

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of KALAND S. BREEDING, Minor

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ANITA LAND,

Respondent-Appellant.

UNPUBLISHED

July 25, 1997

No. 197712

Lapeer Juvenile Court

LC No. 93-006030-NA

Before: Hood, P.J., and McDonald and Young, JJ.

PER CURIAM.

Respondent appeals as of right from the juvenile court order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i) and (g); MSA 27.3178(598.19b)(3)(c)(i) and (g). We affirm.

Respondent may not collaterally attack the juvenile court's assumption of jurisdiction over the minor child. MCL 712A.2(b)(1); MSA 27.3178(598.2)(b)(1); *In re Hatcher*, 443 Mich 426; 505 NW2d 834 (1993); *In Re Bechard*, 211 Mich App 155; 535 NW2d 220 (1995). Although respondent had a direct appeal available during the mandatory review hearings following the court's written order of disposition placing the child under the court's supervision, respondent waited until the instant appeal of the termination order to raise the jurisdictional issue. Because a direct appeal was available, respondent is not entitled to collaterally attack the juvenile court's jurisdiction in this appeal.

The court did not abuse its discretion in allowing the entire case file into evidence. The proceeding was subject to MCR 5.974(F), not MCR 5.974(E), because the child had been in foster care for over three years. MCR 5.972(C)(1); *In re Miller*, 182 Mich App 70, 80; 451 NW2d 576 (1990); *In re King*, 186 Mich App 458, 465; 465 NW2d 1 (1990).

We also find no clear error in the court's finding the statutory grounds for termination were established by clear and convincing evidence. MCR 5.974(1); *In re Miller*, 433 Mich 331, 337; 445

NW2d 161 (1989). When reviewing a termination of parental rights case, the court must be aware of the total circumstances of the case, including the circumstances which prompted placement of the child in temporary custody. *In re LaFlure*, 48 Mich App 377, 390-391; 210 NW2d 482 (1973). To justify termination based on neglect, “real evidence of long-time neglect, or serious threats to the future welfare of a child” must be shown. *In re Pasco*, 150 Mich App 816, 819; 389 NW2d 188 (1986). Considerations include a parent’s ability to provide a proper home, sufficient food, clothing, and other physical and emotional necessities. *In re Boughan*, 127 Mich App 357, 364; 339 NW2d 181 (1983). A parent’s failure to comply with a parent-agency agreement or a court order can be a valid indication of neglect, *In re Ovalle*, 140 Mich App 79, 83; 363 NW2d 731 (1985), although failure to comply is only one consideration, and is not determinative of the outcome of the termination hearing. *In re Pasco*, *supra* at 820. Psychological evaluations of a parent are relevant and probative of the person’s future ability to parent. *In re Johnson*, 142 Mich App 764, 766; 371 NW2d 446 (1985).

In terminating respondent’s parental rights, the court, while agreeing with respondent that her failure to comply with the parent-agency agreements was not sufficient justification for termination, found “her failure to support the child, remain drug free, provide a stable home and seek medical treatment [for the child] for a period of over three years [was] justification.” The court stated, despite numerous opportunities over a three-year period, “Ms. Land is not going to change in the near future.” The court also found that, despite petitioner’s reasonable efforts, respondent “fought every legitimate offer – help offered to her to regain her child,” and that while respondent has “the intelligence to parent, she refuses to learn or accept constructive suggestions on how to better care for her child.”

Contrary to respondent’s contention, her parental rights were not terminated merely because she failed to comply with the parent-agency agreements. Respondent’s refusal to comply with the parent-agency agreements, together with other evidence based on the entire record, was sufficient to constitute clear and convincing evidence of neglect. *In re Pasco*, *supra*, 150 Mich App at 820. The court did not clearly err in finding there was clear and convincing evidence for termination under MCL 712A.19b(3)(c)(i) and (g); MSA 27.3178(598.19b)(3)(c)(i) and (g).

Nor did the court clearly err in finding termination was in the best interests of the child. *In re Quincy Hall-Smith*, 222 Mich App 470; ___ NW2d ___ (1997). Respondent failed to present evidence to the contrary.

Finally, there is no merit to respondent’s contention her due process rights were violated. As already set forth, respondent’s parental rights were terminated not just because she failed to comply fully with the parent-agency agreements, but because there was clear and convincing evidence for termination under the statutory grounds.

Affirmed.

/s/ Harold Hood
/s/ Gary R. McDonald
/s/ Robert P. Young, Jr.