

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DENNIS JAMES MAY, JACOB
LAWRENCE MAY, JANEEN RENE-
DANNIELE MAY, JORDAN ROBERT-LOUIS
MAY, and JILLIAN RYANN MAY, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DENNIS MAY,

Respondent,

and

ROCHELLE MAY,

Respondent-Appellant.

UNPUBLISHED

March 27, 2007

No. 273107

Monroe Circuit Court

Family Division

LC No. 05-018910-NA

Before: Zahra, P.J., and Bandstra and Owens, JJ.

PER CURIAM.

Respondent Rochelle May appeals as of right from an order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The children were removed from respondent's custody because of her failure to protect them from abuse by the children's father and because her own addiction to crack cocaine impeded her ability to properly care for them. Although respondent initially began substance abuse counseling, domestic violence counseling, and consistently visited with her children, once her husband was released from jail in April 2006, she stopped attending counseling, ceased submitting random drug screens, was fired from her job, and stopped visiting the children. There was no evidence that respondent had remained substance free or that she was willing to enter an inpatient treatment program and maintain sobriety for six months in order to

regain custody of her children. The trial court did not clearly err in finding that termination of respondent's parental rights was warranted under §§ 19b(3)(c)(i), (g), and (j).

Further, the evidence did not clearly show that termination of respondent's parental rights was not in the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

Respondent also argues that her trial attorney was ineffective because he neither presented evidence, nor argued, that termination of her parental rights was contrary to the children's best interests.

Effective assistance of counsel is presumed and the respondent bears a heavy burden of proving otherwise. *People v Noble*, 238 Mich App 647, 661-662; 608 NW2d 123 (2000). Because respondent did not raise this issue in a motion for a new trial or request for an evidentiary hearing, our review is limited to errors apparent on the record. *Id.* Respondent must show that her counsel's performance fell below an objective standard of reasonableness and was so prejudicial that she was denied a right to a fair trial. *Id.* To establish prejudice, respondent must show that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *Id.*

Although respondent's counsel did not present any testimony or evidence on her behalf, he thoroughly cross-examined petitioner's witnesses about respondent's progress during the proceedings. The witnesses testified that respondent had not maintained her sobriety or participated in any services in the last four months and failed to rectify the conditions that brought the children into care. Respondent has not identified any specific evidence that could have been presented to support an argument that termination of her parental rights was clearly contrary to the children's best interests, nor is such evidence apparent from the record. Accordingly, respondent has not shown that she was deprived of the effective assistance of counsel.

Affirmed.

/s/ Brian K. Zahra
/s/ Richard A. Bandstra
/s/ Donald S. Owens