

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MICHAEL JOSEPH
VILLAGOMEZ, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MICHAEL ASHBAKER,

Respondent-Appellant,

and

DESIREE VILLAGOMEZ,

Respondent.

UNPUBLISHED
July 22, 2003

No. 244736
Genesee Circuit Court
Family Division
LC No. 01-114134-NA

Before: Zahra, P.J., and Talbot and Owens, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(g). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E)(1)(b).

Respondent-appellant first argues that the trial court erred when it failed to *sua sponte* appoint counsel for him at the initial stages of the proceedings. Respondent-appellant's argument is without merit. The trial court complied with MCR 5.915(B)¹ and MCL 712A.17c, which set forth the procedures for appointing counsel in child protective proceedings. Respondent-appellant was served with a summons, which properly advised him of his right to counsel under both the statute and the court rule. The trial court was not required to *sua sponte* appoint counsel for respondent-appellant at this stage of the proceedings under the court rule or

¹ As of May 1, 2003, this rule is codified as MCR 3.915(B).

the constitution. Respondent-appellant does not claim that he requested counsel at any time during the proceedings. Under the court rule, a parent must take affirmative action in order to have counsel appointed for their benefit. *In re Hall*, 188 Mich App 217, 222; 469 NW2d 56 (1991). Moreover, respondent-appellant's constitutional right to counsel was satisfied because the trial court appointed counsel for respondent-appellant prior to the termination hearing. *In re Powers*, 244 Mich App 111, 121-122; 624 NW2d 472 (2000).

Respondent-appellant next argues that the order terminating his parental rights should be reversed because the FIA did not follow their policies regarding placing the child with paternal relatives. Respondent-appellant has abandoned his argument by failing to cite any authority to support it. *In re Powers*, 208 Mich App 582, 588; 528 NW2d 799 (1995). In any event, respondent-appellant's argument is without merit. The trial court is not required to place a child with relatives. *In re IEM*, 233 Mich App 438, 453; 592 NW2d 751 (1999). If it is in the best interests of the child, the court may properly terminate parental rights instead of placing the child with relatives. *Id.*; *In re McIntyre*, 192 Mich App 47, 52; 480 NW2d 293 (1991). The trial court did not clearly err in finding that the evidence did not show that termination of respondent-appellant's parental rights was clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000).

Finally, respondent-appellant argues that the proceedings were fundamentally unfair to him because there were no allegations against him in the initial petition and there was no adjudication with respect to him. Respondent-appellant raises this issue for the first time on appeal. Therefore, we review it for plain error. *People v Ortiz*, 249 Mich App 297, 310; 642 NW2d 217 (2002).

We find no plain error on this record. It is clear that the petitioner is not required to file a petition and conduct an adjudication with respect to every parent of children involved in a protective proceeding. *In re CR*, 250 Mich App 185, 203, 205; 646 NW2d 506 (2002). In this case, the trial court properly considered only legally admissible evidence against respondent-appellant at the termination hearing. *Id.*, 205-206. Respondent-appellant does not challenge the constitutionality of the court rule allowing this procedure and has failed to articulate any alleged due process violation.

Because respondent-appellant does not challenge the trial court's finding with respect to the statutory ground for termination, he has abandoned this issue. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002). In any event, we find that the trial court did not clearly err in finding that § 19b(3)(g) was established by clear and convincing evidence. MCR 5.974(I); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Respondent-appellant was unavailable to provide proper care and custody for his child because of his incarceration, and he would not be released within a reasonable time to do so considering the child's young age and the significant amount of time the child had spent in foster care.

Affirmed.

/s/ Brian K. Zahra
/s/ Michael J. Talbot
/s/ Donald S. Owens