STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of JESSICA LYNNE HESTER, a Minor.

UNPUBLISHED
December 10, 1996

DEPARTMENT OF SOCIAL SERVICES,

Petitioner-Appellee,

v

No. 188221
LC No. 00-003906

JERRY LYNN GERRARD, JR.,

Respondent-Appellant.

Before: Sawyer, P.J., and Bandstra and M.J. Talbot,* JJ.

PER CURIAM.

Respondent father appeals an order of the probate court terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(g) and (h); MSA 27.3178(598.19b)(3)(g) and (h). We affirm.

The rules related to review of termination decisions were summarized in *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991):

> In order to terminate parental rights, the trial court must find that at least one of the statutory grounds of MCL 712A.19b; MSA 27.3178(598.19b), formerly MCL 712A.19a; MSA 27.3178(598.19a), has been met by clear and convincing evidence. MCR 5.974(A)(2); *In re Vernia*, 178 Mich App 280, 282; 443 NW2d 404 (1989); *In re Springer*, 172 Mich App 466, 473; 432 NW2d 342 (1988). This Court reviews the probate court's findings of fact under the clearly erroneous standard. *In re Miller*, 182 Mich App 70; 451 NW2d 576 (1990). Once the probate court finds statutory grounds for termination by clear and convincing evidence, the decision whether to terminate is within the court's discretion, and the best interests of the children are to be

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

considered. MCL 712A.19b(3); MSA 27.3178(598.19b)(3); formerly MCL 712A.19a; MSA 27.3178(598.19a); *In re Miller, supra* at 84; *In re Schejbal*, 131 Mich App 833, 836; 346 NW2d 597 (1984). Therefore, because the ultimate decision whether to terminate parental rights is discretionary, it is reviewed for an abuse of discretion. *In re Miller, supra* at 84.

The necessary first step in a decision to terminate parental rights is to find by clear and convincing evidence that a statutory ground exists to support termination. In the present case, the probate court found statutory grounds for termination under MCL 712A.19b(3)(g) and (h); MSA 27.3178(598.19b)(3)(g) and (h). Among other requirements, both of these provisions only authorize termination where "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." Under subsection (3)(h), this requirement must be satisfied even in situations where the parent is imprisoned, as in the present case.

In determining probate court jurisdiction over minors, we have concluded that "a child who is placed by the custodial parent in the temporary care of relatives is not 'without proper custody or guardianship' unless the care being provided is neglectful." *In re Systma*, 197 Mich App 453, 455; 495 NW2d 804 (1992). Accord *In re Taurus F*, 415 Mich 512, 535; 330 NW2d 33 (1982). In like manner, the statute here provides no basis for termination of the rights of a parent who has made arrangements for care by a relative unless the care arranged is not "proper."

Respondent had arranged for placement of Jessica with his brother and sister-in-law while he was incarcerated. Both these relatives testified that they would be willing to take Jessica into their home. Respondent argues that he had thus "provide[d] proper care and custody" of Jessica, thereby preventing the termination of his parental rights under the statute. However, respondent overlooks the fact that this exact same argument, based on the exact same statutory language, has been considered and rejected by this Court. *McIntyre, supra* at 50, 52. We are bound by this precedent under Supreme Court Administrative Order 1996-4.

Respondent further argues that the decision to terminate his parental rights was not in the best interest of the child. We have reviewed the record and the reasoning of the trial court regarding the termination of respondent's parental rights and do not conclude that there was an abuse of discretion. *Id.* at 50.

Finally, respondent argues that the trial court should have applied the stricter standards applicable to Indian children, as provided for in MCR 5.980(D), because the child's mother may be ¼ Blackfoot Indian with some Cherokee descent. We disagree. There is no indication that the child's mother is an enrolled tribe member. See *In re Shawboose*, 175 Mich App 637, 639; 438 NW2d 272 (1989).

We affirm.

/s/ David H. Sawyer
/s/ Richard A. Bandstra
/s/ Michael J. Talbot