

STATE OF MICHIGAN
COURT OF APPEALS

In re AIYA BRYANT-WEATHERLY and SHAKIRA
BRYANT-WEATHERLY, Minors

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

UNPUBLISHED
June 24, 1997

Petitioner-Appellee,

v

No. 198896
Kalamazoo Probate Court
LC No. 92-000006-NA

VELMA BRYANT-WEATHERLY,

Respondent-Appellant,

and

MACK WEATHERLY,

Respondent.

Before: Gage, P.J., and Reilly and Hoekstra, JJ.

MEMORANDUM.

Respondent-appellant appeals as of right from the probate court order terminating her parental rights to the minor children under MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g). We affirm.

Respondent-appellant argues that the probate court failed to abide by the time limits in MCR 5.974(F)(1)(b) when the termination hearing was held sixty days after the petition for termination of her rights was filed. This issue was not raised below, but we will address the merits as a question of law. *Richards v Pierce*, 162 Mich App 308, 316; 412 NW2d 725 (1987). While the probate court did not hold the hearing within forty-two days of the filing of the petition, MCR 5.974(F) does not provide for sanctions when the time limits of that rule are violated. Thus, a violation of MCR 5.974(F)(1)(b) does not affect the validity of an order terminating

parental rights or the probate court's jurisdiction to terminate rights. *In re Jackson*, 199 Mich App 22, 28-29; 501 NW2d 182 (1993); *In re Prater*, 189 Mich App 330, 332-333; 471 NW2d 658 (1991). Respondent-appellant has also not shown any resulting prejudice. It appears that the probate court had good reason to delay the hearing because there were problems serving the children's father with the summons and petition. The court's failure to follow MCR 5.974(F)(1)(b) does not require that this Court set aside the order terminating respondent-appellant's parental rights.

Respondent-appellant next argues that the probate court erred by not allowing her mother to care for the children as the children's guardian for up to one year while she sought treatment for her substance abuse. The probate court's decision to terminate respondent-appellant's rights, rather than allow additional time for a guardianship arrangement, was not clearly erroneous. *In re Hall-Smith*, ___ Mich App ___; ___ NW2d ___ (Docket No. 195833, issued March 25, 1997), slip op at 2-3. The probate court was not required to place the children with their grandmother. *In re McIntyre*, 192 Mich App 47, 52; 480 NW2d 293 (1991). Respondent-appellant failed to follow through on the guardianship arrangement by the time of the termination hearing. Therefore, there was no evidence before the court that this arrangement was feasible. Furthermore, given respondent-appellant's past failures at treatment, the probate court did not clearly err in finding that termination of her parental rights was in the children's best interests.

Affirmed.

/s/ Hilda R. Gage
/s/ Maureen Pulte Reilly
/s/ Joel P. Hoekstra