STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of KATTIE IRWIN, DAWSON IRWIN and SHYANNE LYNN RENEE SCHOOLCRAFT, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

RONALD IRWIN,

Respondent-Appellant,

and

SHARICA SCHOOLCRAFT,

Respondent.

UNPUBLISHED
July 13, 2001

No. 229012
Cheboygan Circuit Court
Family Division
LC No. 98-000531-NA

Before: Hood, P.J., and Whitbeck and Meter, JJ.

PER CURIAM.

Respondent-appellant ("respondent") appeals by right from the family court's order terminating his parental rights to three minor children under MCL 712A.19b(3)(g) ("[t]he 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 child's age") and MCL 712A.19b(3)(h) ("[t]he parent is imprisoned for such a period that the child will be deprived of a normal home for a period exceeding 2 years, and the parent has not provided for the child's proper care and custody, and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age").[1] We affirm.

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[1] At one point in his appellate brief, respondent appears to contend that the family court relied on
(continued…)

Respondent first argues that the family court did not have subject-matter jurisdiction in this case and that the order terminating his parental rights must be reversed because although respondent was incarcerated, he was willing and able to care for the children by placing them with their paternal grandparents. We review jurisdictional questions de novo. *Jackson Community College v Dep't of Treasury*, 241 Mich App 673, 678; 621 NW2d 707 (2000).

We disagree that reversal based on a lack of jurisdiction is warranted here. Indeed, the family court properly acquired subject-matter jurisdiction over this case based on the neglectful conduct of the children's mother, and respondent did not argue below, nor does he argue on appeal, that the court erred in this finding. Accordingly, respondent's argument regarding the lack of subject-matter jurisdiction is without merit. See, e.g., *In re Gillespie*, 197 Mich App 440, 442; 496 NW2d 309 (1992) (indicating that the "subject matter" in child protective proceedings is "the child"), and *In re Mayfield*, 198 Mich App 226, 234-235; 497 NW2d 578 (1993) (indicating, in an appeal from an order terminating the parental rights of the father, that the family court acquired subject-matter jurisdiction over the child because of the mother's neglect). See also *In re Hatcher*, 443 Mich 426, 444; 505 NW2d 834 (1993), and *In re Powers*, 208 Mich App 582, 587-588; 528 NW2d 799 (1995) (indicating that the assumption of jurisdiction over a child cannot be collaterally attacked during an appeal from an order terminating parental rights).[2]

Moreover, respondent is incorrect in arguing that the family court could not have properly assumed jurisdiction because of the existence of other relatives who could care for the children while respondent remained incarcerated. First, we note that the holding of *In the Matter of Taurus F*, 415 Mich 512, 535-537; 330 NW2d 33 (1982), on which respondent relies in arguing that placing a child with a suitable relative constitutes proper care and custody, was the product of an equally divided Supreme Court and therefore does not constitute binding precedent. See *People v Armstrong*, 207 Mich App 211, 215; 523 NW2d 878 (1994). In addition, the evidence is clear that respondent had not prevented the children from living in an unfit home at the time the court took jurisdiction. See *In re Systma*, 197 Mich App 453, 456-457; 495 NW2d 804 (1992). No error occurred in this case with regard to jurisdiction.[3]

(…continued)

an outdated version of MCL 712A.19a(e) and (f) in terminating his parental rights. The family court did not in fact cite these provisions, which were superseded by new language in 1988, in ruling on the termination proceedings.

[2] To the extent that respondent cites *In re Ferris*, 151 Mich App 736; 391 NW2d 468 (1986), for a holding contrary to *Hatcher* and *Powers*, we note that *Ferris* relied on *Fritts v Krugh*, 354 Mich 97; 92 NW2d 604 (1958), which was explicitly overruled by *Hatcher, supra* at 444.

[3] Respondent's brief at times seems to confuse subject-matter jurisdiction with personal jurisdiction. To the extent respondent is contending that the family court failed to acquire personal jurisdiction over him, this contention is without merit. Indeed, respondent does not even argue that he was not notified of or did not attend the proceedings in this case. See, e.g., *In re Gillespie, supra* at 442-443 (discussing personal jurisdiction in child protective proceedings). Moreover, respondent failed to cite any authority pertaining to personal jurisdiction and has therefore waived the issue for appeal. See *Great Lakes Division of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 422; 576 NW2d 667 (1998).

