STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of KAYLA DONALDSON, MATTHEW JOHNSON and BABY BOY DONALDSON, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LAURA DONALDSON and CRANDALL JOHNSON,

Respondents-Appellants.

UNPUBLISHED
October 7, 1997

No. 199148
Bay Juvenile Court
LC No. 94-005074-NA

Before: Markey, P.J., and Neff and Smolenski, JJ.

PER CURIAM.

Respondents appeal by leave granted from the juvenile court order terminating their parental rights to the minor children under MCL 712A.19b(3)(c)(i), (c)(ii) and (g); MSA 27.3178(598.19b)(3)(c)(i), (c)(ii) and (g). We affirm.

The juvenile court did not err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Contrary to respondent Johnson's claim, the record reveals that the state did implement a service plan for him and offered services to him (MCL 712A.18f; MSA 27.3178(598.18f)); however, Johnson would not cooperate and was later unavailable because he was incarcerated. Further, respondents failed to show that termination would clearly not be in the children's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5). Thus, the juvenile court did not clearly err in terminating respondents' parental rights. *In re Hall-Smith*, 222 Mich App 470. 472-473; 564 NW2d 156 (1997).

Respondent Johnson also challenges the probate court's jurisdiction over the children. A probate court's jurisdiction in parental rights cases can be challenged only on direct appeal, not by collateral attack. *In re Hatcher,* 443 Mich 426, 439; 505 NW2d 834 (1993); *In re Powers*, 208 Mich App 582, 587; 528 NW2d 799 (1995). Therefore, Johnson may not challenge the probate court's jurisdiction during his appeal of the termination order. See *In re Hatcher* and *In re Powers, supra*.

Finally, respondent Johnson argues that his civil rights were violated and that he was denied equal protection of the laws as guaranteed by the US and Michigan Constitutions[1] when the state applied the Indian Child Welfare Act (ICWA)[2] in a discriminatory fashion based upon gender and denied him the protections afforded by the Act. The ICWA requires a higher burden of proof for an "Indian child" in termination cases and defines "Indian child" as "any unmarried person who is under age eighteen and is either (a) a member of an Indian Tribe or (b) is eligible for membership in an Indian Tribe and is the biological child of a member of an Indian Tribe." 25 USC 1903(4). See also MCR 5.980. Johnson explained that he is Tuscarora Indian and under Tuscarora law, a child whose mother had Indian blood is eligible to join their tribe, but not a child whose Indian heritage comes from its father. In the present case, because the children's Indian heritage comes from Johnson, their father, they are not eligible for membership in the Tuscarora Tribe. Johnson argues that the juvenile court accepted this discriminatory application based upon gender, failed to provide him with the protections of the Indian Child Welfare Act and therefore denied him of his civil and equal protection rights.

Respondent Johnson's civil rights claim is without merit. Johnson contends that §302(a) of the Michigan Civil Rights Act was violated. This section provides that a person shall not

> [d]eny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation or public service because of religion, race, color, national origin, age, sex, or marital status. [MCL 37.2302(a); MSA 3.548(302)(a).]

This provision has no bearing on alleged claims of unequal application of the laws as Johnson urges. Rather, it involves discrimination regarding places of public accommodation and public services.

Respondent Johnson's equal protection argument is also without merit. The Equal Protection Clauses of the federal and state constitution are coextensive. US Const, Am XIV, §1; Const 1963, art 1, §2; *Harville v State Plumbing and Heating, Inc,* 218 Mich App 302, 310; 553 NW2d 377 (1996). Proof of discriminatory effect, by itself, is insufficient to establish a violation of either provision. *Harville, supra* at 319. Rather, proof of discriminatory intent or purpose behind state action is required to show a violation of either provision. *Id.* at 308, 318-319. Here, respondent Johnson does not allege that the court intentionally discriminated against him. Johnson merely alleges that the ICWA was being applied in a discriminatory fashion and had a discriminatory effect. Moreover, it is obvious that the court was merely abiding by the Indian laws it was presented with. The Indian tribe, not the state, determined that Johnson and his

children were not eligible to join the Indian tribe. Because respondent Johnson alleged no discriminatory intent, the issue is without merit.

Affirmed.

/s/ Jane E. Markey
/s/ Janet T. Neff
/s/ Michael R. Smolenski

[1] US Const, Am XIV, §1; Const 1963, art 1, §2.

[2] 25 USC 1901 *et seq*.