds 462 Mich 341 (2000). To prove a claim of ineffective assistance of counsel, respondent must show that (1) her counsel's performance fell below an objective standard of reasonableness and (2) the representation so prejudiced her as to deprive her of a fair trial. *People v Pickens*, 446 Mich 298, 309; 521 NW2d 797 (1994). In applying this test, we presume that counsel's conduct fell within a wide range of reasonable professional assistance, and the respondent bears a heavy burden to overcome this presumption. *People v Mitchell*, 454 Mich 145, 156; 560 NW2d 600 (1997); *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999). If the respondent succeeds in proving that counsel's performance was objectively unreasonable, she must then show that, but for the unprofessional errors, the result of the proceeding would have been different. *Id.* at 167; *Snider, supra*, 239 Mich App at 424.

In this case, it is apparent that respondent failed to establish that her counsel's performance was ineffective. Respondent's primary complaints pertain to her counsel's conduct at the termination hearing in July 1999. However, counsel noted at the hearing that he had been unable to contact respondent for months prior to the hearing. Respondent's failure to appear at the March, April, or July 1999 hearings and the fact that her whereabouts were unknown in July 1999, also support the conclusion that respondent failed to maintain communication with her

attorney. In child protective proceedings, a respondent may waive or relinquish her right to counsel by failing to communicate with her attorney. See *In re Hall*, 188 Mich App 217, 222; 469 NW2d 56 (1991). Further, decisions to call or question witnesses, present evidence, or make arguments fall within the parameters of trial strategy, and this Court should not second-guess an attorney's strategic decisions or assess counsel's competence with the benefit of hindsight. *People v Rice (On Remand)*, 235 Mich App 429, 445; 597 NW2d 843 (1999).

Even if respondent could establish that her counsel's performance was objectively unreasonable, respondent failed to show how she was prejudiced by her counsel's performance. Respondent does not cite a single witness or piece of evidence that her counsel could have introduced in opposition to the overwhelming evidence that termination was warranted. We cannot agree that but for her counsel's alleged ineffective assistance, respondent's parental rights would not have been terminated.

Affirmed.

/s/ Martin M. Doctoroff  
/s/ Donald E. Holbrook, Jr.  
/s/ Joel P. Hoekstra