STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of CHARLES LLOYD SAMPSON, III, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

Respondent-Appellant,

and

CHARLES LLOYD SAMPSON, II,

Respondent.

UNPUBLISHED
December 11, 2003

No. 248807
Cass Circuit Court
Family Division
LC No. 02-000561-NA

In the Matter of MICHAEL AARON SAMPSON, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DAWN LYNN SAMPSON,

Respondent-Appellant,

and

CHARLES LLOYD SAMPSON, II,

Respondent.

No. 248808
Cass Circuit Court
Family Division
LC No. 02-000562-NA

In the Matter of RAYMOND STUART SAMPSON, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DAWN LYNN SAMPSON,

Respondent-Appellant,

and

CHARLES LLOYD SAMPSON, II,

Respondent.

No. 248809
Cass Circuit Court
Family Division
LC No. 02-000563-NA

In the Matter of THOMAS ALLEN SAMPSON, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DAWN LYNN SAMPSON,

Respondent-Appellant,

and

CHARLES LLOYD SAMPSON, II,

Respondent.

No. 248810
Cass Circuit Court
Family Division
LC No. 02-000564-NA

In the Matter of TANNER BOWHEN SAMPSON, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DAWN LYNN SAMPSON,

Respondent-Appellant,

and

CHARLES LLOYD SAMPSON, II,

Respondent.

No. 248811
Cass Circuit Court
Family Division
LC No. 02-000565-NA

In the Matter of CHARLES LLOYD SAMPSON, III, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CHARLES LLOYD SAMPSON, II,

Respondent-Appellant,

and

DAWN LYNN SAMPSON,

Respondent.

No. 248812
Cass Circuit Court
Family Division
LC No. 02-000561-NA

In the Matter of MICHAEL AARON SAMPSON, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CHARLES LLOYD SAMPSON, II,

Respondent-Appellant,

and

DAWN LYNN SAMPSON,

Respondent.

No. 248813
Cass Circuit Court
Family Division
LC No. 02-000562-NA

In the Matter of RAYMOND STUART SAMPSON, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CHARLES LLOYD SAMPSON, II,

Respondent-Appellant,

and

DAWN LYNN SAMPSON,

Respondent.

No. 248814
Cass Circuit Court
Family Division
LC No. 02-000563-NA

In the Matter of THOMAS ALLEN SAMPSON,
Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CHARLES LLOYD SAMPSON, II,

Respondent-Appellant,

and

DAWN LYNN SAMPSON,

Respondent.

No. 248815
Cass Circuit Court
Family Division
LC No. 02-000564-NA

In the Matter of TANNER BOWHEN SAMPSON,
Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CHARLES LLOYD SAMPSON, II,

Respondent-Appellant,

and

DAWN LYNN SAMPSON,

Respondent.

No. 248816
Cass Circuit Court
Family Division
LC No. 02-000565-NA

Before: Smolenski, P.J., and Sawyer and Borrello, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the trial court order terminating their parental rights to the minor children under MCL 712A.19b(3)(g). We affirm.

Both appellants raise issues relating to the adjudication trial in this matter. Respondent mother asserts that counsel for petitioner prejudiced and misled the jury by stating during voir dire and in argument that the taking of jurisdiction meant the court could order the respondents to comply with services, and by stating that termination was not being sought, when in fact a termination petition was filed only ten days after the verdict finding jurisdiction was rendered. Respondent mother also asserts that the judge should have instructed the jury that evidence of services rendered to respondents in the past was irrelevant and that petitioner's reference to the ultimate disposition of the case was improper. Respondent father challenges the sufficiency of the evidence supporting jurisdiction.

These issues are not properly before the court because they relate to the court's exercise of jurisdiction, which cannot be collaterally attacked in an appeal from the order terminating parental rights. *In re Hatcher*, 443 Mich 426, 439, 444; 505 NW2d 834 (1993); *In re Powers*, 208 Mich App 582, 587; 528 NW2d 799 (1995). While lack of subject matter jurisdiction can be collaterally attacked, the exercise of that jurisdiction can be challenged only on direct appeal. *In re Hatcher, supra; In re Powers, supra*. Neither respondent appealed from the order of adjudication or moved for rehearing as directed by MCL 712A.21. Therefore, we decline to review these issues.

Both respondents also challenge the sufficiency of the evidence supporting the termination of parental rights. Because the termination petition was filed only ten days after the jury's verdict finding jurisdiction was rendered and no dispositional review hearings were held, this case is most appropriately reviewed as a termination of parental rights at the initial disposition. MCR 3.977(E).[1] When termination is ordered at an initial dispositional hearing, the trial court must find by clear and convincing legally admissible evidence that one or more of the allegations of the termination petition are true, and establish one of the statutory grounds for termination of parental rights. MCR 3.977(E).[2] A decision terminating parental rights is reviewed for clear error. *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999).

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[1] The trial court did hold a disposition hearing on February 27, 2003, where it continued the children in foster care and ordered the parents to comply with the service plan. However, this case was never directed at reunification. At the initial disposition hearing the court ordered that the matter be forthwith scheduled for a termination trial. The court's order directed no visitation, referencing the pending petition for termination.

[2] Effective May 1, 2003, the court rules governing proceedings regarding juveniles were amended and moved to the new MCR subchapter 3.900. We note that the amended rule governing termination at the initial disposition permits the use of legally admissible evidence admitted at the adjudication trial or plea proceedings as well as that introduced at the disposition hearing, MCR 3.977(E)(3), while the former MCR 5.974 (D)(3) only permitted the use of legally admissible evidence introduced at the adjudication trial or plea proceedings. The new rules came into effect prior to the conclusion of the termination trial on May 8, 2003 and were thus applicable to the then still pending matter. See MCR 1.102.

