

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of D.H., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

THOMAS WHEELER,

Respondent-Appellant,

and

JOYCE HARTFIELD,

Respondent.

UNPUBLISHED

December 17, 2002

No. 241740

Kent Circuit Court

Family Division

LC No. 99-164201-NA

Before: Owens, P.J., and Murphy and Cavanagh, JJ.

MEMORANDUM.

Respondent Thomas Wheeler appeals as of right the order terminating his parental rights to the minor child. Joyce Hartfield, the mother, voluntarily relinquished her rights, and is not a party to this appeal.

Under MCL 712A.19b(3), the petitioner for the termination of parental rights bears the burden of proving at least one ground for termination. *In re Trejo Minors*, 462 Mich 341, 350; 617 NW2d 407 (2000). Once the petitioner has presented clear and convincing evidence that persuades the court that a ground for termination is established, termination of parental rights is mandatory unless the court finds that termination is clearly not in the child's best interests. *Id.*, 355-356. Decisions terminating parental rights are reviewed for clear error. *Id.*, 356.

The petition alleged that respondent failed to provide proper care and custody. MCL 712A.19b(3)(g). There is clear and convincing evidence to support the termination of respondent's parental rights. Respondent clearly had been unable to provide proper care and custody while he was incarcerated. He was uncertain when he would be released, he did not have employment, and he did not have satisfactory living arrangements for the child. Where the child had been in foster care or juvenile detention for a significant amount of time, the court

properly found that the child needed proper care and custody long before respondent would be able to provide it.

The court did not err in denying respondent's oral motion for an adjournment. An adjournment in a child protective proceeding may only be granted for good cause. MCL 712A.17(1). The motion could not be granted where it was not filed in writing before the hearing, and the best interests of the child were met by a speedy resolution of the case and not by a delay. MCL 712A.17(1)(a) and (b). Moreover, respondent fails to show any resulting prejudice, in that he fails to reference any favorable information that would have been presented to the court had the court granted the motion for an adjournment. To the extent that respondent also argues ineffective assistance of counsel, the claim is without merit where there is no showing of prejudice or deficient performance. *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001).

Affirmed.

/s/ Donald S. Owens
/s/ William B. Murphy
/s/ Mark J. Cavanagh