

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

In the Matter of GREGORY THOMAS TREJO, JR.,  
TIMOTHY ROBERT TREJO, and SAMANTHA  
LIBERTY TREJO, Minors.

---

FAMILY INDEPENDENCE AGENCY

Petitioner-Appellee,

v

LIBERTY A. TREJO, also known as LIBERTY A.  
JABAK and GREGORY THOMAS TREJO, SR.,

Respondents-Appellants.

---

UNPUBLISHED

June 12, 1998

Nos. 200486 & 200833

Oakland Juvenile Court

LC No. 95-059636 NA

Before: Hood, P.J., and Markman and Talbot, JJ.

PER CURIAM.

Respondent Liberty Trejo appeals as of right and respondent Gregory Trejo appeals by delayed leave granted from the trial court's order terminating their parental rights to three minor children under MCL 712A.19b(3)(c)(i) and (g); MSA 27.3178(598.19b)(3)(c)(i) and (g). We affirm.

Respondents are the parents of three children: Gregory Jr., born on March 25, 1990; Timothy, born on February 11, 1992; and Samantha, born on September 27, 1993. Pursuant to a judgment of divorce in November 1994, the mother, Liberty Trejo, was granted custody of all three children. By April 1995, Liberty Trejo was unemployed and could not provide adequate housing for the children. She arranged for Gregory Jr. to live with his maternal grandparents, then contacted the Family Independence Agency (the agency) in late April 1995, asking that the other two children be taken from her care. On May 2, 1995, Liberty Trejo left the two younger children with the father, Gregory Trejo, who proved unable to take care of them due to lack of suitable housing and his working hours. Consequently, a neglect petition was filed and the two younger children were placed in foster care, although Gregory Jr. was temporarily permitted to remain with his maternal grandparents.

At a May 15, 1995, pretrial hearing, respondents admitted the allegations in the neglect petition, including that “[Liberty Trejo] was unable to care for her children and wanted the Department of Social Services to take them temporarily.” All three children were temporarily placed with their paternal grandparents, but were removed after an October 10, 1995, hearing at which the paternal grandparents claimed that they were overwhelmed by the task of caring for the children. After several changes in homes, the children eventually ended up together in a foster home.

In the beginning, it appeared that the intent of all parties was to return custody of the children to the respondents, most probably to the mother, Liberty Trejo. A case service plan was established for respondents in June 1995, delineating the efforts to be made by respondents and the agency to enable such return of custody. As required by this agreement, Liberty Trejo attended all court hearings, participated in psychological evaluations, completed a parenting class, and substantially complied with the requirement to maintain contact with the foster care worker. However, she was unable to find suitable housing for the children despite the agency’s offer to help her find low-cost housing, she was unable to maintain steady employment and did not verify her employment with the foster care worker, she was unable to control the children or accept constructive criticism regarding appropriate discipline even after the parenting class, and she failed to participate in individual therapy as required. Between September and October 1996, Liberty Trejo remarried, but did not disclose her marriage to the agency, her therapist or her children until the termination hearings. Although her new husband apparently owned a three-bedroom home, she testified that she planned to reside temporarily in a two-bedroom apartment and let the children get to know her husband before moving in with him.

Although Gregory Trejo maintained fairly regular contact with the foster care worker and completed drug screening, he failed to provide proof of income as required, failed to obtain suitable housing, failed to attend all court hearings, failed to participate in a psychological evaluation, failed to complete parenting classes and failed to attend Alcoholics Anonymous meetings or individual therapy. Neither parent used appropriate discipline with the children during visitation and as the children’s aggressive behavior grew worse during visitations, visits were required to be supervised and less frequent.

After more than one year, respondents failed to make any significant progress toward being able to care for their children properly, and a petition to terminate their parental rights was filed. Liberty Trejo’s attorney admitted during the termination hearings that she was still not yet able to care for the children, but said that she believed that she would be ready in a few more months. After hearing testimony, the trial court determined that two statutory grounds for termination, MCL 712A.19b(3)(c)(i) and (g); MSA 27.3178(598.19b)(3)(c)(i) and (g), were supported by clear and convincing evidence and that it was in the best interests of the children that respondents’ parental rights be terminated.

The trial court’s decision regarding termination of parental rights is reviewed in its entirety for clear error. *In re Hall-Smith*, 222 Mich App 470, 472; 564 NW2d 156 (1997). The court must terminate the rights of a parent to a child if the court finds by clear and convincing evidence that either of the following circumstances exist, unless it finds that termination is clearly not in the child’s best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5).

1. The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds that the conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the condition will be rectified within a reasonable time considering the age of the child. [MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i).]

2. The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the age of the child. [MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g).]

