STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of MITCHELL MCBRIDE, PAUL MCBRIDE IV, JUSTIN MCBRIDE, KEVIN BADEN, and KODY BADEN, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

FAITH BADEN,

Respondent-Appellant,

and

PAUL MCBRIDE and KEVIN BADEN,

Respondents.

UNPUBLISHED
December 14, 2004

No. 255916
Arenac Circuit Court
Family Division
LC No. 03-008685-NA

In the Matter of MITCHELL MCBRIDE, PAUL MCBRIDE IV, JUSTIN MCBRIDE, KEVIN BADEN, and KODY BADEN, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

KEVIN BADEN,

Respondent-Appellant,

and

PAUL MCBRIDE and FAITH BADEN,

No. 256054
Arenac Circuit Court
Family Division
LC No. 03-008685-NA

Respondents.

Before: Markey, P.J., and Fitzgerald and Owens, JJ.

PER CURIAM.

In these consolidated appeals, respondent Faith Baden appeals as of right the order terminating her parental rights to the five minor children pursuant to MCL 712A.19b(3)(b)(i), (c)(i), and (j). Respondent Kevin Baden appeals as of right from the same order in which his parental rights to Kevin and Kody Baden were terminated. We affirm.

The history of intervention by the Family Independence Agency ("FIA") involving these five children is long and involved. According to petitioner's records, Protective Services received at least thirty-three referrals involving this family over a span of fourteen years. In at least ten of these referrals, Protective Services found the referral to be supported by a preponderance of evidence. Many services were provided, but little benefit was gained. Although the most atrocious maltreatment of the children was committed by Paul McBride, the father of the oldest three children, respondents Faith and Kevin Baden also neglected their children, failed to provide proper parental care including recommended medical treatment, and failed to protect the children from sexual abuse.

Respondents first argue that the trial court did not advise them of the consequences of their pleas of admissions as required by MCR 3.971(B)(4). This issue was not preserved for appellate review because respondents never filed a motion with the trial court to withdraw their pleas. *In re Zelzack,* 180 Mich App 117, 126; 446 NW2d 588 (1989). In addition, respondents are precluded from making this argument since they never appealed the trial court's jurisdictional order or moved for a rehearing to contest the trial court's jurisdiction. Matters affecting the family court's exercise of jurisdiction may be challenged only on direct appeal of the jurisdictional decision, not by collateral attack in a subsequent appeal of an order terminating parental rights. *In re Powers*, 208 Mich App 582, 587-588; 528 NW2d 799 (1995), citing *In re Hatcher*, 443 Mich 426; 505 NW2d 834 (1993).

Moreover, a review of the transcript reveals that respondents proffered their pleas in the hope of starting services and, eventually, being reunited with their children. The FIA, however, represented that a service plan was forthcoming but made no promises in order to induce respondents' pleas. As such, there was no promise made, and there was no promise broken, when the FIA failed to offer services other than the psychological evaluations and eventually filed a termination petition.

Respondents next try to portray the trial court's December 22, 2003, "Order of Disposition" as a true dispositional order, despite the clear evidence and apparent belief of all parties that the order actually applied to the recently-completed plea hearing and that a clerical error had resulted in it being made on a standardized form intended for dispositions. The proper remedy would have been for this clerical mistake to be corrected, either by the court on its own initiative or upon a motion of a party. MCR 2.612(A)(1).

Finally, respondents were not deprived of the effective assistance of counsel. Because respondents failed to seek an evidentiary hearing below or move for a new trial based on ineffective assistance of counsel, this Court's review is limited to mistakes apparent on the record. *People v McCrady*, 213 Mich App 474, 478-479; 540 NW2d 718 (1995). Even if the letter from Kody's treating doctor constituted inadmissible hearsay, such error was harmless since other evidence clearly established respondents' propensity for failing to follow through with medical care for the children. The report by the CPS worker was admissible as an exception to the prohibition against hearsay since it was a listing of records kept in regularly conducted activity pursuant to MRE 803(6). In addition, respondents were not prejudiced by their trial attorney's failure to move for a withdrawal of their pleas since that motion would have been unsuccessful. Lastly, a review of their attorney's closing argument clearly shows that his strategy was to seek another chance for respondents to adequately parent their children without denying their past mistakes and the poor prognosis of success. This argument may not have been shared by respondents, but it did not deprive them of effective assistance of counsel.

Affirmed.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Donald S. Owens