Next, respondent contends that the trial court improperly terminated his parental rights because the paternal grandparents were willing to care for the children and respondent therefore could give the children a proper home. We review for clear error a family court's finding that a statutory basis for termination has been met. MCR 5.974(I); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Once a statutory basis has been proven by clear and convincing evidence, the court must terminate parental rights unless the court finds that termination is clearly not in the best interests of the child. *Trejo*, supra at 344, 355. A court's finding on the best interests prong is also reviewed by this Court for clear error. *Id*. at 356-357, 365.

We disagree that the family court erred by terminating respondent's parental rights despite the possibility of placing the children with the paternal grandparents. Indeed, a family court is not required to place a child in the care of relatives. *In re McIntyre*, 192 Mich App 47, 52; 480 NW2d 293 (1991). In *In re IEM*, 233 Mich App 438, 451; 592 NW2d 751 (1999), for example, the respondent argued that because her mother and grandmother could adequately care for the child, there was no basis on which to terminate her parental rights. The court disagreed, stating "[i]f it is in the best interests of the child, the . . . court may properly terminate parental rights instead of placing the child with relatives." *Id*. at 453.

In *In re SD*, 236 Mich App 240, 247; 599 NW2d 772 (1999), the respondent argued that there was insufficient evidence to terminate his parental rights under MCL 712A.19b(3)(h) because even though he was incarcerated, the children would be able to reside in a normal home with their mother in the meantime. This Court disagreed, stating that "[e]ven if respondent is paroled in less than four years," there was little likelihood that the children would end up with a normal home, given the respondent's sexual abuse of the children. *Id*. Here, even though respondent was imprisoned for the sexual abuse of a minor other than his own child, he nonetheless posed a risk to his own children, given his documented diagnoses of pedophilia, alcohol abuse, and anti-social personality disorder.[4] Accordingly, the reasoning of *SD* provides support for the trial court's decision in this case.

Moreover, we note once again that respondent did not prevent his children from being in an abusive situation while he was imprisoned. This fact also supported the trial court's decision to terminate respondent's parental rights. See, generally, *Systma, supra* at 457. For purposes of termination, it does not matter whether respondent's failure to prevent the abuse was intentional or unintentional. MCL 712A.19b(3)(h). We additionally note that respondent acknowledged at the termination hearing that he was unlikely to gain custody of his children because of his background and his lack of personal contact with the children resulting from his prison term. Accordingly, respondent essentially contended that the children would remain with his parents indefinitely. This fact also provided support for the trial court's decision. See, generally, *In re Ernst*, 130 Mich App 657, 663; 344 NW2d 39 (1983). Indeed, the court acknowledged that the

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[4] While the court refused to terminate respondent's parental rights *solely* on his diagnoses and the corresponding possibility that the children would be harmed by respondent if returned to his care, the court, by adopting petitioner's closing statement with regard to the best interests prong of the analysis in this case, nonetheless acknowledged that respondent's diagnoses would likely make his home an unfit place for children (petitioner's statement emphasized respondent's diagnoses).

children, especially given their ages, needed permanency in their lives. See *McIntyre*, *supra* at 52.

Finally, we emphasize that respondent has been imprisoned since 1993 and is likely to remain imprisoned for several more years. One of the children was four-and-one-half years old at the time the incarceration commenced and was seven at the time of the termination hearing. The other two children had not even been conceived at the time of respondent's incarceration.[5] These facts demonstrate that there was essentially no bonding between respondent and the children.

In light of the foregoing facts and case law, we simply cannot say that the family court *clearly erred* in determining that a statutory basis for termination existed[6] and that termination was in the best interests of the children.[7]

Affirmed.

/s/ Harold Hood
/s/ Patrick M. Meter

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[5] Respondent, without objection, was treated as the father of these two children during the instant proceedings because he was married to their mother when they were born.

[6] We note that only one statutory basis need be established to warrant termination. See *Trejo, supra* at 360.

[7] Although his argument is not well-developed, respondent appears to make an additional contention in his appellate brief: that the children should have been placed with his parents at the commencement of the child protective proceedings in this case. We conclude that respondent waived this argument by failing to formally challenge the children's placement at an earlier stage in the proceedings. Moreover, any error in this regard would not affect our decision that the family court did not clearly err in terminating respondent's parental rights.