

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of A.H. and D.H., Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LYNN YORK,

Respondent-Appellant,

and

JOHN DICKENSHEETS and PAUL PERRYMAN,

Respondents.

In the Matter of A.H. and D.H., Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JOHN DICKENSHEETS,

Respondent-Appellant,

and

LYNN YORK and PAUL PERRYMAN,

Respondents.

UNPUBLISHED

April 23, 2002

No. 232407

Kent Circuit Court

Family Division

LC No. 98-100500-NA

No. 233147

Kent Circuit Court

Family Division

LC No. 98-100500-NA

Before: Owens, P.J., and Markey and Murray, JJ.

PER CURIAM.

In Docket No. 232407, respondent-appellant Lynn York (“respondent mother”) appeals by delayed leave granted from an order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (c)(ii) and (g). In Docket No. 233147, respondent-appellant John Dickensheets (“respondent father”) appeals by right from the same order terminating his parental rights to DH pursuant to MCL 712A.19b(3)(c)(ii) and (g). The appeals have been consolidated for this Court’s consideration. We affirm.

Respondents-appellants claim that the trial court erred in terminating their parental rights because petitioner failed to present clear and convincing evidence to establish a statutory ground for termination. We disagree. Although the trial court may have erred in terminating respondent mother’s parental rights under § 19b(3)(c)(i), where, in a narrow sense, the evidence did not show that the specific conditions that led to adjudication continued to exist at the time of the termination hearing, any error in this regard was harmless. The evidence clearly and convincingly showed that termination of respondent mother’s parental rights, as well as respondent father’s parental rights, was justified under § 19b(3)(g). *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000). Further, the evidence did not show that termination of respondents-appellants’ parental rights was clearly not in the children’s best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Thus, the trial court properly terminated respondents-appellants’ parental rights.¹

Respondent mother also claims that she was deprived of her right to the effective assistance of counsel because her trial attorney failed to present evidence at a review hearing to indicate that she had enrolled AH in school and that school policy allowed AH to be immunized anytime before November 1998. According to respondent mother, if trial counsel had presented this evidence, the children, who had already been adjudicated temporary court wards, would not have been removed from her home and placed in foster care. Additionally, respondent mother claims that trial counsel should have appealed the order placing the children in foster care.

Although the constitutional provisions guaranteeing the right to counsel apply only in criminal proceedings, the right to due process indirectly guarantees assistance of counsel in child

¹ Contrary to respondent mother’s claim, the trial court did not terminate her parental rights under subsection 19b(3)(b)(ii). Additionally, we reject respondent mother’s claim that the trial court placed undue emphasis on the delay between adjudication and termination. There is nothing in the record to indicate that the trial court placed any emphasis, let alone undue emphasis, on the delay in this case or that the court blamed respondent mother for the delay. However, we note that it is clear that a significant portion of the delay was, in fact, attributable to respondent mother. Although provided with a variety of services, both before and after the children were adjudicated temporary court wards, respondent mother refused to acknowledge her long-term substance abuse problem, continued to use marijuana throughout the pendency of the case, and refused to comply with key aspects of the treatment plan. It was respondent mother’s failure to rectify her substance abuse problem that prevented the children from being returned to her care.

protective proceedings. *In re EP*, 234 Mich App 582, 597-598; 595 NW2d 167 (1999), overruled on other grounds in *In re Trejo*, *supra* at 353. Thus, the principles of effective assistance of counsel developed in the context of criminal law apply by analogy in child protective proceedings. *In re EP*, *supra* at 598; *In re Simon*, 171 Mich App 443, 447; 431 NW2d 71 (1988); *In re Trowbridge*, 155 Mich App 785, 786; 401 NW2d 65 (1986). To prevail on a claim of ineffective assistance of counsel, a respondent must show that her trial counsel's performance was deficient, i.e., that her attorney's performance fell below an objective standard of reasonableness and that the representation so prejudiced her that it denied her a fair trial. *People v Pickens*, 446 Mich 298, 338; 521 NW2d 797 (1994). Respondent must show that she was prejudiced by her attorney's conduct; in other words, she must show that there is a reasonable probability that but for counsel's unprofessional errors, the result would have been different. *People v Johnson*, 451 Mich 115, 124; 545 NW2d 637 (1996).

Respondent mother's ineffective assistance of counsel claims must fail. First, even if the school would have allowed respondent mother until November 1998 to obtain AH's school immunizations, the trial court had ordered respondent mother to obtain the immunizations on June 22, 1998. There was no dispute that respondent mother still had not obtained the immunizations by August 27, 1998, over two months after she was ordered to do so. Thus, evidence that the school would have allowed respondent mother until November 1998 to obtain the immunizations was irrelevant in light of the trial court's June 22, 1998, order. Furthermore, the children were not removed from respondent mother's home simply because she failed to have AH immunized. The children were removed because respondent mother was not complying with several key aspects of the treatment plan, including submitting drug screens, maintaining stable housing, and seeking medical treatment for the children's head lice. In light of respondent mother's noncompliance with these other key elements of the treatment plan, there is no reasonable likelihood that the result would have been different had counsel presented evidence of the school policy on immunizations. Additionally, because the decision to remove the children from respondent mother's home was supported by evidence of her continued drug use, the fact that she was about to be evicted from her home, and the fact that she had not obtained treatment for her children's head lice, respondent mother was not prejudiced by trial counsel's failure to appeal the order placing the children in foster care. Any appeal would have been futile.

Lastly, we reject respondents-appellants' claims that the court's failure to meet the time requirements set forth in MCR 5.974(F)(1) requires reversal. The court rule provides no sanctions for violation of the time requirements, and we will not impose sanctions that the Legislature and the Supreme Court have declined to impose. *In re Jackson*, 199 Mich App 22, 28-29; 501 NW2d 182 (1993); *In re DaBaja*, 191 Mich App 281, 287-288; 477 NW2d 148 (1991). Further, respondents-appellants have not shown that they were prejudiced by the trial court's failure to meet the time requirements set forth in MCR 5.974(F).

We affirm.

/s/ Donald S. Owens

/s/ Jane E. Markey

/s/ Christopher M. Murray