

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JAMES DEAN BLACKSTON and
JOYCE DEAN MEBERT, Minors.

FAMILY INDEPENDENCE AGENCY,

UNPUBLISHED

August 4, 1998

Petitioner-Appellee,

v

No. 207259

Van Buren Juvenile Court

JUNIOR FRED BLACKSTON,

LC No. 96-010507 NA

Respondent-Appellant,

and

JEANANNE BLACKSTON,

Respondent.

Before: White, P.J., and Hood and Gage, JJ.

MEMORANDUM.

Respondent appeals as of right the juvenile court order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(g), (h), (i) and (j); MSA 27.3178(598.19b)(3)(g), (h), (i) and (j). We affirm.

Respondent, imprisoned at the time of these proceedings until at least the year 2000, first argues that the trial court lacked clear and convincing evidence to support its decision to terminate his parental rights. We disagree. Respondent conceded at the termination hearing that the FIA had previously petitioned the probate court to take jurisdiction over and terminate his rights regarding two of his other children due to neglect. Respondent admitted that he had then simply waived his parental rights to these two children and to two additional children. The FIA case worker handling the instant minors' case at the time of the termination hearing testified that prior attempts to rehabilitate defendant and help him

establish a suitable household had failed. Another FIA case worker who had formerly worked on the instant minors' case believed returning the minors to either of their parents would pose a substantial risk of harm to the minors' lives or physical or mental health. In light of this testimony, we conclude that the probate court did not clearly err in finding termination of respondent's parental rights warranted under MCL 712A.19b(3)(i) and (j); MSA 27.3178(598.19b)(3)(i) and (j). MCR 5.974(I). Because termination was proper under these two subsections, we need not address respondent's arguments that the court erred in applying subsections (3)(g) and (h).

Respondent also claims that his attorney was ineffective for failing to challenge the juvenile court's jurisdiction when respondent had placed the minors with his sister during his incarceration, thus providing them with proper custody for purposes of MCL 712A.2(b)(1); MSA 27.3178(598.2)(b)(1). The only definite evidence defendant provided in support of his contention was his own self-serving statement, without any mention of specific dates, that he had done so. Respondent's sister offered conflicting testimony on this point. The probate court found that respondent made efforts to place the minors only after the court had taken jurisdiction, and we defer to its findings. MCR 2.613(C). Even were we to conclude that the probate court clearly erred, jurisdiction over the minors was also asserted on the basis of neglect. MCL 712A.2(b)(2); MSA 27.3178(598.2)(b)(2). Because the probate court properly asserted jurisdiction under subsection (b)(2) when evidence established that respondent had previously neglected other children, *In re Powers*, 208 Mich App 582, 588-589; 528 NW2d 799 (1995), defendant cannot show that his counsel's failure to challenge jurisdiction under (b)(1) prejudiced him, and his ineffective assistance argument must fail. *In re Rogers*, 160 Mich App 500, 502; 409 NW2d 486 (1987).

Finally, respondent argues that the probate court's failure to issue its decision within twenty-eight days after the termination hearing as provided by MCR 5.974(G)(1) divested it of jurisdiction over the instant case. However, the requirements of the Juvenile Court Rules are not jurisdictional. *In re Mayfield*, 198 Mich App 226, 230; 497 NW2d 578 (1993). Furthermore, although MCL 712A.19b(1); MSA 27.3178(598.19b)(1) states that "[t]he court shall issue an opinion or order regarding a petition for termination within 70 days after the commencement of the initial hearing on the petition," the statute also provides that "the court's failure to issue an opinion within 70 days does not dismiss the petition." Therefore, we conclude that defendant's argument is without merit.

Affirmed.

/s/ Helene N. White

/s/ Harold Hood

/s/ Hilda R. Gage