

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JORDAN JAYMES SAGE,
Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MARIA A. SAGE and NEWTON C. SAGE,

Respondents-Appellants.

UNPUBLISHED

April 12, 2005

No. 259002

Charlevoix Circuit Court

Family Division

LC No. 02-005525-NA

Before: Judges Neff, P.J., and White and Talbot, JJ.

PER CURIAM.

Respondents appeal as of right from the trial court's order terminating their parental rights to the minor child under MCL 712A.19b(3)(c)(i), (g), (j), and (m). We affirm.

The trial court did not clearly err in finding that § 19b(3)(c)(i) was established by clear and convincing evidence for each respondent. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The condition that led to the child's adjudication was anticipatory neglect based on respondents' treatment of the child's older sister. See generally *In re Gazella*, 264 Mich App 668, 680-681; 692 NW2d 708 (2005); *In re Powers*, 208 Mich App 582, 588-589; 528 NW2d 799 (1995). Examined in this context, the primary concern was that the child would be harmed, at least emotionally, if placed in a home environment that included respondents' unstable and volatile relationship, and the father's inability to control his anger. Respondents' physical compliance, or lack of compliance, with the trial court's order that they comply with the parent-agency agreement, while relevant evidence, was not itself dispositive of whether the condition that led to the court's jurisdiction had been rectified or was reasonably likely to be rectified within a reasonable time considering the child's young age. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003); *In re Gazella, supra* at 676. The evidence indicated that respondents' unstable and volatile relationship continued during the two years that the child remained a temporary court ward, that respondent father continued to have difficulty controlling his anger, and that respondent mother was adamant about continuing to live with the father. The trial court had ample evidence to find that § 19b(3)(c)(i) was proven with respect to each respondent.

We further conclude that, although only one statutory ground for termination is required to terminate parental rights, *In re JK, supra* at 210, neither respondent has established any basis for disturbing the trial court's findings with regard §§ 19b(3)(g) and (j). The same evidence that supported termination under § 19b(3)(c)(i) also supported termination under §§ 19b(3)(g) and (j).

Respondents do not challenge the factual sufficiency of the evidence with respect to § 19b(3)(m), but rather claim, for the first time on appeal, that this statutory subsection is unconstitutional. We have considered respondents' claim because it presents a question of law, *In re BAD*, 264 Mich App 66, 72; 690 NW2d 287 (2004), but conclude that respondents have not overcome the presumption that § 19b(3)(m) is constitutional. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000).

Respondents' reliance on the classification scheme found in *In re AH*, 245 Mich App 77; 627 NW2d 33 (2001), to argue that their equal protection rights were violated is misplaced because, unlike MCL 722.638, the termination statute, MCL 712A.19b, does not create classes of parents based on whether parental rights were terminated in the past. The statute does not apply unless a child has been adjudicated as being within the court's jurisdiction under MCL 712A.2(b). Termination of a respondent's parental rights is part of the dispositional phase in which the trial court determines what action, if any, to take on behalf of a child who is within its jurisdiction. See *In re Brock*, 442 Mich 101, 108-112; 499 NW2d 752 (1993). Section 19b(3)(m) is one of the variety of circumstances of parental unfitness that warrants termination of parental rights. We reject respondents' claim that it violates equal protection rights. *Crego v Coleman*, 463 Mich 248; 615 NW2d 218 (2000) ("[W]here the Equal Protection Clauses are implicated, they do not go so far as to prohibit the state from distinguishing between persons, but merely require that 'the distinctions that are made not be arbitrary or invidious.'"); *In re Hawley*, 238 Mich App 509, 511; 606 NW2d 50 (1999) ("The equal protection guarantee requires that persons under similar circumstances be treated alike; it does not require that persons under different circumstances be treated the same."). We also reject respondents' claim that § 19b(3)(m) contravenes their right to procedural due process. *In re JK, supra* at 210; *In re Brock, supra* at 110-111; cf. *In re AH, supra* at 85.

Finally, the evidence did not establish that termination of respondents' parental rights was clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo, supra* at 354-357. Therefore, the trial court did not err in terminating respondents' parental rights to the child.

Affirmed.

/s/ Janet T. Neff
/s/ Helene N. White
/s/ Michael J. Talbot