

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* I.A. KIRBY, Minor.

UNPUBLISHED  
November 20, 2014

No. 321702  
Dickinson Circuit Court  
Family Division  
LC No. 11-000512-NA

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Before: M. J. KELLY, P.J., and BECKERING and SHAPIRO, JJ.

PER CURIAM.

Respondent father appeals as of right the trial court's order terminating his parental rights to the minor child under MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), MCL 712A.19b(3)(g) (failure to provide proper care or custody), and MCL 712A.19b(3)(j) (reasonable likelihood of harm if returned to parent). We affirm.

At the beginning of the proceedings in this case, the trial court assumed jurisdiction over the child based on the plea of the child's mother, who later voluntarily relinquished her parental rights.<sup>1</sup> The court did not specifically adjudicate respondent as an unfit parent, and respondent did not object.

The trial court first terminated respondent's parental rights in 2012 under MCL 712A.19b(3)(c)(i) and (3)(g), primarily on the basis of respondent's criminality, incarceration, drug abuse, and inadequate housing. *In re Kirby*, unpublished opinion per curiam of the Court of Appeals, issued October 15, 2013 (Docket No. 314148), pp 1-3. This Court reversed the trial court's finding of statutory grounds for termination, finding that, "The record indicates that respondent participated in services to the fullest extent possible while incarcerated. There was no indication that he would not pursue housing, substance abuse, and parenting services made available to him upon his release." *Id.* at p 4.

However, following his release, respondent continued to use illegal drugs and associate with known felons in violation of the conditions of his parole. It appears that during the approximately six months between this Court's initial reversal and the second termination, respondent was in jail more often than he was not. He was also unable to find employment or

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<sup>1</sup> The child's mother is not party to this appeal.

independent housing. Following additional hearings, the trial court again terminated his parental rights, relying primarily on his criminal recidivism.

Respondent's sole argument in this appeal is that reversal is required because the trial court did not specifically adjudicate him as an unfit parent before terminating his parental rights. Respondent relies on our Supreme Court's recent decision in *In re Sanders*, 495 Mich 394; 852 NW2d 524 (2014). In that case, our Supreme Court invalidated the one-parent doctrine, articulated by this Court in *In re CR*, 250 Mich App 185; 646 NW2d 506 (2002), which had "permit[ted] courts to obtain jurisdiction over a child on the basis of the adjudication of either parent and then proceed to the dispositional phase with respect to both parents." *In re Sanders*, 495 Mich at 408. The Supreme Court held that this practice was unconstitutional because "due process requires a specific adjudication of a parent's unfitness before the state can infringe the constitutionally protected parent-child relationship." *Id.* at 422. Although a trial court may assume jurisdiction over a child on the basis of one parent's plea, the Court explained, it may not enter dispositional orders, including orders to terminate parental rights, against parents who have not been adjudicated as unfit. *Id.* at 412 n 8.

Respondent asserts for the first time on appeal that the trial court erred by not adjudicating him individually as an unfit parent; he did not raise the issue in the trial court. In *In re Kanjia*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (October 21, 2014; Docket No. 320055), slip op at 8, this Court held that the Supreme Court's decision in *Sanders* is to be given limited retroactivity. Thus, while a respondent may collaterally attack a trial court adjudication on direct appeal from a termination order when alleging a *Sanders* violation, *id.*, slip op at 6, the respondent must have raised and preserved the issue below, *id.*, slip op at 8. Because respondent failed to raise this issue before the trial court, he is not entitled to relief under *Sanders*.

Affirmed.

/s/ Michael J. Kelly  
/s/ Jane M. Beckering  
/s/ Douglas B. Shapiro