

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MARIAN NEWBY and WILLIAM
NEWBY, JR., Minors

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

WILLIAM NEWBY,

Respondent-Appellant,

and

JEANETTE NEWBY,

Respondent.

UNPUBLISHED

September 11, 1998

No. 206946

Lapeer Juvenile Court

LC No. 95-006868 NA

Before: Holbrook, P.J., and Markey and Whitbeck, JJ.

PER CURIAM.

Respondent-appellant William Newby (hereinafter “respondent”) appeals as of right from a juvenile court order terminating his parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g) and (j); MSA 27.3178(598.19b)(3)(c)(i), (g) and (j). We affirm.

I

Respondent first challenges the juvenile court's decisions to assume jurisdiction over the two minor children. Respondent contends that the evidence at the adjudicative hearings was insufficient to support the court's assertion of jurisdiction over the children. We conclude that this issue is not properly before this Court.

A juvenile court's jurisdiction in parental rights cases can be challenged only on direct appeal, not by collateral attack. *In re Hatcher*, 443 Mich 426, 439; 505 NW2d 834 (1993); *In re Powers*, 208 Mich App 582, 587-588; 528 NW2d 799 (1995). Here, respondent did not directly appeal the juvenile court's exercise of jurisdiction over the two minor children or request rehearing of this issue while the probate court still had jurisdiction. Therefore, he may not raise this issue in an appeal by right from the order terminating his parental rights to the two children. *Id. supra*.

Regardless, even if this issue were properly before the Court, we would conclude that it has no merit. With respect to Marian, the allegations in the amended petition were proven by a preponderance of the evidence and were sufficient to establish the juvenile court's jurisdiction. MCL 712A.2(b)(1) and (2); MSA 27.3178(598.2)(b)(1) and (2); *In re Hatcher*, *supra* at 433-436; *In re Toler*, 193 Mich App 474, 476; 484 NW2d 672 (1992). Furthermore, respondent pleaded no contest to the petition requesting jurisdiction over William Jr. and testimony establishing a factual basis for a finding of jurisdiction under § 2(b)(2) was presented.

II

Next, respondent argues that petitioner failed to make reasonable efforts to reunite the family and improperly supported the adoption of the children by the foster family. We disagree.

Whether petitioner made reasonable efforts to reunite the family entails review of the juvenile court's findings of fact. We review the juvenile court's factual findings for clear error. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A finding is clearly erroneous if, although evidence exists to support the finding, the reviewing court on the entire record is left with the definite and firm conviction that a mistake was made. *Id.*

Petitioner was required to make reasonable efforts to rectify the conditions that caused the children to be removed from respondent's home by developing a case service plan. MCL 712A.18f(4); MSA 27.3178(598.18f)(4). The record indicates that a case service plan was prepared and adopted in this case. The juvenile court found that petitioner provided sufficient services to respondent, that respondent was cooperative in receiving help, but that the services offered "did not appear to have any lasting affect." This finding is not clearly erroneous. The record indicates that a number of services were offered in order to address several different issues, including problems with respondent's home, the marital relationship, and parenting skills. Only after it became apparent to the caseworker that respondent was not benefiting from the services, which was almost 1-1/2 years after Marian was originally placed into foster care, did the caseworker initiate termination proceedings.

Respondent's claim that petitioner improperly supported the foster family's adoption of the minor children is without merit. The caseworker expressly denied discussing or considering adoption before respondent's parental rights were terminated. The fact that the former foster-mother for William Jr. took notes during visitations does not evidence that the caseworker was supporting the foster family's adoption of the children. The notes appear to fairly reflect what occurred during visits and another visitation supervisor also took notes.

III

Respondent next argues that the juvenile court erred in finding that statutory grounds for termination were established by clear and convincing evidence. We disagree.

Contrary to respondent's assertions, the juvenile court did not base its decision to terminate parental rights on speculative evidence regarding possible harm to the children in the future. While respondent did not seriously harm or abuse the children, this was due in large part to petitioner's early intervention. The evidence sufficiently established a reasonable likelihood of harm to the children if they were returned to respondent's home. The applicable statutory grounds for termination did not require either culpability, an actual intent to harm, or actual harm to a child before parental rights could be terminated. See §§ 19b(3)(c)(i), (g) and (j).

Respondent also contends that he substantially complied with the terms of the case service plan, thus precluding the juvenile court from terminating his parental rights. Although respondent complied with certain aspects of the treatment plan, he failed to successfully complete its critical portions. He failed to complete therapy as required, or show progress in therapy, primarily in addressing problems in his relationship with his wife. Respondent also failed to demonstrate an understanding of the children's physical needs or the steps necessary to make a home safe for small children. While respondent did comply with some of the terms of the treatment plan, he failed to show the necessary progress in rectifying the conditions and so as to justify returning the children that led the court to assume jurisdiction. *People v Jackson*, 199 Mich App 22, 27; 501 NW2d 182 (1993).

The juvenile court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 5.974(I); *In re Miller*, *supra* at 337. Furthermore, respondent failed to show that termination of his parental rights was clearly not in the children's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Hall-Smith*, 222 Mich App 470, 472-473; 564 NW2d 156 (1997). Thus, the juvenile court did not err in terminating respondent's parental rights to the minor children. *In re Hall-Smith*, *supra*.

IV

Finally, we reject respondent's claim that the juvenile court deprived him of his constitutional right to raise his children according to his religious beliefs. Respondent did not raise this issue in the juvenile court. Although respondent did testify that he wanted to maintain a self-sufficient existence for religious reasons, he did not challenge the efforts to update his home with electricity and running water on religious grounds. Further, petitioner's request that respondent bring his house up to code standards did not involve an infringement upon respondent's constitutional rights to practice his religious beliefs. The evidence demonstrated that respondent's parental rights were terminated for reasons unrelated to respondent's religious beliefs or practices.

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Jane E. Markey

/s/ William C. Whitbeck