

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JUSTIN RAY GATES, SHAWNA
RENEE GATES, HARLAND ROBERT GATES
and CHEYENNE MELENA GATES, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CHRISTINE GATES,

Respondent-Appellant,

and

DAVID GATES,

Respondent.

In the Matter of JUSTIN RAY GATES, SHAWNA
RENEE GATES, HARLAND ROBERT GATES
and CHEYENNE MELENA GATES, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DAVID GATES,

Respondent-Appellant,

and

CHRISTINE GATES,

UNPUBLISHED

April 27, 2004

No. 251111

Van Buren Circuit Court

Family Division

LC No. 02-013654

No. 251366

Van Buren Circuit Court

Family Division

LC No. 02-013654

Respondent.

Before: White, P.J., and Markey and Owens, JJ.

PER CURIAM.

Respondent-appellant Christine Gates (respondent-mother) appeals as of right in Docket No. 251111, and respondent-appellant David Gates (respondent-father) appeals as of right in Docket No. 251366, from an order terminating their parental rights to their children under MCL 712A.19b(3)(g) and (j). We affirm.

I. Docket No. 251111

Respondent-mother argues that several of the trial court's factual findings are clearly erroneous. This Court reviews the trial court's findings of fact in a parental termination case under the clearly erroneous standard. A finding is clearly erroneous when the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); MCR 3.977(J).

Respondent-mother first argues that the trial court erred in concluding that there was clear and convincing evidence to support termination of her parental rights. She challenges the court's finding that the family home was unsafe and unsanitary, given that she was living in a new home at the time of the termination hearing. She further argues that the court's observations that she was uncooperative with the service provider, that she made threats, and that she was held in contempt of court do not provide a basis for terminating her parental rights, and that certain positive facts were at odds with the court's findings. We disagree.

Given the history of this case, we conclude that the court properly found clear and convincing evidence to support the termination. Although respondent-mother had finally moved into an appropriate house at the time of the termination, there was no assurance that she would be able to remain there. Further, respondent-mother's history of uncooperative conduct explained why she failed to make sufficient progress. Respondent-mother further argues that the trial court erred in finding that the children had difficulty in school, given that a former teacher for three of the children testified that they did well in school. However, it had been years since the former teacher had taught two of the children. Her testimony had little relevance to the children's educational progress at the time of the termination hearing. The trial court did not clearly err by giving her testimony little or no weight in its findings in contrast to other evidence supporting that the children had attendance and behavioral problems.

Respondent-mother argues that the trial court erred in considering an earlier finding of contempt against her. We disagree. Respondent-mother was found in contempt for refusing to comply with an earlier court order not to discuss the case with the children. Respondent-mother's noncompliance was further evidence of her inability to accept responsibility and parent with the children's best interests in mind.

Next, respondent-mother argues that the trial court erred in considering threats she made against the caseworkers. Such evidence was part of the history of this case and helped explain

why extreme measures had to be taken at visits and why the caseworkers did not visit the family home.

While we agree with respondent-mother that she was not given a full opportunity to respond to or learn more about the allegations of sexual abuse against respondent-father, it was clear that respondent-mother regarded the allegations as unfounded. Further, the trial court did not consider these allegations in its decision to terminate parental rights. We also agree with respondent-mother that there was no evidence that she was physically abusive toward the children. However, the trial court did not find that she was physically abusive, and there is no indication that physical abuse was a factor in the trial court's decision. Accordingly, these arguments do not provide a basis for reversal.

The trial court did not clearly err in finding that termination of respondent-mother's parental rights was in the children's best interests. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The trial court properly considered respondent-mother's refusal to cooperate with the caseworkers and service providers because this evidence was relevant to whether she could make the long-term changes necessary for the children. Respondent-mother has further failed to show that the trial court clearly erred in finding that she had a pattern of failing the children and that termination of her parental rights was in the children's best interests. However, the court had sufficient basis to conclude that despite some recent progress on her treatment plan, she failed to make sufficient progress to enable the children to be safe in her care.

II. Docket No. 251366

Respondent-father argues that, at the time he entered his plea of admission to the initial petition to assume jurisdiction, the trial court failed to advise him that a consequence of his plea was that it could later be used to terminate his parental rights, as required by former MCR 5.971(B)(4), now MCR 3.971(B)(4).

Because respondent-father never challenged his plea or otherwise raised this issue in the trial court, he must show that a plain error affected his substantial rights. See *People v Carines*, 460 Mich 750, 761-767; 597 NW2d 130 (1999); *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000).

Although the record discloses that the trial court failed to comply with MCR 5.971(B)(4), respondent-father has failed to show that his substantial rights were affected. Notwithstanding the trial court's failure to provide the required advice, respondent-father does not allege that he did not understand the consequences of his plea. Indeed, the record discloses that respondent-father was present when, just before tendering his plea, respondent-mother's attorney made a statement on the record informing respondent-mother that, as a result of stipulating to the court assuming jurisdiction, she was required to follow the court's orders, and that failure to follow those orders could result in termination of parental rights. Although this statement was not directed at respondent-father, it is an indication that he was aware of this possible consequence when he subsequently tendered his plea of admission. Also, respondent-father never subsequently moved to withdraw his plea in the trial court or requested review by a judge. See former MCR 5.991, now MCR 3.991. See also *In re Zelzack*, 180 Mich App 117, 126; 446 NW2d 588 (1989).

Furthermore, by now challenging his plea, respondent-father is attempting to collaterally attack the trial court's exercise of jurisdiction over the children. Because the trial court entered an order assuming jurisdiction over the children in August 2002, any challenge to the court's exercise of jurisdiction was required to be raised in a direct appeal from that order; the court's exercise of jurisdiction may not now be collaterally attacked in this appeal. *In re Hatcher*, 443 Mich 426, 439-444; 505 NW2d 834 (1993).

Next, respondent-father argues that the trial court improperly considered his psychological evaluation, identified as petitioner's exhibit 1, because it was not admitted into evidence. Although the court did not admit the psychological evaluation, it did admit, without objection, petitioner's exhibit 4, which included the information that respondent-father asserts the court should not have considered. Because the challenged information was included in a properly admitted document, we reject respondent-father's claim that consideration of this information was improper.

Respondent-father argues that petitioner did not make reasonable efforts to reunite him with his children. See *In re Terry*, 240 Mich App 14, 25-26; 610 NW2d 563 (2000). Respondent-father claims that petitioner unreasonably required him to admit to sexually abusing his child before petitioner would recommend reunification.

The record demonstrates that respondent-father was offered other services that did not require him to admit to sexual abuse. Furthermore, throughout these proceedings, the trial court declined to consider the sexual abuse allegations because they were dismissed when respondent-father entered his plea of admission. Petitioner offered reasonable services that did not require respondent-father to admit to sexual abuse which, if successfully completed, could have allowed him to be reunited with his children. However, respondent-father failed to fully participate in or benefit from those services, thereby preventing his reunification with the children. Thus, we find no merit to this argument.

Affirmed.

/s/ Helene N. White
/s/ Jane E. Markey
/s/ Donald S. Owens