



certain statements that counsel made during his closing argument undermined her case.

To establish her claim, mother needs to show by a preponderance of the evidence that (1) counsel's conduct fell short of the prevailing standard of a reasonably competent attorney, and (2) this incompetence was sufficiently prejudicial to create a reasonable probability of a different result. @ In re M.B. & E.B., 162 Vt. 229, 234 (1994) (quoting Strickland v. Washington, 466 U.S. 668, 694 (1984)). [1] Mother fails to meet her burden.

Assuming, for argument's sake only, that mother's attorney's conduct fell short of the prevailing standard of a reasonably competent attorney, mother fails to show or even assert that this alleged incompetence was sufficiently prejudicial so as to create a reasonable probability of a different result. [2] Mother generally asserts that counsel's shortcomings cast into doubt whether the termination proceeding established the truth. @ She does not identify how a different result would have obtained had counsel acted differently, nor does she identify any evidence that would have contradicted the testimony of numerous witnesses regarding mother's severe parental shortcomings and her absolute failure to comply with the DCF case plan. The family court based its decision on the factors set forth in 33 V.S.A. ' 5540, and its findings appear overwhelmingly supported by the evidence and are hardly contested, if at all, by mother. See id. at 236 (rejecting similar claim of ineffective assistance of counsel where record contained clear and convincing evidence on all the relevant criteria of 33 V.S.A. ' 5540, and evidence supported the termination of parental rights). The court's findings support its conclusion that mother had stagnated in her ability to parent, that she would not be able to resume parenting in a reasonable amount of time, and that termination was in T.M.'s best interests. We find no error.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Denise R. Johnson, Associate Justice

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Brian L. Burgess, Associate Justice

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[1] As in In re M.B. & E.B., we do not reach the issue of whether ineffective assistance of counsel may be raised to challenge a judgment terminating parental rights and we express no opinion as to the viability of such a claim, or the appropriate procedure to hear it. 162 Vt. at 233 n.3. We consider mother's claim of ineffective assistance of counsel in this case because our resolution of the claim does not require evidence about trial counsel's competence and because we conclude that mother's claim has no merit. See id.

[2] We note that, according to the record of mother's refusal to participate in proceedings below, her counsel had little to work with in terms of protecting mother's interests or attacking the State's position.