

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of RENE HURD, JOSEPH HURD,
KAYLA HURD, MATTHEW HURD, AND DAVID
HURD, Minors.

DEPARTMENT OF SOCIAL SERVICES,

Petitioner-Appellee,

v

TIMOTHY HURD,

Respondent-Appellant.

UNPUBLISHED

March 20, 1998

No. 189579

Sanilac Juvenile Court

LC No. 94-032475-NA

Before: Fitzgerald, P.J., and Hood and Sawyer, JJ.

PER CURIAM.

Respondent's parental rights to his minor children were terminated pursuant to MCL 712A.19b(3)(h); MSA 27.3178(598.19b)(3)(h). This Court granted respondent's delayed application for leave to appeal. We affirm.

First, respondent argues that the juvenile court erred in finding that it had jurisdiction over the minor children. As a threshold matter, we disagree with petitioner's claim that respondent waived appellate review of this issue by failing to directly and timely appeal the probate court's decision on jurisdiction. See MCR 5.993(A). The record does not indicate that a separate order was entered following the adjudicative hearing. Because no written order taking jurisdiction was entered at the adjudicatory stage, a direct appeal from such an order was not available. *In re Bechard*, 211 Mich App 155, 159-160; 535 NW2d 220 (1995). The juvenile court's decision on jurisdiction was subsumed in the later, dispositional order terminating respondent's parental rights. Respondent directly appealed from that order, and thus, this Court may consider the jurisdictional issue on the merits in this appeal. *Id.*

At the adjudicative hearing, respondent admitted to his conviction for first-degree criminal sexual conduct. He admitted that the conviction arose out of allegations involving respondent's sexual abuse of his oldest daughter. These admissions were sufficient to establish the probate

court's jurisdiction over all of the minors by a preponderance of the evidence pursuant to MCL 712A.2(b); MSA 21.2178(598.2)(b). MCR 5.972(C)(1); *In re Brock*, 442 Mich 101, 108-109; 499 NW2d 752 (1993). See also *In the Matter of Futch*, 144 Mich App 163, 167-168; 375 NW2d 375 (1984), where this court ruled that evidence that a parent mistreats one child is probative of how that parent may treat other children.

Respondent argues that because he did not oppose the placement of his children with his parents and because he had a plan for the children's care and custody during his incarceration, the juvenile court did not have authority to assert jurisdiction. In *In re Systma*, 197 Mich App 453, 455; 495 NW2d 804 (1992), this Court ruled that "a child who is placed by the custodial parent in the temporary custody of relatives is not 'without proper custody and guardianship' unless the care being provided is neglectful". While it is true that jurisdiction may be improper where an incarcerated parent places his children with relatives, we disagree that the juvenile court improperly took jurisdiction in this case. Respondent here did not place his children in the custody of relatives nor did he arrange for alternative care for his children while he was in prison. Rather, it was petitioner that placed the minor children in new homes. In addition, we note that respondent's acquiescence in his parents' request for guardianship is not tantamount to his providing the children with proper care and custody such that the juvenile court would be prevented from exercising jurisdiction over the children. The juvenile court did not err in finding that it had jurisdiction over the minors at issue pursuant to MCL 712A.2(b); MSA 27.3178(598.2)(b).

Second, respondent argues that the juvenile court erred in terminating his parental rights pursuant to MCL 712A.19b(3)(h); MSA 27.3178(598.19b)(3)(h). We disagree. The statute provides:

(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:

(h) 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.

Respondent was sentenced to a minimum term of twenty-five years' imprisonment for first-degree criminal sexual conduct. Respondent failed to provide for the proper care and custody of the children during his incarceration and there was no reasonable expectation that he would be able to provide proper care and custody for the children within a reasonable amount of time. Therefore, termination of his rights was proper.

We are not persuaded by respondent's argument that petitioner failed to prove that respondent had not provided for or planned for the proper care and custody of the children during his incarceration. Respondent claims that petitioner stepped into the situation before he was given the opportunity to place

his children with relatives and that because he had a plan for their proper care and custody, termination was improper. We disagree. The evidence demonstrated petitioner, and not respondent, placed the children into new homes thereby providing for their care and custody. Moreover, even if respondent had intended to provide for the children's care during his incarceration, there was no evidence that he made or attempted to make any arrangements for them. The only evidence on the issue indicated that he merely supported his parents proactive request to be guardians of the children. In addition, there was no evidence that any relatives were suitable guardians for the children. The juvenile court was not required to place the children with relatives if it was not in their best interest. *In re McIntyre*, 192 Mich App 47, 52; 480 NW2d 293 (1991).

We also are not persuaded by respondent's argument that termination was inappropriate because he was not offered services or a treatment plan prior to the termination of his rights. Given the length of time of his minimum sentence, services or a treatment plan would not assist him in being able to provide proper care and custody for the children within a reasonable time.

Respondent's rights were properly terminated under MCL 712A.19b(3)(h); MSA 27.3178(598.19b)(3)(h). We also find, based on the record, that the juvenile court did not clearly err in finding that termination of respondent's parental rights was in the best interests of the children. *In re Hall-Smith*, 222 Mich App 470, 471-473; 564 NW2d 156 (1997).

Finally, respondent argues that the juvenile court erroneously relied on facts outside of the record in reaching its decision. We find no error. The juvenile court properly took judicial notice of its files from the guardianship matter brought by respondent's parents. A court is permitted to take judicial notice of facts adduced from its own court files. *In re Stowe*, 162 Mich App 27, 32-33; 412 NW2d 655 (1987); MRE 201(b).

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Harold Hood
/s/ David H. Sawyer