

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DALE ANTHONY HUDACK,
HEATHER ALEXIS HUDACK, JACOB LEE
HUDACK, and STEVEN ANTHONY HUDACK,
Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CHRISTIE HUDACK,

Respondent-Appellant,

and

DALE HUDACK, SR.,

Respondent.

UNPUBLISHED
July 29, 2003

No. 244730
Oakland Circuit Court
Family Division
LC No. 00-645678-NA

Before: Wilder, P.J., and Griffin and Gage, JJ

PER CURIAM.

Respondent-appellant appeals as of right from the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i) and (g). We affirm.

Respondent-appellant's children were taken into care in December 2000 when the family became homeless. Respondent-appellant entered into a parent-agency agreement, which required, among other things, that she obtain suitable housing, attend weekly visitation with the children, maintain employment, complete parenting classes, and attend marriage and family counseling. Throughout this matter, caseworkers reported that respondent-appellant was inconsistent in her visitation with the children, missing a substantial number of visits especially with the younger three children. Respondent-appellant was also unable to obtain appropriate housing and failed to attend counseling.

Following a number of dispositional review hearings, the court ordered petitioner to proceed to termination. Respondent-appellant appeared for trial and entered a plea of no contest

to the petition. Respondent-appellant's counsel asked for the best interests phase to be set for some time in the future to facilitate reevaluation of the parties. The court scheduled the best interests hearing to take place two months later and ordered new psychological evaluations to be performed.

At the best interests hearing, respondent-appellant testified on her own behalf. She advised the court that she loved her children and testified about her relationship with each of them. She also indicated that she was on lists for government subsidized housing and believed that she would be able to obtain appropriate housing within six months to two years. She asked the court to allow her additional time to obtain appropriate housing and to find that termination was clearly not in her children's best interests.

At the conclusion of the hearing, the court ruled that the record as a whole did not show that termination was not in the children's best interests. Therefore the trial court ordered that respondent-appellant's parental rights to the minor children be terminated.

On appeal, respondent-appellant first asserts that she was denied the effective assistance of counsel. In reviewing claims of ineffective assistance of counsel in termination cases, this Court applies by analogy the principles of ineffective assistance of counsel as they have developed in the criminal context. *In re Simon*, 171 Mich App 443, 447; 431 NW2d 71 (1988). Thus, to prevail on this claim, respondent-appellant must show that her counsel's performance was below an objective standard of reasonableness and that the representation so prejudiced her that there is a reasonable probability that, but for counsel's error, the result would have been different. *In re CR*, 250 Mich App 185, 198; 646 NW2d 506 (2001). In reviewing a claim of ineffective assistance of counsel arising out of a plea, the pertinent inquiry is whether the plea was made voluntarily and understandingly. *People v Thew*, 201 Mich App 78, 89; 506 NW2d 547 (1993); *In re Oakland Co Prosecutor*, 191 Mich App 113, 120; 477 NW2d 455 (1991). "The question is not whether a court would, in retrospect, consider counsel's advice to be right or wrong, but whether the advice was within the range of competence demanded of attorneys in criminal cases." *Thew, supra* at 89-90. Ineffective assistance of counsel results when counsel fails to explain to his client the nature and consequences of the plea and the range and consequences of available courses of action so as to allow respondent to make an intelligent and informed choice. *People v Jackson*, 203 Mich App 607, 614; 513 NW2d 206 (1994).

There is nothing in the record to indicate that respondent-appellant's plea was not made knowingly and understandingly. On the contrary, the record is clear that, before accepting her plea, the court properly advised respondent-appellant of her various rights and the allegations against her. Respondent-appellant indicated that she understood those rights and was pleading no contest to the petition. Further, the record reflects that respondent-appellant's attorney reviewed both the petition and her rights with her before she tendered the plea. It was respondent-appellant's wish, and her counsel's strategy, to focus on the best interests phase of the proceeding, asking that it be set for some time in the future to allow respondent-appellant additional time to obtain suitable housing and address other issues. This Court will not second-guess trial counsel on matters of trial strategy. *People v Knapp*, 244 Mich App 361, 386; 624 NW2d 227 (2001). As such, respondent-appellant's argument that she was denied effective assistance of counsel lacks merit.

Respondent-appellant next asserts that her plea was made involuntarily. In making her argument, respondent-appellant focuses on a comment by her counsel that she did not intend to plead no contest to each of the allegations. When reviewed in context, however, the statement makes clear that respondent-appellant did intend to plead no contest to the petition to terminate her rights. Before accepting her plea, the court specifically advised respondent-appellant regarding the ramifications of her plea, telling her that it was going to treat her in every way as if the allegations in the petition were true. Respondent-appellant indicated on the record that she understood the ramifications of her plea and understood what would occur next in the proceedings.

Further, contrary to respondent-appellant's contention, there was sufficient factual basis for her plea. The caseworker testified that, to the best of her knowledge, the allegations in the petition for termination were true. Petitioner offered to have the worker testify regarding each of the allegations, but respondent-appellant's attorney declined, stating that he was satisfied with the worker's testimony as the basis for respondent-appellant's plea. Thus, respondent-appellant cannot now assert that the factual basis was insufficient. *People v Carter*, 462 Mich 206, 214-215; 612 NW2d 144 (2000); *People v Tate*, 244 Mich App 553, 559; 624 NW2d 524 (2001).

Next, respondent-appellant argues that the trial court erred by failing to make findings of fact and conclusions of law as required by court rule. MCR 5.974(G)¹ requires the trial court to state its findings of fact and conclusions of law, including the statutory basis for a termination order, either on the record or in writing. Pursuant to MCR 5.974(G)(1), brief, definite and pertinent findings and conclusions on contested matters are sufficient. Respondent-appellant did not contest the allegations in the petition. As such, the trial court was not required to make findings of fact and conclusions of law regarding these allegations. In addition, the petition to which respondent-appellant pleaded no contest specifically sought termination pursuant to MCL 712.19b(3)(c)(i) and (g). Thus, taken in context of respondent-appellant's plea, the court's findings on the record indicated that it was terminating respondent-appellant's rights pursuant to MCL 712A.19b(3)(c)(i) and (g). The court's statements on the record were sufficient to inform respondent-appellant of the basis for its decision, thereby satisfying the requirements of MCR 5.974(G).

Finally, the trial court did not clearly err in finding that the statutory grounds for termination, MCL 712A.19b(3)(c)(i) and (g), were established by clear and convincing evidence. MCR 5.947(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The record is clear that respondent-appellant remained unable to secure appropriate housing, failed to consistently visit her children, and failed to complete required counseling. From the record, these conditions were not likely to be rectified in a reasonable time. Further, considering the length of time that the children were already in foster care and respondent-appellant's unwillingness or inability to comply with the requirements of the parent-agency agreement, the evidence did not show that termination of respondent-appellant's parental rights was clearly not in the children's best

¹ Effective May 1, 2003, the court rules governing proceedings regarding juveniles were amended and moved to the new subchapter 3.900. The provisions on termination of parental rights are found in MCR 3.977. In this opinion, we refer to the rules in effect at the time of the order terminating parental rights.

interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Thus, the trial court did not err in terminating respondent-appellant's parental rights to the minor children.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Richard Allen Griffin
/s/ Hilda R. Gage