STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of RACHEL ROSEMARIE JAGARS-WELLS, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JANICE RACHEL JAGARS and ORRIN BENJAMIN WELLS,

Respondents-Appellants.

UNPUBLISHED
November 13, 1998

No. 208267
Allegan Juvenile Court
LC No. 96-006064 NA

Before: Whitbeck, P.J., and Cavanagh and Neff, JJ.

PER CURIAM.

Respondents appeal as of right from a juvenile court order terminating their parental rights to the minor child under MCL 712A.19b(3)(b)(ii) and (g); MSA 27.3178(598.19b)(3)(b)(ii) and (g). We affirm.

I

Respondents raise several issues regarding the adjudicatory trial and the juvenile court's decision to exercise jurisdiction over the child. However, the juvenile court's exercise of jurisdiction was subject to challenge only in a direct appeal. It is not subject to collateral attack in an appeal from an order terminating parental rights. *In re Hatcher*, 443 Mich 426, 437, 444; 505 NW2d 834 (1993). Accordingly, all issues related to the juvenile court's exercise of jurisdiction are not properly before this Court.

In any event, we find no merit to respondents' issues. The juvenile court did not err in determining that it could exercise jurisdiction over the child where the child was physically present within the county. MCL 712A.2(b)(2); MSA 27.3178(598.2)(b)(2); *In re Mathers*, 371 Mich 516; 124 NW2d 878 (1963). Also, the juvenile court did not abuse its discretion in refusing to authorize a

special verdict form at the adjudicatory trial. MCR 2.514(A); *State Hwys Comm v Abood*, 83 Mich App 612; 269 NW2d 247 (1978); see also Martin, Dean & Webster, *Michigan Court Rules Practice*, Rule 2.514, Authors' Comment, pp 209-210. Further, the juvenile court did not err when it overruled respondent-father's objection and allowed petitioner's counsel to state in closing argument that the minor child had been sexually assaulted. Finally, respondents have presented no evidence to support their speculative claim that the court bailiff made improper remarks to the jury.

II

Next, the juvenile court did not abuse its discretion in refusing to admit respondent-father's polygraph test results into evidence at the termination hearing. *People v Barbara*, 400 Mich 352, 415-16; 255 NW2d 171 (1977). Assuming, without deciding, that the rule announced in *Barbara* applies to a termination hearing, we agree with petitioner that the conditions for admissibility set forth in *Barbara* were not satisfied. Accordingly, the juvenile court properly exercised its discretion in excluding the evidence.

III

Next, the juvenile court did not abuse its discretion when it refused to reopen the proofs after receiving a report from the State Court Administrative Office. See *People v Solomon (Amended Opinion)*, 220 Mich App 527, 532; 560 NW2d 651 (1996). The juvenile court expressly stated that it was not considering the report in its decision.

IV

The juvenile court also did not clearly err in finding that the statutory grounds for termination set forth in MCL 712A.19b(3)(b)(ii) and (g); MSA 27.3178(598.19b)(3)(b)(ii) and (g), were established by clear and convincing evidence. MCR 5.974(I), *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *In re Cornet*, 422 Mich 274, 277; 373 NW2d 536 (1985). Further, because respondents failed to show that termination of their parental rights was clearly not in the child's best interests, MCL 712A.19b(5); MSA 27.3178(598.19b)(5), the juvenile court did not err in terminating respondents' parental rights to the child. *In re Hall-Smith*, 222 Mich App 470, 472-473; 564 NW2d 156 (1997).

We further reject respondents' arguments that they were not given sufficient time to remedy their problems. Although respondents contend that funding problems delayed services, the FIA caseworker testified that no services were denied because of a lack of funding, although counseling was delayed. In any event, the record indicates that ample services were provided to respondents, particularly respondent-mother, who began receiving services two years before the initial neglect petition was filed. Further, after the minor child returned to Michigan in August 1996, services were provided to both respondents pursuant to their parent/agency agreements, including medical and dental tests and treatment for the child, counseling for respondents and the child, and psychological evaluations for both respondents. The evidence established that respondents did not comply entirely with their parent/agency agreements, particularly respondent-mother who did not follow through with counseling. Contrary to respondents' contention, this case is factually distinguishable from *In re Newman*, 189

Mich App 61; 472 NW2d 38 (1991). Here, respondents were given a "full and fair opportunity" to regain custody of their children, and reasonable efforts were made to reunite the family. MCL 712A.18f; MSA 27.3178(598.18f). Accordingly, the juvenile court properly terminated respondents' parental rights.

V

Finally, respondents have failed to provide any page references to the record showing that they preserved the issue of the applicability of the Americans with Disabilities Act ("ADA"), 42 USC 12101 *et seq.*, by raising it below, and there is no indication in the record that the issue was addressed by the juvenile court. Accordingly, we find that the issue is not preserved. Furthermore, we find no factual support in the record for respondent-mother's contention that she was "developmentally disabled" within the meaning of the ADA and, therefore, our failure to review this issue will not result in manifest injustice. MCR 7.212(C)(7); *People v Grant*, 445 Mich 535, 546; 520 NW2d 123 (1994); *Alford v Pollution Control Inds*, 222 Mich App 693, 699; 565 NW2d 9 (1997).

Affirmed.

/s/ William C. Whitbeck
/s/ Mark J. Cavanagh
/s/ Janet T. Neff