

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of J. I. POOLE, Minor.

UNPUBLISHED  
July 24, 2014

No. 319138  
Oakland Circuit Court  
Family Division  
LC No. 08-743365-NA

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Before: MARKEY, P.J., and OWENS and FORT HOOD, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating his parental rights to his minor child. We affirm.

Respondent first argues that there was insufficient evidence for the trial court to have exercised jurisdiction over the minor child based on respondent's actions and/or inactions, and as such, the trial court lacked the authority to order respondent's compliance with the parent-agency agreement. However, because respondent's parental rights to the minor child were terminated after the filing of a supplemental petition and respondent appeals the termination order rather than the initial dispositional order, respondent's argument is an impermissible collateral attack on the trial court's exercise of jurisdiction. See *In re SLH*, 277 Mich App 662, 669; 747 NW2d 547 (2008) (stating that "an adjudication cannot be collaterally attacked following an order terminating parental rights . . . when a termination occurs following the filing of a supplemental petition for termination after the issuance of the initial dispositional order"); see also MCR 3.993(A)(1). Thus, we will not consider the merits of respondent's argument.

We note that respondent's reliance on *In re Sanders*, \_\_\_ Mich \_\_\_; \_\_\_ NW2d \_\_\_ (2014), to argue that the adjudication was improper because he was not adjudicated by a jury is misplaced. *Sanders* held that there is a statutory right to a jury trial. *Id.* at \_\_\_ n 15. However, respondent must exercise this right by demanding a jury trial, which he failed to do. Only the mother demanded a jury trial. Since he did not demand a jury trial, he only had the right to a bench trial, which he was afforded in this case. Because respondent failed to appear at the adjudication hearing, but was represented by counsel at that hearing, he cannot now claim that he was denied his right to demand a jury trial. Based on the evidence provided, the trial court made specific adjudicative findings with regard to respondent, including that he failed to provide, or even attempted to provide, child support, maintenance, and care, had not been present in the child's life since the removal in October 2012, had been convicted of numerous crimes, which involved guns and drugs, and did not have a fit home. Thus, because the trial court made a

specific adjudication of respondent's unfitness, the constitutional safeguards pronounced in *Sanders* were satisfied.

Respondent also argues that he received ineffective assistance of counsel. Because respondent did not move for a new trial or an evidentiary hearing, appellate review of respondent's claims of ineffective assistance of counsel is limited to the record. *People v Payne*, 285 Mich App 181, 188; 774 NW2d 714 (2009). "Whether [respondent] was denied the effective assistance of counsel presents a mixed question of fact and constitutional law. We review for clear error a circuit court's findings of fact. We review de novo questions of constitutional law." *People v Vaughn*, 491 Mich 642, 650; 821 NW2d 288 (2012).

"[T]he principles of effective assistance of counsel developed in the context of criminal law apply by analogy in child protective proceedings." *In re CR*, 250 Mich App 185, 197-198; 646 NW2d 506 (2001), overruled on other grounds by *In re Sanders*, \_\_\_ Mich \_\_\_ (2014). Therefore, to establish ineffective assistance of counsel, respondent must satisfy the two-part test set forth in *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984). *Vaughn*, 491 Mich at 669. Specifically, respondent "must establish that 'counsel's representation fell below an objective standard of reasonableness' and that 'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" *Id.*, quoting *Strickland*, 466 US at 694. Respondent bears a heavy burden to overcome the presumption of effective assistance. *Vaughn*, 491 Mich at 670.

To the extent respondent argues that but for his first appointed attorney's conduct at adjudication, including the failure to object to adjudication, the trial court would not have assumed jurisdiction over respondent, we decline to address this argument because it amounts to an impermissible collateral attack on the trial court's adjudication. *In re SLH*, 277 Mich App at 669. But we do note that any alleged error on counsel's part would not have affected the outcome, where sufficient evidence was presented for the trial court to assume jurisdiction over respondent, including respondent's failure to pay child support and to provide care, maintenance, and a fit home for the child, and his numerous convictions. See *Vaughn*, 491 Mich at 669.

With respect to respondent's argument that his second appointed attorney provided ineffective assistance by admitting his unfamiliarity with the case and recommending that respondent plead no contest to the allegations in the supplemental petition, we find no error. The only evidence respondent cites in support of counsel's unpreparedness is the portion of his opening statement in which he stated, "I'm recently appointed for the case. I've only been involved for about a month. I'm not familiar with the jury trial slash [sic] bench trial and what was decided there." While counsel is responsible for "preparing, investigating, and presenting all substantial defenses," *People v Chapo*, 283 Mich App 360, 371; 770 NW2d 68 (2009), the quoted statements alone do not indicate lack of preparedness. Additionally, respondent fails to demonstrate how counsel was ineffective for suggesting that he plead no contest where the record shows that respondent failed to support the minor child financially, supplied the child's mother with marijuana while she was living with the minor child, refused drug testing, and had not visited the child, and that the minor child tested positive for marijuana. Respondent cannot

show that, but for his decision to plead no contest to the allegations in the supplemental petition, the trial court would not have found that one or more statutory grounds existed to support the termination of respondent's parental rights over the minor child.<sup>1</sup>

Affirmed.

/s/ Jane E. Markey  
/s/ Donald S. Owens  
/s/ Karen M. Fort Hood

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<sup>1</sup> Statutory grounds for termination included MCL 712A.19b(3)(a)(ii) (parent deserted child for 91 or more days), MCL 712A.19b(3)(g) (neglect), MCL 712A.19b(3)(j) (reasonable likelihood that the minor child would be harmed if returned to the parent's home).