

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MELISSA AVERITTE and TYRA
AVERITTE, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

OLIVER CLAYTON,

Respondent-Appellant,

and

LATASHA AVERITTE,

Respondent.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LATASHA AVERITTE,

Respondent-Appellant,

and

OLIVER CLAYTON,

Respondent.

UNPUBLISHED

November 25, 1997

No. 200356

Wayne Juvenile Court

LC No. 94-321092

No. 200560

Wayne Juvenile Court

LC No. 94-321092

Before: Jansen, P.J., and Fitzgerald and Young, JJ.

PER CURIAM.

In No. 200356, respondent Clayton appeals as of right from the juvenile court order terminating his parental rights to the minor children under MCL 712A.19b(3)(a)(ii); MSA 27.3178(598.19b)(3)(a)(ii). In No. 200560, respondent Averitte appeals by leave granted from the juvenile court order terminating her parental rights to the minor children under MCL 712A.19b(3)(g) and (j); MSA 27.3178(598.19b)(3)(g) and (j).¹ Respondents' appeals have been consolidated for our review. We affirm.

In No. 200356, the juvenile court did not err in terminating respondent Clayton's parental rights despite his claim that the only evidence presented was hearsay from petitioner's reports with no demonstration that the author of the reports was unavailable as required by MCR 5.974(F)(2). Any error was harmless given that respondent failed to show any prejudice. See *In re Ernst*, 130 Mich App 657, 661; 344 NW2d 39 (1983), citing *Moskalik v Dunn*, 392 Mich 583, 588; 221 NW2d 313 (1974). Respondent does not contest the validity of the record which reveals that he deserted his daughters for ninety-one or more days. See MCL 712A.19b(3)(a)(ii); MSA 27.3178(598.19b)(3)(a)(ii). Moreover, respondent was not denied due process where there was no indication that the hearsay testimony was other than fair, reliable and trustworthy. *In re Ovalle*, 140 Mich App 79, 82; 363 NW2d (1985). Respondent does not allege that the author of the reports would have testified contrary to her own notes and state that respondent did visit his children more often. Finally, any due process error was harmless where respondent does not deny that he deserted his children for ninety-one days or more. MCL 712A.19b(3)(a)(ii); MSA 27.3178(598.19b)(3)(a)(ii); *People v Cunningham*, 215 Mich App 615, 657; 546 NW2d 715 (1996).

In No. 200560, the juvenile court did not err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *In re Hall-Smith*, 222 Mich App 470, 472; 564 NW2d 156 (1997).

Affirmed.

/s/ Kathleen Jansen

/s/ E. Thomas Fitzgerald

/s/ Robert P. Young, Jr.

¹ Although respondent Averitte also claims that the court erred in terminating her parental rights under MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i), the record does not reflect that this subsection was a basis for terminating her parental rights.