

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ANM, SNM, DNM, and HNM,
Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

NASSER HUSSAIN MURSHED,

Respondent-Appellant.

UNPUBLISHED

April 20, 2010

No. 293203

Wayne Circuit Court

Family Division

LC No. 08-480019

Before: MARKEY, P.J., and ZAHRA and GLEICHER, JJ.

PER CURIAM

Respondent appeals by right the trial court's order terminating his parental rights to the minor children under MCL 712A.19b(3)(j) (children likely harmed if returned) and (n)(i) (parent convicted of a specified crime). Respondent challenges the trial court's findings of fact regarding those statutory factors and its best-interests determination. Respondent also asserts that he lacked effective assistance of counsel. We affirm.

Evidence was presented to the trial court that respondent's then-seven-year-old niece reported that every time she came to respondent's house, "His pee-pee, you know, hurt my pee-pee." The child further described respondent's discharge of "white clear sticky stuff." Respondent admitted that he had pleaded guilty to assault with intent to commit second-degree criminal sexual conduct.¹ Respondent estimated that at the time of the incident underlying the conviction, his niece was about five years old. He stated that the children were present in the house, but that he had sent them to the basement. Respondent reported that he had, for the past four weeks, participated in sex-offender treatment.

¹ MCL 750.520g(2).

The children's mother, who was married to but separated from respondent, testified that she and respondent had a history of domestic violence to which the children were sometimes exposed. The mother additionally testified that she often had to beg respondent for money, that she and the children once had to go without heat from January to April, and that respondent was trying to evict them from their house.

We note that, despite respondent's participation in sex-abuse treatment, he offered neither evidence of having successfully completed any such program, nor any specialist's opinion that he had reformed his inclinations toward pedophilia. It was on the basis of those inclinations that the trial court concluded that termination was in the children's best interests.

In light of this clear and convincing evidence, we conclude that the trial court neither clearly erred in finding that statutory grounds for termination were established, nor in finding that termination was in the children's best interests. See MCR 3.977(J); MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

Nor can we agree with respondent's assertion that he lacked effective assistance of counsel. "In analyzing claims of ineffective assistance of counsel at termination hearings, this Court applies by analogy the principles of ineffective assistance of counsel as they have developed in the criminal law context." *In re Simon*, 171 Mich App 443, 447; 431 NW2d 71 (1988). Thus, a party claiming ineffective assistance of counsel must show that counsel's performance fell below an objective standard of reasonableness and that the representation was so prejudicial as to result in deprivation of a fair trial. *Strickland v Washington*, 466 US 668, 687-688, 690; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994). The party must further show that the result of the proceeding was fundamentally unfair or unreliable, and that but for counsel's poor performance the result would have been different. *People v Rodgers*, 248 Mich App 702, 714; 645 NW2d 294 (2001).

We will not substitute our judgment for that of counsel regarding matters of trial strategy, nor will we assess counsel's competence with the benefit of hindsight. *Strickland*, 466 US 689. Counsel's decisions concerning the choice of witnesses or theories to present are presumed to be exercises of sound trial strategy. *People v Julian*, 171 Mich App 153, 158-159; 429 NW2d 615 (1988). To overcome that presumption, a person claiming ineffective assistance must show that counsel's lack of preparation resulted in counsel's ignorance of evidence that would have substantially benefited his client's case. *People v Caballero*, 184 Mich App 636, 640, 642; 459 NW2d 80 (1990).

Respondent raises several speculative arguments, including that he would have fared better had counsel elicited testimony from the children or the author of the clinical report the court relied on, or had counsel elicited more information from respondent concerning his care of the children or participation in sex-abuse counseling. Respondent does not suggest precisely what information beneficial to him would have thus come to light. Further, any such testimony of the sort he now argues should have been presented might have provided petitioner opportunities for effective cross-examination. Such argument is an invitation to undertake the hindsight-driven analysis in which we must not engage. *Strickland*, 466 US 689.

In sum, respondent has failed to overcome the presumption that he had the benefit of effective assistance of counsel. *Id.*; *Rodgers*, 248 Mich App at 714.

We affirm.

/s/ Jane E. Markey
/s/ Brian K. Zahra
/s/ Elizabeth L. Gleicher