

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BRITTNEY MARIE SMITH and
DERRICK KWAME HICKS, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DERRICK HICKS,

Respondent-Appellant.

UNPUBLISHED

June 25, 2009

No. 288351

Oakland Circuit Court

Family Division

LC No. 04-698788-NA

Before: Wilder, P.J., and Meter and Servitto, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating his parental rights under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Respondent first argues that the trial court erred in finding that termination of his parental rights was in the children's best interests. MCL 712A.19b(5). This Court reviews the trial court's findings regarding a child's best interests for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Here, there was evidence that the children had been assigned a Department of Human Services caseworker for four years and that respondent was in and out of jail during that time. Furthermore, there was very little compliance with the case-service plan. On the basis of the evidence of respondent's past behavior and lack of progress on the case-service plan, the court had no reason to believe that respondent's behavior would change in the near future. Therefore, we find no clear error in the court's finding that termination of respondent's parental rights was in the children's best interests.

Respondent also argues that he was denied the effective assistance of counsel because his counsel advised him to make a plea of no contest to the allegations in the supplemental petition seeking permanent custody of the children, which essentially established the statutory grounds for termination. When analyzing a claim of ineffective assistance of counsel at a termination hearing, "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). Therefore, a respondent who claims to have been denied the effective assistance of counsel must establish that (1) the performance of counsel was below an objective standard of

reasonableness under prevailing professional norms, and (2) a reasonable probability exists that, in the absence of counsel's unprofessional errors, the outcome of the proceedings would have been different. *Strickland v Washington*, 466 US 668, 687, 694; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v LaVearn*, 448 Mich 207, 213; 528 NW2d 721 (1995); *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994).

At the outset, we note that the trial court (1) established through specific questioning that defendant voluntarily and knowingly pleaded no contest to the petition and (2) ascertained that respondent knew that, if the plea were accepted, the court would find a statutory basis for termination.

Moreover, the record contained evidence that respondent did not substantially comply with the treatment plan, was in and out of jail throughout this case, and did not consistently visit the children when he was out of jail. This evidence would have been sufficient to clearly and convincingly prove the statutory grounds for termination set forth in MCL 712A.19b(3)(c)(i), (g), and (j), had respondent not entered a plea of no contest. We also note that only one statutory ground need be established to warrant termination. *Trejo, supra* at 360. Therefore, respondent has not shown that, but for counsel's advice to plead no contest to the petition, the result of the proceedings would have been different. Accordingly, respondent has not shown that he was denied the effective assistance of counsel.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Patrick M. Meter
/s/ Deborah A. Servitto