

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of S.S., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JUSTINE SMELTZER,

Respondent-Appellant,

and

LEANN SMELTZER,

Respondent.

UNPUBLISHED

November 22, 2002

No. 240913

Hillsdale Circuit Court

Family Division

LC No. 01-000553-NA

Before: Markey, P.J., and Saad and Smolenski, JJ.

MEMORANDUM.

Respondent Justine Smeltzer appeals by right from a circuit court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(b)(i), (i), (j), (k)(ii), (l) and (n)(i). We affirm.

The trial court did not clearly err in finding that the statutory grounds for termination had been proved by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Further, the trial court did not clearly err in its determination that the evidence, on the whole record, did not clearly show that termination was clearly not in the child's best interest. *Id.* at 354, 356-357; MCL 712A.19b(5); Therefore, the trial court did not clearly err in terminating respondent's parental rights to the child. *Trejo, supra* at 356-357.

Respondent contends the trial court erred in finding the statutory grounds for termination had been proved because it declined to allow respondent to call witnesses to refute the allegations of sexual abuse of the minor child's sibling. We disagree. Defendant was convicted of third-degree criminal sexual conduct, MCL 750.520d, as shown by a certified judgment of sentence. In an earlier termination proceeding, the child testified to the sexual abuse and respondent's parental rights to that child and her siblings were terminated. Because there was no

dispute that the circuit court had jurisdiction and the judgments were never appealed, they were final and could not be collaterally attacked in a subsequent action. *People v Howard*, 212 Mich App 366, 369; 538 NW2d 44 (1995); *SS Aircraft Co v Piper Aircraft Corp*, 159 Mich App 389, 393; 406 NW2d 304 (1987). Therefore, the trial court did not abuse its discretion in excluding the witnesses' testimony. *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 188; 600 NW2d 129 (1999).

We affirm.

/s/ Jane E. Markey

/s/ Henry William Saad

/s/ Michael R. Smolenski