STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of RAPHAEL EUGENE COOPER, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

LUQUIOUS PHILOMENA WOOTEN,

Respondent-Appellant,

and

MICHAEL COOPER,

Respondent.

UNPUBLISHED
May 23, 2000

No. 216997
Wayne Circuit Court
Family Division
LC No. 95-326315

Before: Markey, P.J., and Gribbs and Griffin, JJ.

MEMORANDUM.

Respondent-appellant Luquious Wooten (hereinafter "respondent") appeals as of right from an order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(g), (i) and (j); MSA 27.3178(598.19b)(3)(g), (i) and (j). We affirm.

Respondent argues that under MCL 722.638; MSA 25.248(18), as amended by 1998 PA 428, effective December 30, 1998, the trial court could not terminate her parental rights at the initial dispositional hearing absent a specific determination that the child was at risk of harm. Respondent failed to preserve this issue by raising it below. *People v Grant*, 445 Mich 535, 546; 520 NW2d 123 (1994); *In re Hildebrant*, 216 Mich App 384, 389; 548 NW2d 715 (1996). Regardless, assuming without deciding that the statute, as amended, applies to this case and requires a specific determination that a child is at risk of harm before parental rights may be terminated at an initial dispositional hearing,

the applicable provisions of the statute, as amended, were satisfied in this case. The record discloses respondent has a long-term history of using crack cocaine, her parental rights to four older children were terminated in 1997, respondent was still using crack cocaine at the time of the child's birth in May 1998, and respondent continued to be homeless and had no legal source of income. Clearly, under these circumstances, there was a risk of harm to the minor child. Indeed, the trial court specifically indicated "the child would be harmed if [he] were returned to the home of the parents." This determination is not clearly erroneous. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Additionally, because there is no dispute that respondent's parental rights to four older children were terminated previously, under MCL 722.638; MSA 25.248(18), the Family Independence Agency was required to "submit a petition for authorization" under MCL 712A.2; MSA 27.3178(598.2), which it did. Therefore, the FIA complied with the requirements of the statute.

Furthermore, contrary to respondent's position on appeal, the trial court did not clearly err in finding the statutory grounds for termination were established by clear and convincing evidence. MCR 5.974(I); *In re Miller*, *supra*. Additionally, respondent failed to show that termination of her parental rights was clearly not in the child's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re JS & SM*, 231 Mich App 92, 103; 585 NW2d 326 (1998); *In re Hall-Smith*, 222 Mich App 470, 472-473; 564 NW2d 156 (1997). Thus, the trial court did not err in terminating respondent's parental rights to the child.

Affirmed.

/s/ Jane E. Markey
/s/ Roman S. Gribbs
/s/ Richard Allen Griffin