

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of D.J.B. and D.S.B., Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

SHERRY DENISE BARNES,

Respondent-Appellant,

and

ROBERT BROWN,

Respondent.

UNPUBLISHED

May 22, 2003

No. 234479

Wayne Circuit Court

Family Division

LC No. 91-294190

Before: Murray, P.J., and Neff and Talbot, JJ.

MEMORANDUM.

Respondent Sherry Denise Barnes appeals as of right from the trial court's order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (g), (i), (j), and (l).¹ We affirm.

Respondent argues that the children were "unlawfully" removed from their placement on an "extended visit" in her home, contrary to MCR 5.973(E). There is no merit to this claim. Contrary to what respondent argues, a dispositional hearing was held concerning the children's placement when concerns about respondent's compliance with the parent-agency agreement were reported to the court. Respondent had not completed a drug screen in over three months and had not been available for court ordered services. At that time, the court ordered a change of

¹ Although the trial court also identified MCL 712A.19b(3)(a)(i) and (k) as additional bases for termination, the record indicates that these subsections were applicable only to the putative father, Robert Brown, who is not a party to this appeal.

placement from “Family Independence Agency/Mother,” to “FIA/Foster Care or Suitable Relative.” The procedure was consistent with the requirements of MCR 5.973(E).

In light of our conclusion that an appropriate hearing was held consistent with MCR 5.973(E), we also reject respondent’s argument that her counsel was ineffective for not requesting a hearing. *People v Mitchell*, 454 Mich 145, 156; 560 NW2d 600 (1997); *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973); *People v Williams*, 223 Mich App 409, 414; 566 NW2d 649 (1997). Counsel was not required to make a futile motion. *People v Darden*, 230 Mich App 597, 605; 585 NW2d 27 (1998).

Respondent does not argue that the statutory grounds for termination were not proved, or that termination of her parental rights was contrary to the children’s best interests. Accordingly, we may assume for purposes of this decision that the court did not clearly err in this regard. *In re Sours Minors*, 459 Mich 624, 632-633; 593 NW2d 520 (1999).

Affirmed.

/s/ Christopher M. Murray

/s/ Janet T. Neff

/s/ Michael J. Talbot