

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of Scarlett Rachelle Knickerbocker,  
and Carolann Janielle Knickerbocker, Minors.

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UNPUBLISHED  
August 13, 1996

JAMES OLIVER and KATHRYN OLIVER,

Petitioners-Appellees,

v

No. 183863  
LC No. 94-29990-GD;  
94-29991-GD

BRUCE KNICKERBOCKER,

Respondent - Appellant.

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Before: Hood, P.J., and Griffin and J.F. Foley\*, JJ.

PER CURIAM.

Respondent appeals as of right the termination of his parental rights to his minor twin children, Scarlett Rachelle Knickerbocker and Carolann Janielle Knickerbocker, (d/o/b 10/12/90). The probate court terminated respondent's rights pursuant to MCL 712A.19b(3)(h); MSA 27.3178(598.19b)(3)(h) [incarceration for two or more years/inability to provide a normal home life]. We affirm.

Petitioners, the maternal grandparents of the twin five-year-old girls, obtained physical custody of the children after their mother had left them with another couple. Petitioners subsequently obtained legal guardianship of the children and petitioned the court to terminate parental rights to facilitate their adoption of the children. Respondent, who is currently incarcerated for criminal sexual conduct involving another of his children, does not plan to seek custody in the future but appeals the termination of his parental rights because he wishes to protect his right to visitation.

Respondent argues that the probate court erred in assuming jurisdiction over the children because it lacked the statutory basis under MCL 712A.2(b); MSA 27.3178(598.2)(b). We find that

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

respondent has waived appellate review of this issue by failing to timely pursue his appeal. *In re Hatcher*, 443 Mich 426; 505 NW2d 834 (1993). A probate court's jurisdiction in parental rights cases can be challenged only on direct appeal. *Id.*; *In re Power*, 208 Mich App 582, 5987; 528 NW2d 799 (1995). Specifically, the Supreme Court in *Hatcher* stated, "Our ruling today severs a party's ability to challenge a probate court's decision years later in a collateral attack where a direct appeal was available." *Hatcher, supra* at 444. Therefore, the collateral estoppel bar of *Hatcher* is raised if, at the adjudicatory stage, there was a written order taking jurisdiction from which the respondent could appeal. *In re Bechard* 211 Mich App 155, 159; 535 NW2d 220 (1995).

In this case, on August 9, 1994, James Oliver, the maternal grandfather of the children, was made their temporary guardian. On September 6, 1994, James Oliver was appointed their full guardian and signed an Acceptance of Trust. On October 11, 1994, James Oliver filed a petition to terminate the parental rights of the children's parents. The court held a preliminary hearing on November 2, 1994, and respondent was present. On November 2, 1994, the court entered an order which took jurisdiction, authorized the petition, and set a trial date for December 28, 1994. Respondent's rights were terminated on January 20, 1995. It is from the January 20, 1995, order that respondent appeals. Because the November 2, 1994, order took jurisdiction, a direct appeal from that order was available. We therefore conclude that, pursuant to *Hatcher, supra*, this issue is without merit.

Respondent also contends that the petition to terminate his parental rights was defective because James Oliver was not properly appointed guardian of the children at the time he filed the petition and therefore was not a proper party to file. We disagree. MCR 5.974(1) states that a petition may be filed by the prosecutor, agency or representative of the child. MCL 712A.19b(1); MSA 27.3178(598.19b)(1) specifically allows a guardian, among others, to file a petition for termination of parental rights. On September 6, 1994, the probate court appointed James Oliver as the children's full guardian. The probate court has jurisdiction to appoint a guardian under MCL 700.424(2)(b); MSA 27.5424(2)(b). Respondent does not express the grounds for his assertion that James Oliver was not properly appointed as guardian. We therefore conclude that James Oliver was an appropriate party to file the petition to terminate respondent's parental rights.

Respondent further argues that the probate court erred in terminating his parental rights pursuant to MCL 712A.19b(3)(h); MSA 27.3178(598.19b)(3)(h)<sup>1</sup>. We disagree. In terminating respondent's parental rights, the probate court stated:

The father will be imprisoned until March 1, 1998. His plan to care for these children along with his other children is unrealistic. Assuming his release is March of 1998, it will then take time to establish a home for the children.

In order to terminate a parent's parental rights under MCL 712A.19b(3)(h); MSA 27.3178(598.19b)(3)(h), the three following factors must be present by clear and convincing evidence:

[1] The parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years, and

[2] the parent has not provided for the child's proper care and custody, and

[3] 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. [*In re Perry*, 193 Mich App. 648, 650; 484 NW2d 768 (1992).]

Here, the probate court explicitly found that the first and third elements were satisfied. Respondent does not claim that either of these findings was erroneous. Rather, respondent's argument focuses on the second element (failure to provide for the child's proper care and custody). Respondent argues that when he was incarcerated he entrusted the care of the children to their mother. According to respondent, when he learned that the mother was not properly caring for the children, he did everything he could while in prison to ensure that the children were adequately cared for. He claimed that he called the Department of Social Services and asked the caseworker to act, and telephoned the Olivers and asked them to intervene. Respondent, however, cites no authority to support his contention that these acts preclude a finding that a parent has failed to provide for the child's proper care and custody. Therefore, this argument is abandoned. "A party may not merely announce his position and leave it to [this Court] to discover and rationalize the basis for his claim. *In re Toler*, 193 Mich App 474, 477; 484 NW2d 672 (1992). On the basis of the evidence presented in the record, we conclude that the probate court did not abuse its discretion in terminating respondent's parental rights where its findings were not clearly erroneous.

Affirmed.

/s/ Harold Hood

/s/ Richard Allen Griffin

/s/ John F. Foley

<sup>1</sup> MCL 712A.19b(3)(h); MSA 27.3178(598.19b)(3)(h), provides:

The parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years, and the parent has not provided for the child's proper care and custody, 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.