

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TIMOTHY JORDAN RUSSELL,
a/k/a TIMOTHY JORDAN CULKAR, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

HERMAN CULKAR,

Respondent-Appellant.

UNPUBLISHED

February 12, 1999

No. 211218

Washtenaw Juvenile Court

LC No. 94-022534 NA

Before: Gribbs, P.J., and Saad and P. H. Chamberlain,* JJ.

PER CURIAM.

Respondent appeals as of right from the juvenile court order terminating his parental rights to the minor child under MCL 712A.19b(3)(g) and (h); MSA 27.3178(598.19b)(3)(g) and (h). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

The juvenile court's exercise of jurisdiction can be challenged only on direct appeal, not by collateral attack. *In re Hatcher*, 443 Mich 426, 439; 505 NW2d 834 (1993). Thus, respondent may not collaterally attack the juvenile court's decision exercising jurisdiction over the minor child where a direct appeal of the February 4, 1997, adjudication order was available. *Id.*; *In re Bechard*, 211 Mich App 155, 159; 535 NW2d 220 (1995). In any event, we conclude that the juvenile court properly exercised jurisdiction over the minor child, MCL 712A.2(b)(2); MSA 27.3178(598.2)(b)(2), and note that respondent failed to arrange for suitable placement of the child with a relative.

We reject respondents' various claims that he was denied due process of law. *In re Slis*, 144 Mich App 678, 683; 375 NW2d 788 (1985). First, there was no denial of due process when the preliminary hearing did not take place within twenty-four hours of the child's removal from his mother, because good cause existed for the delay. MCR 5.965(A). Second, respondent was not denied due

* Circuit judge, sitting on the Court of Appeals by assignment.

process on the basis of his claim that there was no adjudication of the underlying facts that led to the child's initial removal. The juvenile court was presented with sufficient information to justify removal under MCR 5.963(A), on the basis that the child's health, safety or welfare was in danger while in the custody of his mother, where there was evidence that the mother admitted to using heroin. In addition, the court made it clear throughout the proceedings that it was respondent's failure to find suitable relative care placement for the child while he was incarcerated that justified the child's continued removal. Third, petitioner's various amendments of the petition did not violate respondent's due process rights where respondent was given proper notice and an opportunity to challenge the allegations. MCR 5.118.

Next, even assuming *arguendo* that there is some question about the applicability of MCL 712A.19b(3)(h); MSA 27.3178(598.19b)(3)(h), the juvenile court did not clearly err in finding that § 19b(g) was met by clear and convincing evidence. *In re Perry*, 193 Mich App 648; 484 NW2d 768 (1992); *In re Huisman*, 230 Mich App 372, 384-385; 584 NW2d 349 (1998).

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

Affirmed.

/s/ Roman S. Gribbs
/s/ Henry William Saad
/s/ Paul H. Chamberlain