STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of ARYIAN KALISE HARMON and PARIS ALISE HARMON, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

HEATHER R. HARMON and JESSIE L. HARMON,

Respondents-Appellants.

UNPUBLISHED
May 8, 2008

No. 282295
Berrien Circuit Court
Family Division
LC No. 2007-000009-NA

Before: White, P.J., and Hoekstra and Smolenski, JJ.

MEMORANDUM.

Respondents appeal as of right from a circuit court order terminating their parental rights to the minor children pursuant to MCL 712A.19b(3)(g). We affirm.

The trial court did not clearly err in finding that the statutory ground for termination was proven by clear and convincing evidence. *In re Archer*, 277 Mich App 71, 73; 744 NW2d 1 (2007). Respondents had ceded custody of the children to the mother's parents and step-parents in 2004, and had little contact with them over the next 2-1/2 years. The alternative caretakers were unsuitable either because their own parental rights had been terminated or because of involvement with drugs. Respondent mother made little progress with the service plan, then violated her probation by using drugs again and was sentenced to a two-year prison term. Respondent father was incarcerated throughout the proceedings and expressed no interest in planning for the children.

Contrary to respondents' argument, petitioner was not required to prove that respondents would neglect their child for the long-term future as held in *Fritts v Krugh*, 354 Mich 97, 114; 92 NW2d 604 (1958), overruled on other grounds in *In re Hatcher*, 443 Mich 426, 444; 505 NW2d 834 (1993). The *Fritts* decision predates the enactment of MCL 712A.19b, which now sets forth the criteria for termination. Further, the evidence did not clearly show that termination of respondents' parental rights was not in the children's best interests. *In re Trejo*, 462 Mich 341, 354, 356-357; 612 NW2d 407 (2000); MCL 712A.19b(5).

We also reject the claim that the trial court deprived respondent father of his right to counsel. The court rules require the court to advise a parent of his right to counsel at the parent's first court appearance. MCR 3.915(B)(1)(a). The court rules also require the court to appoint counsel for a parent at any hearing that is conducted if the parent requests appointment and it appears from the record that he is unable to afford to hire counsel. MCR 3.915(B)(1)(b). Respondent father never appeared in this action and there is no indication in the record that he ever requested the appointment of counsel. Therefore, he has failed to establish a plain error with respect to this unpreserved issue. See *Rooyakker & Sitz, PLLC v Plante & Moran, PLLC,* 276 Mich App 146, 162; 742 NW2d 409 (2007); *Kloian v Schwartz,* 272 Mich App 232, 242; 725 NW2d 671 (2006).

Affirmed.

/s/ Helene N. White
/s/ Joel P. Hoekstra
/s/ Michael R. Smolenski