

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of KEN'TAISHA LANA HEART,
Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

KENYANIKA HEART,

Respondent-Appellant.

UNPUBLISHED

March 17, 2005

No. 258784

Saginaw Circuit Court

Family Division

LC No. 03-028686-NA

Before: Murray, P.J., and Markey and O'Connell, JJ.

PER CURIAM.

Respondent appeals as of right from the order terminating her parental rights to her minor child pursuant to MCL 712A.19b(3)(c)(i) and (g). We affirm.

Respondent first argues that there was insufficient evidence for the trial court to assume jurisdiction in the case. Consideration of this issue is procedurally barred. As we stated recently, "Matters affecting the court's exercise of its jurisdiction may be challenged only on direct appeal of the jurisdictional decision, not by collateral attack in a subsequent appeal of an order terminating parental rights." *In re Gazella*, 264 Mich App 668, 679-680; ___ NW2d ___ (2005), citing *In re Powers*, 208 Mich App 582, 587-588; 528 NW2d 799 (1995). As no such direct appeal was filed, the issue cannot now be reviewed.

Respondent next presents several arguments regarding the adequacy of her representation by counsel. We review ineffective assistance of counsel claims in child custody proceedings by the same standard as we employ in criminal proceedings. The respondent must show "that counsel's performance fell below an objective standard of reasonableness, and that the representation so prejudiced her that it denied her a fair trial. This necessarily entails proving prejudice to [respondent], which means that there is 'a reasonable probability that, but for counsel's unprofessional errors, the result would have been different.'" *In re CR*, 250 Mich App 185, 198; 646 NW2d 506 (2002) (internal case citation omitted).

Here, we find this standard not to have been met. The evidence of respondent's unfitness to provide proper care and custody for her five-year-old daughter was overwhelming. Moreover, the assertions that respondent makes regarding assistance having been ineffective are, for the

most part, somewhat exaggerated. We would note, for example, that at the review hearing in this matter, although counsel did arrive late and was initially confused regarding whose case was being heard, she did offer appropriate argument for respondent once the confusion was cleared up. In addition, we would note that, contrary to respondent's argument, respondent's new counsel indicated at the termination hearing that he had read the case file. Moreover, the fact that he had not been able to contact respondent was clearly the result of the difficulty in locating respondent, not his own lack of effort.

Finally, we address respondent's claim that process was not properly served upon her and that counsel failed properly to raise this issue. The record indicates that the process server went to respondent's home and attempted to serve a summons upon her, and that she refused to come to the door. Moreover, service by publication was made. Given the impossibility of effecting service of process by other means, this was appropriate under MCR 3.920(B)(4)(b).

Affirmed.

/s/ Christopher M. Murray

/s/ Jane E. Markey

/s/ Peter D. O'Connell