

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SYDNEY GRACE DIBERT,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

GRACE ARLENE CHICK,

Respondent-Appellant.

UNPUBLISHED

May 12, 2009

No. 288884

Osceola Circuit Court

Juvenile Division

LC No. 08-004443-NA

Before: K. F. Kelly, P.J., and Cavanagh and Beckering, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(j) and (m). We affirm.

I. Basic Facts

This case concerns an original petition for termination of parental rights. The minor child was removed from respondent's care at birth, approximately eight months after respondent had voluntarily relinquished her parental rights to four older children who were under the jurisdiction of the court by virtue of child protective proceedings. Following a two-day adjudication trial, a jury found that jurisdiction over the minor child existed. The trial court terminated respondent's parental rights at the initial dispositional hearing. This appeal followed.

II. Standards of Review

Respondent contends that reversal and a new trial is necessary because counsel was ineffective and because the trial court erroneously determined that termination of respondent's parental rights was in the child's best interests. To prevail on a claim of ineffective assistance of counsel, respondent must show that counsel's performance was deficient, such that it "fell below an objective standard of reasonableness" and that respondent was so prejudiced that she was denied a fair trial. *In re CR*, 250 Mich App 185, 198; 646 NW2d 506 (2002). To show prejudice, respondent must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result would have been different." *Id.* We note that there is a strong presumption that counsel was effective and his or her decisions based on sound trial strategy,

which respondent must overcome in order to prevail. *People v Unger*, 278 Mich App 210, 242; 749 NW2d 272 (2008). Further, we review for clear error a trial court's decision to terminate parental rights. *In re Roe*, 281 Mich App 88, 95 ; ___ NW2d ___ (2008). "A circuit court's decision to terminate parental rights is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

III. Ineffective Assistance of Counsel

Respondent's ineffective assistance of counsel claim focuses on her attorney's failure to raise numerous objections and, further asserts, that when considered cumulatively, had counsel not made these errors the result of the trial would have been different. We consider each of the alleged errors in turn.

A. Hearsay Statements

Respondent first contends that counsel was ineffective for failing to object to several hearsay statements, including the admission of a police report containing statements from the complainant, Sunday Quinn, and statements made to complainant by her children, Ms. Quinn's testimony regarding what her children and respondent's child said to her, and caseworker Miguel Solis's testimony regarding what a foster parent told him. We cannot grant the relief requested based on these arguments. It is true that only legally admissible evidence may be considered during adjudication proceedings. MCR 3.972(C)(1). In the absence of an applicable hearsay exception, hearsay evidence is inadmissible if offered to prove the truth of the matter asserted. See MRE 801(c); MRE 802; MRE 803.

Assuming, without deciding, that all of this evidence constitutes inadmissible hearsay and that counsel could not have had any strategic reason for not objecting, we nonetheless cannot conclude that but for these errors there is a reasonable probability that the result would have been different. *In re CR, supra* at 198. In other words, after our review of the record, it is plain that petitioner established by admissible evidence that which was contained in the hearsay statements, thereby making respondent's counsel's failure to object harmless. We note that the only improper hearsay not duplicated in admissible evidence was Ms. Quinn's statement, in both the police report and her testimony, that respondent's child had knocked on Ms. Quinn's door and asked of respondent's whereabouts. However, in light of the evidence as a whole, which demonstrated that respondent had neglected her children, repeatedly engaged in relationships with abusive men, and as of the termination order continued to reside with an individual convicted of child abuse, we cannot conclude that but for this error alone, the result would have been different. As such, respondent has failed to show that counsel rendered ineffective assistance on these bases.

