

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JEREMIAH A. PICKARD, JOSHUA
I. PICKARD, CALEB M. PICARD,
and SARAH P. PICKARD, Minors.

UNPUBLISHED
June 21, 1996

DEPARTMENT OF SOCIAL SERVICES,

Petitioner-Appellee,

v

No. 182814
LC No. 92-000106-NA

JAMES PICKARD,

Respondent-Appellant,

and

REBECCA PICKARD,

Respondent.

Before: Saad, P.J. and McDonald and M. A. Chrzanowski,* JJ

PER CURIAM.

Respondent-appellant, father of the four minor children, appeals from an order of the probate court terminating his parental rights pursuant to MCL 712A.19b(3)(i); MSA 27.317(598.19b)(3)(b)(i) [abuse], and (g) [neglect]. We affirm.

I.

Respondent first argues that he was denied procedural due process because he was not given the opportunity to deny the allegations in the petition, and the trial court assumed jurisdiction upon respondent mother's admission of the allegations. Respondent argues that these admissions should not

* Circuit judge, sitting on the Court of Appeals by assignment.

have been binding upon him. Indeed, at the preliminary hearing, respondent mother did plead no contest to six of the allegations regarding the children's delinquent behavior. However, at that time, *respondent's* counsel stated that respondent "take[s] no position" on the petition. If respondent had desired to challenge the allegations of the petition, he should have done so at that time rather than taking no position. Therefore, he waived his right to a preliminary hearing, and the court properly authorized the petition and assumed jurisdiction. Thus, respondent's challenge to the court's order exercising jurisdiction over this matter was not timely appealed and cannot now be collaterally attacked. *In re Hatcher*, 443 Mich 426, 444; 505 NW2d 834 (1993).

We find no merit to respondent's related "constitutional" challenges. Respondent claims that the procedural defect of failing to file the termination petition within forty-two days of the permanency planning hearing violated due process. Due process requires that there be jurisdiction over the respondent and subject matter of the litigation and that the respondent be afforded notice of the nature of the proceedings and an opportunity to be heard. *In re Kirkwood*, 187 Mich App 542, 546; 468 NW2d 280 (1991). Failure to petition for termination of parental rights within the time provided in MCL 712A.19a(5); MSA 27.3178(598.19a)(5) or MCR 5.974(F)(1)(a) or to conduct a hearing on such a petition within the time provided in MCR 5.974(F)(1)(b) does not require setting aside the order terminating parental rights. *In re Pardee*, 190 Mich App 243, 252; 475 NW2d 870 (1991); *Kirkwood*, supra. Here, respondent participated in the review hearings and was provided a full termination hearing and an opportunity to be heard before termination of his parental rights. Therefore, his due process rights were not violated by the late filing of the supplemental petition.

II.

Respondent argues that the probate court abused its discretion in terminating his parental rights, and that the court failed to limit the evidence to "changed circumstances" (as envisioned in MCR 5.974(E)). In order to terminate parental rights, the probate court must find that at least one of the statutory grounds for termination, MCL 712A.19b; MSA 27.3178(598.19b), has been met by clear and convincing evidence. Once the probate court finds that statutory grounds for termination exist by clear and convincing evidence, the decision to terminate is discretionary, and the best interests of the child are considered. *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993).

Here, respondent's rights were terminated pursuant to §§ 19b(3)(b)(i) and (3)(g), which provide:

- (3) The court may terminate the parental rights of a parent to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

- (b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under either of the following circumstances:

(i) A parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the age of the child.

We find that the probate court properly terminated respondent's parental rights pursuant to these provisions. The court found that respondent has been a "bully" and was physically abusive to respondent mother and the children, hitting them with a plastic bat, a belt, sticks and switches. The court also found that respondent was emotionally abusive and gave as an example respondent's admission that he called Sarah a "whore," a "bitch" and an "asshole." When respondent defended this behavior by stating that he knew other parents who were worse, the court observed that this demonstrated that respondent was so self-possessed and self-centered that he could not see or acknowledge that his behavior may have been an error in judgment. The court also noted that respondent had child support obligations from a previous relationship, and that he had paid only \$600 in child support in two years, and built up a \$7,000 arrearage, and had been jailed for failing to pay support several times. Respondent failed to comply with numerous parent-agency agreements: he failed to follow through on counseling, failed to find a suitable home, and failed to meet with agency workers. (The caseworkers believed that the court-ordered counseling in particular, was necessary so that respondent could learn to combat his anger and learn appropriate discipline techniques to keep him from returning to his abusive ways.)

Testimony from the children, the caseworkers and respondent mother recounted respondent's anger, inappropriate discipline, and physical abuse of the family. Respondent admitted that these incidents were true, but stated that he reacted in a violent manner because he was under pressure. Evidence was also presented regarding respondent's inability to obtain appropriate housing for over two years while the children were wards of the court, and establishing that respondent changed jobs five or six times in the same period of time. The court concluded that respondent was following a pattern of behavior that has existed throughout his adult life, that he has not taken this matter seriously, that he has not tried to improve, and that he placed the blame onto somebody else for everything that went wrong. We have carefully reviewed the record, and conclude that these findings are not clearly erroneous, and that the court did not subsequently err in finding that clear and convincing evidence was presented to terminate respondent's rights under § 19b(3)(b)(i) and (g).

Finally, respondent's argument that the court failed to find "changed circumstances" pursuant to MCR 5.974(E) is without merit. MCR 5.974(E) provides:

The court may take action on a supplemental petition that seeks to terminate the parental rights of a respondent over a child already within the jurisdiction of the court on the basis of one or more circumstance [sic] new or different from the offense that led the court to take jurisdiction. The new or different circumstance shall fall within MCL 712A.19b(3); MSA 27.3178(598.19b)(3), and must be sufficient to warrant termination of parental rights.

The supplemental petition in this case did not invoke MCR 5.974(E) as the basis under which it sought termination. Rather, it relied on the initial allegations of respondent's neglect and abuse, recounted the long history of the case, and alleged respondent's failure to improve or follow court orders or demonstrate his ability to parent. Therefore, because the DSS did not seek termination on the basis of changed circumstances, MCR 5.974(E) is not relevant to this case.

Affirmed.

/s/ Henry William Saad

/s/ Gary R. McDonald

/s/ Mary A. Chrzanowski