STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of NICHOLAS ANTONIO EVANS and JOHNATHON EDWARD EVANS, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JEFFREY EVANS and FREDRICA LUMLEY,

Respondents-Appellants.

UNPUBLISHED
November 23, 1999

Nos. 216916;217140
Oakland Circuit Court
Family Division
LC No. 95-059641 NA

Before: Whitbeck, P.J., and Gribbs and White, JJ.

PER CURIAM.

In these consolidated appeals, respondents Jeffrey Evans and Fredrica Lumley appeal as of right from an 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. This case is being decided without oral argument pursuant to MCR 7.214(E).

There is no merit to respondent Evans' argument that the trial court erred in declining to appoint counsel for him before the petition to terminate his parental rights was pending. Indeed, because Evans did not pursue any of the avenues through which a man not married to a child's mother may establish paternity, see MCR 5.903(A)(4)(b)-(d), the trial court was not obliged to recognize Evans' paternity. See *In re Gillespie*, 197 Mich App 440, 443; 496 NW2d 309 (1992). Further, a respondent's right to appointed counsel does not attach until the respondent requests an attorney. MCR 5.915(B)(1)(a)(ii). Evans does not assert, and the record does not show, that he requested an attorney before the court appointed counsel.

Respondent Lumley's argument that the trial court erred when it initially assumed jurisdiction over Johnathon is not properly before this Court. "[A] . . . court's jurisdiction in parental rights cases can be challenged only on direct appeal, not by a collateral attack." *In re Powers*, 208 Mich App 582,

587; 528 NW2d 799 (1995). Because Lumley pleaded no contest to the initial petition years ago, she is estopped from challenging the trial court's exercise of jurisdiction now.

Next, 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); *In re Hall-Smith*, 222 Mich App 470, 472-473; 564 NW2d 156 (1997). Further, respondents failed to show that termination of their parental rights was "clearly not" in the children's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Hall-Smith, supra* at 472-473. The record indicates that both respondents failed to overcome with finality their substance-abuse problems, and that Evans failed to remedy his tendencies toward domestic abuse. The record further indicates that neither respondent has ever provided proper care and custody for the children, and that both have fallen far short of remedying the situation. Thus the trial court properly concluded that respondents had failed to provide proper care and custody, that the conditions originally leading to adjudication, along with other conditions bringing the children under the court's jurisdiction, continued to exist, and that there was no reasonable expectation that these deficiencies would be remedied within a reasonable time considering the ages of the children.

Affirmed.

/s/ William C. Whitbeck
/s/ Roman S. Gribbs
/s/ Helene N. White