Although the trial court did not expressly find that one or more of the allegations of the petition were true, the court found facts that clearly and convincingly supported that conclusion. The termination petition outlined the extensive services that were provided to respondents from April 2000 until the filing of the termination petition. The petition cited the removal of the children on two occasions prior to their removal in October 2002 and sought termination based on respondents' inability to maintain a proper environment or adequately supervise the children. The court found that respondents are unable to make changes; that despite intensive services changes had not occurred; that there were two prior removals; and that the house was in total chaos with improper supervision. A review of the record reveals that all of these findings are amply supported by the evidence. Moreover, the trial court did not clearly err by finding that these conditions established the grounds for termination set forth in MCL 712A.19b(3)(g).

Various witnesses indicated that, over a course of two years, the condition of the house was inconsistent. Significantly, witnesses indicated that the condition of the house would deteriorate when the Wraparound Program services would be reduced or absent for a period of time and would improve when workers would advise respondents that some action would be necessary. Respondents never got to the point of maintaining the house in acceptable condition on their own. There was specific testimony that respondent father was inconsistent with regard to maintaining an acceptable standard of cleanliness over the years and would avoid the home when things got chaotic. The majority of the time the home was cluttered with clothing everywhere throughout, remnants of food in the living area, and days' worth of dirty dishes stacked up in the kitchen. On October 8, 2002 the home was extremely dirty and cluttered, with cigarette butts on a chair and food on the floor of the living area. The kitchen was cluttered with a lot of dirty dishes and trash was on the floor. The youngest children were observed eating cocoa powder off of the floor by the handfuls while playing in it. Respondent mother did not intervene. She did not intervene in fighting, kicking and biting or in climbing on the table. Based on all of this evidence, the trial court did not clearly err by finding that both respondents failed to provide proper care and custody for the minor children.

The evidence also amply supported the trial court's conclusion that respondents lacked the ability to change, a condition that indicates there is no reasonable likelihood that either respondent will be able to provide proper care and custody for the minor children in the reasonable future. The psychological evidence indicated that respondent father significantly minimized the seriousness of problems and even was unwilling to recognize problems, instead blaming his wife and the system. Respondent mother was more open to admitting problems, but the problems remained the same and her ability to change did not shift. Psychologist William Schirado indicated that the proof of respondent mother's prognosis would be in her response to services. Somewhat similarly with respondent father, Dr. Schirado recommended a gradual return of the children to allow him to demonstrate an ability to manage the home and parent the children, with a poor prognosis if this did not work out. The evidence overwhelmingly showed that, despite intensive assistance and interventions over two years, and the gradual return of the children on two separate occasions, respondents did not consistently improve in their ability to keep the home minimally clean or to effectively supervise the children.

Respondent father points out on appeal that the home was immaculate in a visit that occurred after the last removal of the children and after respondent mother had moved from the home. However, the evidence showed that, over the years, the problem was the maintenance of

an acceptable standard. The evidence indicated that numerous confrontational meetings with respondents would result in immediate improvement that was not subsequently maintained.

Respondent father also argues that the prior return of the children to the home on two separate occasions indicates that he was able to comply with a service plan, thus demonstrating parental fitness. See *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). This case is distinguishable from *In re JK, supra,* because, even assuming that respondents did demonstrate fitness at specific times in history, the subsequent removal of the children demonstrates that the same problems resurfaced. Furthermore, in this unusual case, the return of the children to the home did not indicate that respondents were able to maintain a fit home. There was express testimony that the return of the children did not necessarily indicate that progress had been made. Rather, the children were returned because there was a comprehensive support team in place including Wraparound, the schools, and Early On. Wraparound workers testified that they did not believe the children would be safe with their parents without the assistance of Wraparound. Based on all of this testimony, the trial court did not clearly err by finding that both respondents would be unable to provide proper care and custody for the minor children in the reasonable future.

Finally we conclude that the trial court did not clearly err by finding that termination was in the best interests of the children. Dr. James Henry described a trauma bond exhibited by the three eldest children, in which the children needed the parental relationship because of an outside threat, but respondents were not meeting the needs of the children. Dr. Henry opined that Charles' moving forward would depend on the system severing the parental relationship, allowing him to grieve and process that loss and then to develop a relationship with another primary adult. With respect to Michael, Dr. Henry noted that the closer he gets to his foster parents, the more afraid he becomes of betraying respondents. His confusion as to what will be a permanent relationship prevents his development of a positive, safe and secure relationship. Dr. Henry testified that Raymond experiences confusion as to the security of his primary relationship and at age four desperately needs to develop a secure attachment. With respect to the twins Thomas and Tanner, Dr. Henry opined that to return home would be very harmful to their development because of the lack of parenting and inability of respondents to change. With respect to all of the children, Dr. Henry testified that it was critical that stability be established. He indicated that they have all benefited from stability in recent months while in foster care. While the testimony clearly indicated that respondents love their children and there is a parental bond, it did not establish that termination was clearly contrary to the best interests of the children. Since May 2000, the children have been removed from the home three times because of the condition of the home and inadequate supervision. The evidence showed that the home remained chaotic and unsafe despite over two years of intensive assistance. At this time the children need permanency and stability.

Affirmed.

/s/ Michael R. Smolenski
/s/ David H. Sawyer
/s/ Stephen L. Borrello