# STATE OF MICHIGAN

# COURT OF APPEALS

In the Matter of TIMOTHY ANGEL GATES and TANK ERNEST GATES, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DAVID ALAN GATES,

Respondent-Appellant,

and

ANA LUCIA LONGMAN,

Respondent.

UNPUBLISHED
April 23, 2009

No. 288827
Montcalm Circuit Court
Family Division
LC No. 2008-000342-NA

Before: Borrello, P.J., and Murphy and M. J. Kelly, JJ.

PER CURIAM.

Respondent David Alan Gates appeals as of right from the order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(g), (j), and (l).[1] We affirm.

Respondent contends that his due process rights were violated when the trial court proceeded with the preliminary hearing in his absence. Because respondent failed to raise this issue in the trial court, it is reviewed for plain error that affected his substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Under MCR 3.965(B)(1), the court may proceed with a preliminary hearing in the absence of a parent "if notice has been given or if the court finds that a reasonable attempt to give notice was made." The court did determine at the preliminary hearing that respondent was notified of the proceeding. We acknowledge that respondent was in the hospital at the time of the hearing, but his attorney was present and

[1] Although respondent cites MCL 712A.19b(3)(i) in his brief, our review of the transcripts reveals that the trial court relied instead on MCL 712A.19b(3)(l).

expressed that she had no objection to the court proceeding with the preliminary hearing. We also note that respondent's attorney did not request that respondent participate in the hearing telephonically or request an adjournment.

Respondent next contends that the trial court erred in exercising jurisdiction in this matter. Respondent has waived this argument because he did not appeal the court's order of adjudication directly. "Matters affecting the court's exercise of its jurisdiction may be challenged only on direct appeal of the jurisdictional decision, not by collateral attack in a subsequent appeal of an order terminating parental rights." *In re Gazella*, 264 Mich App 668, 679-680; 692 NW2d 708 (2005). Respondent is pursuing a collateral attack on jurisdiction, given that this is not an appeal "from an initial order of disposition containing both a finding that an adjudication was held and a finding that the children came within the jurisdiction of the court." *In re SLH, AJH, and VAH*, 277 Mich App 662, 668-669; 747 NW2d 547 (2008). We additionally note that in *In re CR*, 250 Mich App 185, 205; 646 NW2d 506 (2002), this Court explained that "[t]he family court's jurisdiction is tied to the children, making it possible, under the proper circumstances, to terminate parental rights even of a parent who, for one reason or another, has not participated in the protective proceeding." Respondent states that neither he nor his attorney were present for the hearing although "counsel was advised of the hearing and . . . chose not to attend." Statutory grounds for jurisdiction were established by the no-contest plea of the children's mother to the allegations that she had physically abused one of the children and that her rights to three other children were previously terminated.

Finally, the trial court did not clearly err in finding that at least one statutory ground for termination was established by clear and convincing evidence or in its best-interests determination. MCL 712A.19b(3) and (5); MCR 3.977(J); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Sours Minors*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). We first note that respondent fails to challenge the court's ruling on MCL 712A.19b(3)(l); therefore, the ruling stands and that would suffice for the needed termination ground. Further, there is no dispute that respondent's parental rights to two other children were previously terminated.

Respondent argues that MCL 712A.19b(3)(g), as applied to him, was unconstitutional. In *In re Gentry*, 142 Mich App 701, 707-709; 369 NW2d 889 (1985), this Court rejected a vagueness challenge to former MCL 712A.19a(c), the predecessor to current MCL 712A.19b(3)(g), because the respondents lacked standing where there was "no question that respondents' conduct clearly fits within the statute." Like the respondents in *In re Gentry*, respondent lacks standing to challenge the statutory language because his conduct clearly came within the statute. While we recognize that a divorce judgment did not provide respondent any parenting time with the children and that a personal protection order (PPO) had been in place, these were only recent events and do not explain his earlier absences as a parent. And the evidence also showed that he had not previously complied with his child support obligations. There was also testimony that respondent committed domestic violence against the children's mother and that he had not benefited from services offered in his previous termination case to alleviate the condition of domestic violence. Indeed, the PPO, dated March of 2008, reflects that the children's mother remained deathly afraid of respondent. We find no clear error with respect to the court's ruling on § 19b(3)(g). Furthermore, although there was no evidence that respondent had physically harmed his children, his problem with domestic violence and failure to

provide for the children establish a reasonable likelihood that the children would be harmed if returned to his care, § 19b(3)(j). Finally, respondent does not present a best-interests argument and, even had one been set forth, there was no clear error in the court's determination that termination would be in the children's best interests.

Affirmed.

/s/ Stephen L. Borrello
/s/ William B. Murphy
/s/ Michael J. Kelly