The respondent bears the burden of going forward with evidence that termination is clearly not in the child's best interests and, absent any evidence addressing this issue by the parent, termination of parental rights is mandatory. *Hall-Smith, supra* at 473.

In this case, respondents argue that the court erred by terminating their parental rights. We find that there was sufficient evidence presented to support the termination of respondents' parental rights. Although Liberty Trejo appears to love her children and desires an eventual return of custody, she was not able to consistently or regularly abide by her obligations to her children under the plan, nor did she demonstrate progress toward being able to provide proper care and custody within a reasonable time through any other means. She voluntarily gave up her children because she was either unable or unwilling to care for them, then failed to progress toward being able to meet the children's emotional or physical needs, both because of her own overwhelming problems and because of a seeming lack of effort on her part toward providing proper discipline, attending therapy or cooperating with the agency.

The evidence shows that Gregory Trejo's efforts toward the care and custody of his children were considerably less than those of the mother, Liberty Trejo. Although he was apparently employed and had sufficient income, he failed without explanation to obtain suitable housing for the children either before or after they were placed in foster care. Further, there was undisputed evidence that he told a foster care worker that he did not want custody of the children.

Although both respondents appeal this revocation of their parental rights, their children were at an age where they needed a permanent and stable environment and neither parent made a sufficient demonstration that they would be able to provide this in the near future. Even short visits with the children proved extremely disruptive, culminating in aggressive and unusual behaviors. The trial court did not clearly 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).

Further, respondents failed to show that termination of their parental rights was not clearly in the children's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5). Respondent Liberty Trejo argued that she would be able to provide a proper home for the children within three to six months, but this was based only on her own opinion. Her counselor did not believe that she could sufficiently address her own issues in that time. There was also suspicion regarding her motivation for remarrying, since it appeared that she may have acted impulsively in order to make a better impression upon the trial

court during the termination proceeding. Her arguments that the agency did not take sufficient action to facilitate reunification were largely unpreserved, since she did not make them in the trial court, and this Court will not review such arguments. *McCready v Hoffius*, 222 Mich App 210, 218; 564 NW2d 493 (1997). While she did preserve the argument that the agency failed to facilitate reunification by referring the children for therapy earlier in the proceedings, this claim is not substantiated by the record. The evidence showed that while earlier intervention might have been helpful, there was nothing in the children's early behavior to suggest that such intervention was needed. Although it is extremely difficult for this Court to order the termination of parental rights where a parent shows an interest in the children, as Liberty Trejo does here, she did not meet the burden of showing that she would be able to reestablish a proper home for the children within a reasonable time and Gregory Trejo failed to present any evidence that termination was not in the children's best interests. Therefore, the trial court did not clearly err in terminating respondents' parental rights. *In re Hall-Smith*, 222 Mich App 470, 473; 564 NW2d 156 (1997).

Respondents next argue that the trial court improperly assumed jurisdiction over this case because there was not sufficient testimony to support jurisdiction at the time that respondents entered their pleas of admission. Although subject matter jurisdiction may be attacked at any time, the exercise of discretion in applying that jurisdiction cannot be challenged in a collateral attack. *In re Hatcher*, 443 Mich 426, 438, 439-440; 505 NW2d 834 (1993). Similar to the case at hand, *Fritts v Krugh*, 354 Mich 97; 92 NW2d 604 (1958) involved a claim regarding the exercise of jurisdiction, i.e. that there was insufficient evidence to support a neglect petition. The Court allowed this claim to be appealed collaterally. However, *Hatcher* expressly overruled *Fritts*, and held that the court's "jurisdiction is established when the proceeding is of a class the court is authorized to adjudicate and the claim stated in the complaint is not clearly frivolous." *Hatcher, supra* at 444. Here, there is no dispute that the trial court was authorized to hear neglect and termination cases, and the petition alleged sufficient information that the court could find neglect and was not clearly frivolous. MCL 712A.2(b); MSA 27.3178(598.2)(b). Although respondents could have directly appealed the exercise of jurisdiction by appealing the initial determination, they cannot now collaterally attack it on appeal from the termination decision. *Hatcher, supra* at 436, 444.

Finally, respondents also raise other secondary issues, but none, in our judgement, warrant reversal. These issues-- the constitutionality of the termination process, the alleged failure of the court to fully resolve an issue regarding abuse by an unrelated party, and the fairness of an ex parte visitation hearing-- are not preserved for appeal. They either were not raised before, and addressed by, the trial court, *McCready, supra* at 218, or respondents have failed to provide supporting authority for their arguments. *Price v Long Realty, Inc*, 199 Mich App 461, 467; 502 NW2d 337 (1993). We therefore decline to review these issues.

For these reasons, we affirm the trial court's termination of respondents' parental rights.

/s/ Harold Hood

/s/ Stephen J. Markman

/s/ Michael J. Talbot