

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DARVON LAWAN SMITH, JR.,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DARVON LAWAN SMITH, SR.,

Respondent-Appellant,

and

DASHAWN MONIQUE TAYLOR,

Respondent.

UNPUBLISHED

May 13, 2008

No. 277428

Wayne Circuit Court

Family Division

LC No. 04-434790-NA

Before: Donofrio, P.J., and Sawyer and Murphy, JJ.

MEMORANDUM.

Respondent Darvon Lawan Smith, Sr. appeals as of right the order of the trial court terminating his parental rights to his minor child pursuant to MCL 712A.19b(3)(a)(ii), (c)(i), (g), (h), and (j). Because the trial court was properly vested with jurisdiction to determine respondent's parental rights, clear and convincing evidence established a statutory basis for termination of parental rights, and termination of parental rights was not clearly contrary to the best interests of the child, we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent challenges for the first time on appeal the trial court's exercise of personal jurisdiction over him, contending that the trial court failed to properly serve him with the original and supplemental petitions. Respondent did not raise this issue before the trial court and it is therefore not preserved for our review. See *In re Gazella*, 264 Mich App 668, 679-680; 692 NW2d 708 (2005). Were we to review this issue, we would reject respondent's contention. Respondent attended virtually all hearings after the initiation of the case and was represented by counsel throughout the proceedings for over two years, yet he never challenged personal jurisdiction. Respondent cannot now belatedly claim that defective notice operated to invalidate

the proceedings in which he diligently participated for over two years. See *In re Gillespie*, 197 Mich App 440, 446-447; 496 NW2d 309 (1992).

We also reject respondent's contention that the trial court clearly erred in finding that termination was warranted under MCL 712A.19b(3)(a)(ii) (desertion), (c)(i) (conditions that led to adjudication continue to exist), (g) (failure to provide proper care and custody), and (h) (imprisonment). MCR 3.977(J). Respondent was incarcerated throughout most of the child's life, was incarcerated at the time that the child was removed from the home of the child's mother, and remained incarcerated at the time of termination. During the small portions of the child's life that respondent was not incarcerated, the record indicates that he provided little support or care for the child. We note that the trial court's order terminating respondent's parental rights also indicates subsection (3)(j) as a ground for termination, so designated apparently by mistake because the trial court's ruling from the bench indicates subsection (3)(i) as the intended ground. Because courts speak through their written orders, we decline to consider subsection (3)(i) as a ground for termination in this case. Erroneous termination under one statutory ground, however, is harmless where the trial court correctly found another statutory basis for termination. *In re Powers*, 244 Mich App 111, 119; 624 NW2d 472 (2000).

Based on the same clear and convincing evidence we conclude that the record also supports the trial court's finding that termination was not contrary to the best interests of the child. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 354, 356-357; 612 NW2d 407 (2000).

Affirmed.

/s/ Pat M. Donofrio
/s/ David H. Sawyer
/s/ William B. Murphy