STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of SHELLY GREEN and CRYSTAL ROE, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DENNIS STURGIS,

Respondent-Appellant,

and

ROBERT ROE and MARIE GREEN

Respondents.

UNPUBLISHED
July 7, 1998

No. 207029
Muskegon Juvenile Court
LC No. 96-022764 NA

Before: Wahls, P. J., and Jansen and Gage, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from a juvenile court order terminating his parental rights under MCL 712A.19b(3)(h); MSA 27.3178(598.19b)(3)(h). We affirm.

The juvenile court did not clearly err in finding that the statutory ground for termination was established by clear and convincing evidence. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Contrary to respondent-appellant's claim, the lower court did not find that respondent-appellant's incarceration, by itself, was sufficient grounds for terminating his parental rights under § 19b(3)(h). On the contrary, the court observed that § 19b(3)(h)

> does not make incarceration an automatic trigger for termination of parental rights. Rather, the parent facing incarceration is provided the opportunity to retain his parental rights by making adequate arrangements for the care and custody of the child left behind.

The foregoing statement is in accord with the law. See e.g., *In re Taurus*, 415 Mich 512; 330 NW2d 33 (1982). The juvenile court found that respondent-appellant failed to make arrangements for his daughter's care and custody before his incarceration and this finding is not clearly erroneous. We disagree with respondent-appellant's claim that he never had a chance to provide for his daughter's care and custody since his incarceration and his daughter's removal occurred almost simultaneously. Nothing prevented respondent-appellant from requesting someone to care for his daughter while he was in prison. Further, we reject respondent-appellant's contention that his attempt to obtain appellate relief in his criminal case should have precluded the juvenile court from terminating his parental rights under § 19b(3)(h). There is no indication in the record that respondent-appellant's plea-based conviction has been set aside or that he will be able to provide proper care and custody of his daughter within a reasonable time.

Respondent-appellant also argues that remand is necessary to determine if a comprehensive list of recognized Indian tribes of the United States includes the mother's tribe. Respondent-appellant notes that if the tribe is included on the list, the higher burden of proof required by the Indian Child Welfare Act must be applied. See 28 USC 1903, 1912(f). Remand is unnecessary, however, because, as the juvenile court found, the mother's tribe is not included on the list of Indian tribes recognized by the Secretary of the Interior. See 62 FR 55270. Further, respondent-appellant lacks standing to bring this issue.

Finally, respondent-appellant failed to show that termination of his parental rights was clearly not in the child's best interests. *In re Hall-Smith*, 222 Mich App 470, 472-473; 564 NW2d 156 (1997). Thus, the juvenile court did not err in terminating respondent-appellant's parental rights to the child. MCL 712A.19b(5); MSA 27.3178(598.19b)(5).

Affirmed.

/s/ Myron H. Wahls
/s/ Kathleen Jansen
/s/ Hilda R. Gage