B. Writing to Refresh Memory

Respondent next argues that counsel erred by failing to object when Ms. Quinn, after being shown a police report relating to an incident when one of respondent's children was found unattended, testified that the child was not wearing a coat and was found again outside unattended shortly after the police left without stating that her memory had been refreshed. Respondent does not cite to any authority in support of her argument that the prosecuting

attorney must verify that the document refreshed the witness's memory by having the witness state as much on the record. "An appellant may not merely announce its position and leave it to this Court to discover and rationalize the basis for its claims, unravel or elaborate its argument, or search for authority for its position" *Greater Bethesda Healing Springs Ministry v Evangel Builders & Constr Managers, LLC*, ___ Mich App ___ ; ___ NW2d ___ (2009). In any case, we fail to see how counsel's failure to object fell below an objective standard of reasonableness, or how, but for this error, the outcome of the proceeding would have been different. *In re CR, supra* at 198.

C. Authentication

Respondent's claim that counsel was ineffective for failing to object when respondent was questioned regarding a document that she was shown, and did not recognize, in violation of MRE 901 is also unavailing. MRE 901 makes authentication of a document a condition precedent to its admissibility. Opposing counsel, however, never sought to admit the evidence, it was not subsequently admitted, and thus this rule was inapplicable. Counsel cannot be ineffective for failing to raise a futile objection. *People v Ackerman*, 257 Mich App 434, 455; 669 NW2d 818 (2003). For this reason, respondent's argument fails.

D. Leading Questions

Respondent further contends that counsel performed ineffectively by failing to object to petitioner's leading questions directed to petitioner-witness Mr. Solis. The record does reflect that some leading questions were posed; however, use of them was not pervasive. In our view, respondent has not overcome the presumption that counsel's decision not to object constituted sound trial strategy. *Unger, supra* at 242. For instance, counsel may have refrained from objecting so as not to unnecessarily attract unfavorable attention to respondent. For this reason, we cannot conclude that counsel's performance fell below an objective standard of reasonableness.

E. Speculative Testimony

Finally, respondent claims that counsel was ineffective for failing to object when petitioner asked her questions beginning with "could it be" or "is it possible," calling for answers that were speculative and not based on personal knowledge. The questions respondent now complains of were asked during cross-examination, where some latitude in how a question is framed is common. See MRE 611(c)(2). Arguably then, petitioner's questioning was not improper. Because counsel cannot be ineffective for failing to raise a futile objection, *Ackerman, supra* at 455, we cannot conclude that the failure to object fell below the objective standard of reasonable performance, *In re CR, supra* at 198. Further, even if petitioner did improperly elicit speculative testimony, we cannot conclude that but for this error, the result of the trial would have been different.

F. Cumulative Error

Lastly, respondent asserts that the cumulative effect of these errors was to deny respondent a fair trial. See *In re Cooper*, 236 Mich App 643, 659-660; 601 NW2d 409 (1999). While it is true that "the cumulative effect of a number of minor errors may in some cases

amount to error requiring reversal[,]” *id.* at 660, that is not the case in the instant matter. Under the circumstances here, even when all the errors or arguable errors are considered cumulatively, they only constitute a collection of minor errors that, upon full review of the record, leave no impression of having compromised the fairness of respondent’s trial. Reversal is not warranted on the basis of cumulative error.

IV. Best Interests

Respondent also argues that the trial court clearly erred when it found that termination of her parental rights was in the best interests of the child. See MCL 712A.19b(5). Specifically, respondent contends that the reasons the trial court referenced in support of its decision were insufficient. We disagree. Under the statute, once a trial court finds that statutory grounds for termination are established by clear and convincing evidence, it may only then terminate parental rights if it also finds that termination is in the child’s best interests. MCL 712A.19b(3); MCL 712A.19b(5).

Here, the trial court found that grounds for termination existed, as respondent concedes, because respondent voluntarily released her parental rights to her four oldest children. MCL 712A.19b(3)(m). The trial court then determined that termination of respondent’s parental rights was in the child’s best interests as respondent continued to live with an abusive partner. After our review of the record, it is plain to us that the trial court did not clearly err by determining that termination of respondent’s parental rights was in the child’s best interests. *In re Roe, supra* at 95. Accordingly, we decline to grant the relief requested.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Mark J. Cavanagh
/s/ Jane M. Beckering