STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of R.R.R., II, S.M.R. and P.T.R., Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

PATRICIA RUSE,

Respondent-Appellant,

and

ROBERT RUSE,

Respondent.

UNPUBLISHED
October 1, 2002

No. 239008
Oscoda Circuit Court
Family Division
LC No. 00-000123-NA

Before: Markey, P.J., and Cavanagh and R.P. Griffin*, JJ.

PER CURIUM.

Respondent Patricia Ruse (hereafter "respondent") appeals by right from an order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i). We affirm.

Respondent asserts that multiple procedural errors require either reversal of the order terminating her parental rights or a remand for further proceedings. Because none of the alleged errors were preserved with an appropriate objection at trial, appellate relief is precluded absent a plain error affecting respondent's substantial rights. *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000). Additionally, the alleged errors preceding the trial court's assumption of jurisdiction are not properly before this Court. Matters affecting the court's exercise of jurisdiction may only be challenged on direct appeal of the jurisdictional decision, not by collateral attack in a subsequent appeal of an order terminating parental rights. *In re Hatcher*,

* Former Supreme Court justice, sitting on the Court of Appeals by assignment.

443 Mich 426, 439-444; 505 NW2d 834 (1993); *In re Powers*, 208 Mich App 582, 587; 528 NW2d 799 (1995). Regardless, it is apparent that none of the alleged errors require reversal.

Although the court erred in adjourning the preliminary hearing beyond the fourteen days allowed by MCR 5.965(C)(1), respondent has not demonstrated that the delay of four days in this case prejudiced her. Furthermore, the court rule provides no sanctions for failure to comply with the fourteen-day time period; therefore, dismissal is not an appropriate remedy. Cf. *In re Jackson*, 199 Mich App 22, 28-29; 501 NW2d 182 (1993); *In re Kirkwood*, 187 Mich App 542, 545-546; 468 NW2d 280 (1991); see, also, *In the Matter of TC*, 251 Mich App 368, 370-371; ___ NW2d ___ (2002).

We disagree with respondent's claim that the court failed to make the necessary findings required by MCR 5.965(C)(2) and (3) at the preliminary hearing. The record reveals that the court was concerned about the risk of abuse as the basis for its decision to place the children in temporary foster care. No plain error has been demonstrated.

Respondent further argues that upon assuming jurisdiction, the trial court failed to conduct a dispositional hearing, as required by MCR 5.973(A)(4) and (5). We disagree. It is apparent from the record that the issue of the children's disposition was addressed and decided at the hearing on December 18, 2000, after the court acquired jurisdiction pursuant to respondent's plea of admission. The initial dispositional order was subsequently entered on December 27, 2000. No plain error has been shown.

Although we agree that the notice received by respondent for the permanency planning hearing failed to comply with MCR 5.973(C)(3) because it did not include language advising respondent that the hearing could result in further proceedings to terminate her parental rights, respondent has not demonstrated that she was prejudiced by this deficiency. *In the Matter of TC, supra* at 371. Therefore, reversal is not required.

We reject respondent's claim that, pursuant to MCR 5.921(B)(2)(j) and (3), notice of the termination hearing was required to be given to the Indian tribe to which her father was a member. Those notice provisions are applicable only if tribal affiliation has been established. Here, the record discloses that the Indian tribe was contacted about this case, but declined to intervene based on its determination that the children were not eligible for tribal membership. Therefore, the notice prescribed by MCR 5.921(B)(2)(j) and (3) was not required.

Furthermore, because the Indian tribe determined that the children were not eligible for tribal membership, the children were not Indian children as defined by the Indian Child Welfare Act, 25 USC 1901 *et seq*., 25 USC 1903(4); MCR 5.980(D); *In re NEGP*, 245 Mich App 126, 131-133; 626 NW2d 921 (2001). Therefore, the trial court was not required to apply the proof beyond a reasonable doubt standard prescribed by MCR 5.980(D).

We affirm.

/s/ Jane E. Markey
/s/ Mark J. Cavanagh
/s/ Robert P. Griffin