

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JAZZMA GRAHAM, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JUAN FRANKLIN,

Respondent-Appellant.

UNPUBLISHED
October 19, 1999

No. 217160
Oakland Circuit Court
Family Division
LC No. 98-612042 NA

Before: White, P.J., and Hood and Jansen, JJ.

MEMORANDUM.

Respondent-appellant (hereinafter “respondent”) appeals as of right from a family court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(a)(ii); MSA 27.3178(598.19b)(3)(a)(ii). We affirm.

Respondent claims that the family court erred in terminating his parental rights when he did not abandon the minor child, but rather, left the child in the custody and care of her mother “where he assumed that she was receiving proper care.” We disagree. In *In re Ward*, 104 Mich App 354, 358-359; 304 NW2d 844 (1981), this Court held that the placement of the minor child into the custody of a relative who properly cares for the minor deprives the court of jurisdiction. However, in the present case, the minor child was in the custody of her mother, and there was no evidence that respondent placed or entrusted the minor child into the mother’s custody at any time. Even assuming that respondent had entrusted the minor child to her mother, there is no evidence that respondent knew that the minor child would be properly cared for. In fact, the mother of respondent’s minor child had four additional children and a history of neglect based on her prior involvement with Oakland and Wayne County family agencies. Accordingly, respondent’s contention that his “placement” of the minor child with her mother precluded termination of his parental rights is without merit. *Id.*

Respondent next claims that the family court erred in terminating his parental rights when it concluded that respondent did not have a plan in place for the minor child during respondent's period of incarceration and thereafter. We disagree. There is no evidence that the minor child was placed or entrusted into the custody of her mother due to any period of incarceration. While respondent may have told the minor child's mother of his intent or willingness to plan for the minor child following his release from incarceration, he took no action consistent with those alleged words. Respondent was personally served with notice of a pretrial hearing and trial, and he planned to travel to the trial with the minor child's mother. The mother waited for respondent, but he failed to meet her or independently attend the trial. Accordingly, the family court correctly concluded that respondent had failed to create a plan for the minor child.

Respondent next argues that the family court erred in proceeding to terminate his parental rights without granting his counsel's request for an adjournment to secure respondent's presence at trial. We disagree. By statute, there is no requirement that parents appear before the family court at a dispositional hearing, but rather, parents are only required to be served with notice of the hearing. MCL 712A.19(4)(b); MSA 27.3178(598.19)(4)(b); *In re Vasquez*, 199 Mich App 44, 49; 501 NW2d 231 (1993). MCR 5.973(A)(3)(b) provides that a parent may be present at a termination hearing or may proceed through legal counsel. There is no absolute right to be physically present at a dispositional hearing to terminate parental rights, and the court rules do not require that the family court secure the physical presence of a parent. *Id.* The evidence indicated that defendant knew of the trial, but failed to appear. Accordingly, respondent's contention that the family court erred in denying counsel's request for an adjournment to secure the presence of respondent is without merit.

Respondent also contends that petitioner, Family Independence Agency, breached its statutory obligation to preserve familial relationships by taking action to terminate respondent's parental rights without attempting to locate him when his whereabouts were easily ascertainable. We disagree. When it was learned that respondent was incarcerated, the prosecutor was instructed to obtain a writ to ensure respondent's presence at the pretrial hearing and trial. Once it was learned that respondent had been released, action was taken to notify respondent of the pretrial hearing and trial by personal service on respondent, publication and notice to respondent's family members and parole officer. The family court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Further, the family court did not err in terminating respondent's parental rights, inasmuch as respondent failed to show that termination of his parental rights was "clearly not" in the child's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Hall-Smith*, 222 Mich App 470, 472; 564 NW2d 156 (1997).

Affirmed.

/s/ Helene N. White
/s/ Harold Hood
/s/ Kathleen Jansen