

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of APRIL MICHELLE BURDIN, Minor

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DUAYNE BURDIN, a/k/a DWAYNE BURDIN,

Respondent-Appellant,

and

COLLEEN MICHELLE HOPE,

Respondent.

UNPUBLISHED

December 19, 1997

No. 201178

Wayne Juvenile Court

LC No. 95-325901

Before: McDonald, P.J., and Wahls and J. R. Weber*, JJ.

MEMORANDUM.

Respondent Duayne Burdin (hereafter “respondent”) appeals as of right from the juvenile court order terminating his parental rights to the minor child under MCL 712A.19b(3)(c)(i), (g) and (j); MSA 27.3178(598.19b)(3)(c)(i), (g) and (j), in accordance with the report and recommendation of a probate court referee. We affirm.

Respondent argues that petitioner should be equitably estopped from seeking termination under § 19b(3)(a)(ii) (desertion for 91 or more days) because petitioner did not seek to terminate his rights earlier in the case, despite the fact that “there were other periods from the time the child became a temporary court ward in 1995 to the time of termination in January 1997, when [respondent] didn’t visit for more than 91 days.” Although respondent did not preserve this issue by raising it below, *Booth*

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

Newspapers, Inc v University of Michigan Bd of Regents, 444 Mich 211, 234 (1993), it is also moot because it is unrelated to the order being appealed. *In re Prater*, 189 Mich App 330, 333; 471 NW2d 658 (1991). The record indicates that, although the probate court referee did refer to § 19b(3)(a)(ii) on the record at the hearing, that statutory subsection was not identified as one of the grounds for termination in the referee's written report and recommendation. Rather, the referee's report indicates that respondent's parental rights were terminated under §§ 19b(3)(c)(i), (g) and (j). The referee did not clearly err in finding that those statutory grounds were proven by clear and convincing evidence. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1993).

Affirmed.

/s/ Gary R. McDonald

/s/ Myron H. Wahls

/s/ John R. Weber