

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of CONSTANCE MICHELLE
WAGNER and CLINTON ROBERT JAMES
WAGNER, Minors.

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

Petitioner-Appellee,

v

ROBERT MATTHEW WAGNER,

Respondent-Appellant.

UNPUBLISHED
October 20, 2005

No. 261592
Osceola Circuit Court
Family Division
LC No. 04-003901-NA

In the Matter of CONSTANCE MICHELLE
WAGNER, CLINTON ROBERT JAMES
WAGNER, KERRIGAN RENAE WICKS, and
EDDIE DEAN WICKS II, Minors.

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

Petitioner-Appellee,

v

CHARLENE M. LOCKREY,

Respondent-Appellant.

No. 261593
Osceola Circuit Court
Family Division
LC No. 04-003901-NA

Before: Kelly, P.J., and Meter and Davis, JJ.

PER CURIAM.

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

A petitioner must establish a statutory ground for termination under MCL 712A.19b(3) by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Once the court finds that a statutory ground for termination has been established, MCL 712A.19b(5) requires that it terminate the respondent's parental rights to the child unless it finds that termination is clearly not in the child's best interests. *Id.* at 364-365. This Court reviews decisions terminating parental rights for clear error. *Id.* at 356.

Initially, we reject respondents' claims of a due process notice violation because the termination petition did not identify the specific statutory grounds under which termination of their parental rights was sought.¹ Because respondents did not preserve this issue by asserting a due process notice violation below, our review is limited to plain error affecting respondents' substantial rights. See *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Although it would have been preferable to list the applicable statutory grounds for termination in the petition, see *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999), reversal is not required on this basis because the petition contained a long list of factual allegations pertaining to each respondent. These allegations were sufficient to provide respondents with notice of the nature of the proceeding and the applicable statutory grounds for termination for which they would be required to defend against. Indeed, neither respondent argued otherwise below. Therefore, respondents' due process rights were not violated. See *In re CR*, 250 Mich App 185, 208-209; 646 NW2d 506 (2001).

We also reject respondent Wagner's argument that petitioner was collaterally estopped from seeking termination of his parental rights because a prior termination proceeding in 2000 was resolved in his favor. See *In re Wagner*, unpublished opinion per curiam, issued December 21, 2000 (Docket No. 232219) (wherein this Court reversed a December 2000 order terminating respondent Wagner's parental rights). Collateral estoppel precludes relitigation of an issue in a subsequent, different cause of action between the same parties when the prior proceeding culminated in a valid final judgment and the issue was actually and necessarily determined in the prior proceeding. *Barrow v Pritchard*, 235 Mich App 478, 480; 597 NW2d 853 (1999). For collateral estoppel to apply, the same parties must have had a full and fair opportunity to litigate the issue. *VanVorous v Burmeister*, 262 Mich App 467, 480; 687 NW2d 132 (2004).

In this case, although both proceedings considered a request to terminate respondent Wagner's parental rights, they involved different issues. As the trial court observed when denying respondent Wagner's motion to dismiss, "[T]his is a brand new petition. It's a brand new set of allegations." Because the 2005 proceeding involved entirely different issues pertaining to respondent Wagner that were not actually and necessarily determined in the 2000 proceeding, it was not barred by collateral estoppel.

We further conclude that the trial court did not clearly err in finding that the statutory grounds for termination of respondents' parental rights were established by clear and convincing evidence.

¹ Contrary to what respondent Wagner asserts, the record indicates that he pleaded no contest to the jurisdictional allegations in the May 5, 2004, amended petition at a hearing on June 16, 2004.

Respondent Wagner violated his parole for second-degree CSC involving a minor and returned to prison in 2002. He has been denied parole several times since then and was still imprisoned at the time of the termination hearing, subject to a fifteen-year maximum sentence. Because of his conviction and imprisonment, he has had only minimal contact with his children over the last ten years. He also has a past history of drug abuse. The trial court did not clearly err in finding that §§ 19b(3)(g), (h), (j), and (n)(i) were each established by clear and convincing evidence.

With respect to respondent Lockrey, the evidence established that she allowed her former boyfriend and father of two of her children, Eddie Wicks, Sr., to have unsupervised contact with her children, despite the fact that his parental rights to his children were terminated in 2000 because of sexual abuse. As a result of this continued contact, two of respondent Lockrey's daughters were sexually abused by Wicks. Given respondent Lockrey's history of ignoring warnings not to permit any contact between Wicks and her children, the trial court did not clearly err in finding that §§ 19b(3)(b)(ii), (g), and (j) were each established by clear and convincing evidence. Moreover, because petitioner requested termination in the original petition, it was not required to develop and consider a case service plan to reunite the family, and the trial court was authorized to terminate respondent Lockrey's parental rights at the initial dispositional hearing. MCL 712A.19b(4); MCR 3.977(E). Finally, the evidence did not clearly show that termination of respondent Lockrey's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *In re Trejo, supra* at 356-357. Thus, the trial court did not err in terminating her parental rights to the children.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Patrick M. Meter

/s/ Alton T. Davis