

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TYLER SCOTT SCHONEMAN,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

V

RAQUEL ROGERS,

Respondent-Appellant,

and

SCOTT SCHONEMAN,

Respondent.

In the Matter of TYLER SCOTT SCHONEMAN,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

SCOTT SCHONEMAN,

Respondent-Appellant,

and

RAQUEL ROGERS,

Respondent.

UNPUBLISHED

April 13, 2010

No. 293712

Jackson Circuit Court

Family Division

LC No. 07-005581-NA

No. 293713

Jackson Circuit Court

Family Division

LC No. 07-005581-NA

Before: Davis, P.J., and Donofrio and Stephens, JJ.

PER CURIAM.

In these consolidated cases, respondents Raquel Rogers and Scott Schoneman appeal as of right the order of the trial court terminating their parental rights to their minor child pursuant to MCL 712A.19b(3)(l). We affirm.

For the first time on appeal, Respondent Schoneman contends that termination under MCL 712A.19b(3)(l) deprived him of due process because (1) the statute did not require petitioner to prove that termination was in the child's best interest, and (2) in finding that termination was in the child's best interest, the trial court impermissibly considered facts not alleged in the petition. We review these unpreserved issues for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 764-765; 597 NW2d 130 (1999).

The due process guarantees of the federal and Michigan constitutions, US Const, Ams V and XIV; Const 1963, art 1, section 17, apply to the adjudication of important rights and impose constraints on government decisions that deprive the individual of liberty and property interests within the meaning of the Due Process Clause. *In re Brock*, 442 Mich 101, 109; 499 NW2d 752 (1993). The government may not deprive a person of life, liberty, or property without due process of law. *Hinky Dinky Supermarket, Inc v Dep't of Community Health*, 261 Mich App 604, 605-606; 683 NW2d 759 (2004). The procedural due process analysis is a dual inquiry asking whether (1) a liberty or property interest exists that the state has interfered with, and whether (2) the procedures attendant to that deprivation were constitutionally sufficient. *Id.*; *Jordan v Jarvis*, 200 Mich App 445, 448; 505 NW2d 279 (1993). Our Supreme Court has determined that parents' interest in the custody of their children is a liberty interest to which due process protections apply. *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003); *In re Brock*, 442 Mich at 109. Therefore, the remaining inquiry in this case is whether the process utilized in terminating respondent Schoneman's parental rights was constitutionally sufficient. See *Id.* We find that it was.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been demonstrated by clear and convincing evidence. *In re Fried*, 266 Mich App 535, 540-541; 702 NW2d 192 (2005). In addition, once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court may not order termination unless it determines that termination is in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000). A parent does not automatically have his rights terminated on the finding of the statutory factor. In fact, the trial court has the "opportunity to find that termination is 'clearly not in the child's best interests' despite the establishment of one or more grounds for termination." *Id.* at 352-353. There is no specific burden on either party to present evidence of the child's best interest; instead, the trial court should weigh all evidence available. *Id.*

Respondent Schoneman's parental rights to the child were terminated under MCL 712A.19b(3)(l), which provides that the trial court may terminate parental rights if the court finds by clear and convincing evidence that the parent's rights to a different child were previously terminated as a result of proceedings in Michigan or any other state. MCL 712A.19b(3)(l).

Respondent Schoneman does not dispute that his parental rights to another child were previously terminated. Rather, he argues that termination of his parental rights to the child in this case based solely on this prior termination is a deprivation of due process and would only be constitutionally acceptable if petitioner also had been required to demonstrate that termination was in the child's best interests. First, termination was not based solely on the prior termination. Second, to the extent that respondent Schoneman is suggesting that petitioner was not required to make a best interest showing, the argument has no merit.

Contrary to respondent Schoneman's argument, the record in this case is sufficient to support the trial court's determination. In its amended petition, petitioner referenced the prior termination and requested that the trial court take judicial notice of the record in that case. The trial court did so and properly exercised its authority to take judicial notice of those files and records. See *Snider v Dunn*, 33 Mich App 619, 625; 190 NW2d 299 (1971). Petitioner also presented undisputed information to the trial court that respondent Schoneman tested positive for cocaine while this case was pending and that he failed to participate in a drug recovery program, which he had requested to attend. Contrary to respondent Schoneman's contention of error, the record contains evidence, both from the prior termination file and newly introduced in this case, from which the trial court was able to conclude that termination was in the child's best interest. Because the evidence was presented and the determination made, we conclude that respondent Schoneman has not demonstrated the existence of a plain error with respect to his due process rights.

We also reject respondent Schoneman's contention that he was deprived of due process because the allegations in the petition did not include an allegation of drug use. Respondent Schoneman argues that he was thereby denied notice of that claim and that due process consequently precluded the court from relying on his drug use in terminating his rights. We disagree. Where a petition initiating termination proceedings references a prior action, the respondent has notice and an opportunity to object or otherwise respond to the information, and a trial court does not err by taking judicial notice of the file in the prior action. See *In re AMAC*, 269 Mich App 533, 540; 711 NW2d 426 (2006). In concluding that termination was in the best interest of the child, the trial court properly relied upon both the evidence of drug use in the prior record and the new evidence of drug use. We therefore find that the trial court did not commit plain error that affected respondent Schoneman's substantial rights. *Carines*, 460 Mich at 764-765.

Finally, both respondents argue that the trial court erred in determining that termination was in the best interests of the child. We disagree. The trial court properly considered respondent Schoneman's history of drug use as demonstrated in the prior termination case, as well as new information that respondent Schoneman had again tested positive for cocaine and had failed to participate in the drug recovery program that he requested and was authorized to attend. Similarly, regarding respondent Rogers, the trial court properly relied upon evidence of her history of drug use in the prior termination record. The Court also had evidence of her admitted cocaine use in January 2009, her unexplained failure to attend the drug recovery program and her arrest on outstanding warrants while this case was pending. In light of the evidence on the whole record, the trial court did not clearly err in finding that termination was in the best interests of the child. *In re Trejo*, 462 Mich at 356-357.

Affirmed.

/s/ Alton T. Davis

/s/ Pat M. Donofrio

/s/ Cynthia Diane Stephens