STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of NICHOLAS WARUNEK and KARA WARUNEK, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DANIEL WARUNEK,

Respondent,

and

MARCIA WARUNEK,

Respondent-Appellant.

UNPUBLISHED
December 15, 2000

No. 224138
Macomb Circuit Court
Family Division
LC No. 96-043198-NA

In the Matter of NICHOLAS WARUNEK and KARA WARUNEK, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellees,

v

DANIEL WARUNEK,

Respondent-Appellant,

and

MARCIA WARUNEK,

No. 224407
Macomb Circuit Court
Family Division
LC No. 96-043198-NA

Respondent.

Before: Bandstra, C.J., and Wilder and Collins, JJ.

PER CURIAM.

In these consolidated appeals, respondents Daniel Warunek and Marcia Warunek appeal as of right the termination of their parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j); MSA 27.3178(598.19b)(3)(c)(i), (g), and (j). We affirm.

Respondent Marcia Warunek argues that the proceedings that ultimately resulted in the termination of her parental rights were void from the beginning because she did not receive notice of the initial preliminary hearing. We disagree. The statute on which respondent relies, MCL 712A.12; MSA 27.3178(598.12), requires that a respondent be provided with notice "[a]fter a petition shall have been filed . . . ." However, the purpose of a preliminary hearing, or preliminary inquiry, is to determine whether the court should "authorize the filing of a petition[.]" MCR 5.962(B)(3). Thus, the notice requirement of § 12 does not apply to the preliminary hearing.

Respondent Daniel Warunek argues that the family court improperly assumed jurisdiction by "defaulting" him when he failed to appear for the adjudication. Defendant's argument involves a challenge to the court's exercise of jurisdiction which may only be raised in a direct appeal, not in a collateral attack following the court's termination of parental rights. *In re Hatcher*, 443 Mich 426, 444; 505 NW2d 834 (1993); *In re Powers*, 208 Mich App 582, 587-588; 528 NW2d 799 (1995). Accordingly, we decline to consider this claim.

Both parents argue that the family court erred in finding that statutory grounds for termination were established by clear and convincing evidence. We disagree. The petitioner must prove at least one statutory ground for termination by clear and convincing evidence. MCL 712A.19b(3); MSA 27.3178(598.19b)(3). "Once a ground for termination is established, the court must issue an order terminating parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests." *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000).

The conditions that led to the adjudication in this case were the parents' homelessness, leaving their son with family or friends without informing them of the parents' whereabouts, drug abuse, the mother's arrest for possession of narcotic paraphernalia, and lack of adequate income. The record reveals that at the time of the termination hearing, despite being afforded numerous opportunities to improve their parents skills and correct their deficiencies, these conditions continued to exist and there was no reasonable likelihood that the conditions would be rectified within a reasonable time. The family was still homeless and had not made any housing arrangements that would provide the children with a safe and stable home. The mother had only recently made efforts in gaining employment and attending NA and her visits with the children had been "very sporadic." The father was incarcerated for an uncertain amount of time and clearly could not provide a home for his children. Although the mother was on a waiting list for

a HUD home, even after she got a home, she would need to demonstrate that she could maintain it over a period of time. On this record, we conclude that the family court did not err in finding that subsection 19b(3)(c)(i) had been established by clear and convincing evidence.[1] Further, the evidence on the whole record demonstrates that the family court did not clearly err in finding that termination of appellant's parental rights was in the children's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5).

Affirmed.

/s/ Richard A. Bandstra
/s/ Kurtis T. Wilder
/s/ Jeffrey G. Collins

[1] Because the family court properly terminated respondents' parental rights under subsection 19b(3)(c)(i) and only one statutory ground for termination must be established in order to terminate parental rights, we need not decide whether termination was also proper under the other subsections. *In re Trejo Minors*, 462 Mich 341, 350; 612 NW2d 407 (2000).