

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of B.L., C.L., and S.L., Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MIKEL D. LUCAS,

Respondent-Appellant,

and

CHERYL LOSEY,

Respondent.

UNPUBLISHED

May 22, 2003

No. 245537

Kent Circuit Court

Family Division

LC No. 00-000889

Before: Whitbeck, C.J., and White and Donofrio, JJ.

MEMORANDUM.

Respondent-appellant appeals by delayed leave granted trial court order terminating his parental rights to CL and SL under MCL 712A.19b(3)(b)(i), (j), and (k)(ii). We affirm.

The trial court did not violate respondent-appellant's right to due process in not providing him an additional opportunity to present best interests evidence. In this case, respondent-appellant's parental rights were terminated at the initial disposition, as allowed by MCR 5.974(D). The trial court advised respondent-appellant of his right to a trial and to present evidence, but respondent waived those rights and pleaded no contest to the allegations in the termination petition. A party may not waive objection to an issue before the trial court and then raise it as error on appeal. *People v Carter*, 462 Mich 206, 214; 612 NW2d 144 (2000).

Although unnecessary, the trial judge asked respondent-appellant whether he believed termination to be in the children's best interests. Respondent-appellant replied that he did not believe that termination was in the children's best interests, but did not elaborate. The trial court was not required to elicit further testimony on the subject of best interests where respondent-appellant did not offer it and where respondent-appellant had waived his right to present further evidence. Additionally, there is no requirement that best interests evidence be taken separately from evidence of the underlying statutory grounds for termination, or that a respondent bears a special burden to go forward with such evidence. Rather, the trial court considers the evidence

on the whole record in making its best interests determination. *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000).

Respondent-appellant next contends that he was denied the effective assistance of counsel when his attorney failed to request an opportunity to present best interests evidence. This issue was not raised in the trial court, so appellate review is limited to the existing record. *People v Sharbnow*, 174 Mich App 94, 106; 435 NW2d 772 (1989). Respondent-appellant did not elaborate on why he felt that termination was not in the children's best interests when asked that question by the trial court judge. His attorney did not act below an objective standard of reasonableness in not pursuing the issue further when respondent-appellant was given the opportunity to respond, particularly in light of the fact that there is no requirement that best interests evidence be taken separately. Additionally, respondent-appellant does not indicate any evidence that he may have given that would have changed the trial court's decision. Counsel's performance was not prejudicially deficient and did not constitute ineffective assistance under an objective standard of reasonableness. Clearly, respondent appellant and counsel employed a specific strategy in the termination proceeding. The Court is reluctant to substitute its judgment for that of trial counsel in matters of trial strategy. *People v Cicotte*, 133 Mich App 630, 636-637; 349 NW2d 167 (1984). Therefore, respondent-appellant was not denied the effective assistance of counsel. *People v Pickens*, 446 Mich 298, 303; 521 NW2d 797 (1994).

Affirmed.

/s/ William C. Whitbeck

/s/ Helene N. White

/s/ Pat M. Donofrio