STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of ALEX DAVID LEE, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JULIE FAY LEE,

Respondent-Appellant,

and

DAVID SALISBURY,

Respondent.

UNPUBLISHED
March 3, 1998

No. 194890
Wayne Juvenile Court
LC No. 93-306606

Before: Michael J. Kelly, P.J., and Fitzgerald and M.G. Harrison*, JJ.

PER CURIAM.

Respondent-appellant appeals as of right[1] from the juvenile court order terminating her parental rights to the minor child under MCL 712A.19b(3)(a)(ii), (g), (i) and (j); MSA 27.3178(598.19b)(a)(ii), (g), (i) and (j). We affirm.

Initially, we note that respondent-appellant improperly attempts to enlarge the record by asserting numerous facts that were not developed at the trial level. This Court's review is limited to the record developed by the trial court. *Wiand v Wiand*, 178 Mich App 137, 143; 443 NW2d 464 (1989). Therefore, respondent-appellant's references to facts outside the record will not be considered. *Id.*

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* Circuit judge, sitting on the Court of Appeals by assignment.

Because ninety-one days had not elapsed between the time respondent-appellant was determined to have abandoned her child and the date of the termination hearing, the juvenile court erred in finding that termination was warranted under § 19b(3)(a)(ii). However, the juvenile court did not clearly err in finding that the remaining statutory grounds for termination, §§ 19b(3)(g), (i) and (j), were established by clear and convincing evidence. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

We reject respondent-appellant's argument that termination was improper because neglect requires an act or omission that is "blameworthy" and her drug addiction prevented her from forming "the intent of being negligent towards her child." Section 19b(3)(g) expressly states that it applies "without regard to intent." Also, culpable neglect need not be shown for the court to exercise jurisdiction. *In re Jacobs*, 433 Mich 24, 37; 444 NW2d 789 (1989). Furthermore, given the facts of this case, expert testimony was not required to prove that respondent-appellant's prospects of rehabilitation were poor. MRE 702; *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 197; 555 NW2d 733 (1996).

We also reject respondent-appellant's claim that the juvenile court's ultimate decision to terminate was an abuse of discretion. Once the juvenile court finds statutory grounds for termination by clear and convincing evidence, termination is mandatory, unless the court finds that termination is "clearly not in the child's best interest." MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Hall-Smith*, 222 Mich App 470, 472-473; 564 NW2d 156 (1997). Appellate review of the court's decision to terminate is under the clearly erroneous standard. *In re Hall-Smith, supra*. The burden of going forward with evidence that termination is clearly not in the child's best interest rests with the parent. *Id.* Here, no evidence was presented on behalf of respondent-appellant. Therefore, the juvenile court did not err in terminating respondent-appellant's parental rights upon determining that statutory grounds for termination had been proven by clear and convincing evidence.

Finally, the record adequately reflects that respondent-appellant's whereabouts could not be determined after reasonable effort. Therefore, the juvenile court did not err in authorizing substituted service by publication. MCR 5.920(B)(4)(c); MCL 712A.13; MSA 27.3178(598.13); *In re Sears*, 150 Mich App 555, 559-560; 389 NW2d 127 (1986); see also *In re Vasquez*, 199 Mich App 44, 46-49; 501 NW2d 231 (1993).

Affirmed.

/s/ Michael J. Kelly
/s/ E. Thomas Fitzgerald
/s/ Michael G. Harrison

[1] The appellee minor asserts that this Court is without jurisdiction in this appeal of right because respondent's request for appointment of counsel was untimely, and because the claim of appeal was filed more than twenty-one days after the date counsel was appointed. MCR 7.204(1). However, respondent's request for appointment of an attorney may be considered timely if made within 21 days

after *notice* of the order terminating parental rights. MCR 5.974(H)(1)(c). The record before us does not reflect whether notice of the termination order was attempted or, if so, when that notice was provided. Likewise, the record does not reflect the date on which appellate counsel was appointed. Accordingly, we are unable to determine whether this Court has jurisdiction to entertain an appeal of right in this case. Because this case was accepted for filing by the clerk's office, because appellee did not raise this issue in an appropriate motion to dismiss, and because this case has now been fully briefed by the parties, in the event an appeal by right does not exist, we elect to treat respondent's claim of appeal as an application for leave to appeal and grant it, thereby permitting resolution of the appeal on its merits. *SNB Bank & Trust v Kensey*, 145 Mich App 765, 770; 378 NW2d 594 (1985); *Guzowski v Detroit Racing Ass'n, Inc*, 130 Mich App 322, 326; 343 NW2d 536 (1983).