

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SELENA ROSE-GUATALUPE
MARTINEZ, Minor.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

UNPUBLISHED
September 27, 2005

Petitioner-Appellee,

v

TIMOTHY ROBERTO MARTINEZ,

Respondent-Appellant,

and

TAMMY MARIE WAGNER,

Respondent.

No. 262120
Saginaw Circuit Court
Family Division
LC No. 03-028578-NA

Before: Bandstra, P.J., and Neff and Donofrio, 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), (i), (j), and (l). We affirm.

Initially, we find respondent-appellant's first three issues not preserved for appellate review because they were not raised below, and no appeal was taken from the order removing the child or other preliminary orders. See MCR 3.993(A); *In re Hatcher*, 443 Mich 426, 433-435, 444; 505 NW2d 834 (1993). The claims also lack merit.

The trial judge did not err in ordering the referee to hold a preliminary hearing after petitioner requested review of the denial of the original petition under MCR 3.991(A)(1). At first, the minor child Selena was not removed, based on favorable testimony from the petitioner and extensive monitoring and services being provided in the home. Thereafter, the guardian ad litem (GAL) filed a motion for immediate removal upon learning that respondents were being evicted from their housing. Termination proceedings were underway regarding respondents'

three other children. The doctrine of anticipatory neglect would apply to confer jurisdiction over Selena. See *In re Powers*, 208 Mich App 582, 588-589; 528 NW2d 799 (1995).

The trial court also did not err in holding a permanency planning hearing (PPH) when it did. Adjudication of the petition regarding Selena was adjourned and a termination petition filed once respondents' rights to the other three children were terminated in November 2004. Respondent-appellant was in jail awaiting trial on felony charges, including habitual offender, third offense. While the timing of the PPH was somewhat unusual, it did not prejudice respondent-appellant. See MCR 3.976(B). Likewise, any delay in the jurisdictional trial was justified by the circumstances. MCR 3.972(A) is inapplicable; FIA had grounds to and did file a petition to terminate respondents' rights to Selena after their rights to the older children were terminated. MCL 722.638(1)(b). Moreover, the failure of the court to hold the trial within the time required does not divest the court of jurisdiction. *In re Prater*, 189 Mich App 330, 333; 471 NW2d 658 (1991).

Finally, clear and convincing evidence supported the termination of respondent-appellant's parental rights to Selena under MCL 712A.19b(3)(g), (i), (j), and (l). MCR 3.977(J); *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000); *Powers, supra* at 588-592. The court took judicial notice of orders and findings in the previous termination hearing. Parental rights to the older children were terminated for serious and chronic neglect and attempts at rehabilitation were unsuccessful. Respondent-appellant had two felony convictions, had abused respondent mother, and failed to comply with drug screens and other provisions of his treatment plan. He had no plan for child care for Selena other than respondent mother, who had no suitable housing and had her parental rights to Selena and the other three children terminated as well. The trial court did not clearly err in finding sufficient evidence to terminate respondent-appellant's parental rights. Even if termination under one of the grounds alleged was erroneous, only one ground need be proven to terminate parental rights. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

Further, the evidence did not show termination of respondent-appellant's parental rights to be clearly contrary to Selena's best interests. MCL 712A.19b(5); MCR 3.977(J); *Trejo, supra* at 353. The child needs a permanent, safe, stable home, which respondent-appellant cannot provide. We find no clear error in the trial court's determination on the best interests issue.

Affirmed.

/s/ Richard A. Bandstra
/s/ Janet T. Neff
/s/ Pat M. Donofrio