

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ENKELEDA GASHAJ,
KLAUDIA GASHAJ, ANA GASHAJ and STEFFI
GASHAJ, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

PALOK GASHAJ,

Respondent-Appellant.

UNPUBLISHED

June 15, 2004

No. 252016

Oakland Circuit Court

Family Division

LC No. 02-666031-NA

Before: Sawyer, P.J., and Gage and Owens, JJ.

MEMORANDUM.

Respondent appeals as of right from a circuit court order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(g) and (j). We affirm.

Respondent first contends that the trial court lacked jurisdiction over the children because it failed to comply with the requirements of MCR 3.971 when taking his plea. This issue has not been preserved for appeal because respondent did not raise the issue below. *In re NEGP*, 245 Mich App 126, 134; 626 NW2d 921 (2001); *In re Zelzack*, 180 Mich App 117, 126; 446 NW2d 588 (1989). Therefore, respondent must show plain error that affected the outcome of the lower court proceedings. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999); *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000).

At the time respondent tendered his plea, the case was governed by MCR 5.971. The record shows that the trial court did not substantially comply with the requirements of MCR 5.971(B). Therefore, respondent has shown plain error. However, that error had no effect on the court's ability to exercise jurisdiction over the children.

MCL 712A.2(b) grants the family court "subject-matter jurisdiction of cases concerning children under eighteen years of age if, among other factors, the child's parents or guardians are neglectful as defined in subsection 1 or have failed to provide a fit home as defined in subsection 2." *In re AMB*, 248 Mich App 144, 167; 640 NW2d 262 (2001). The advice of rights required for a plea is to ensure that the respondent's plea is knowingly, understandingly, and voluntarily made. MCR 5.971(C)(1). Those rights and respondent's understanding of them have no bearing

on whether the court has jurisdiction over the child, which is determined by establishing a factual basis for the plea, either by the respondent's admissions to the allegations in the petition or by other evidence if the respondent pleads no contest. MCR 5.971(C)(2). Here, respondent pleaded no contest and the parties stipulated to using the petition to establish a factual basis for the plea. The petition alleged that the children, who had been living with their parents, lacked proper custody or guardianship because their father had been incarcerated for killing their mother, and that the killing took place in the presence of two of the children. Those allegations established a basis for assuming jurisdiction under MCL 712A.2(b). In addition, the evidence at the dispositional hearing showed that respondent had been convicted of two counts of first-degree murder for killing his wife and brother-in-law and was serving mandatory life prison sentences. Therefore, had respondent requested a trial on the adjudicatory phase of the proceedings, it is unlikely that the outcome would have been any different. Consequently, we find that respondent has not established a right to relief for this unpreserved error.

We decline to consider respondent's claim that his plea should be set aside. This issue is not properly before the Court because respondent did not include it in the statement of questions presented and thus it need not be considered. *Busch v Holmes*, 256 Mich App 4, 12; 662 NW2d 64 (2003). In addition, the issue has not been preserved because respondent did not move to withdraw his plea in the trial court. *In re Campbell*, 170 Mich App 243, 249-250; 428 NW2d 347 (1988).

Respondent next contends that the trial court erred in terminating his parental rights because petitioner failed to prove that termination was in the children's best interests. We disagree.

The petitioner "bears the burden of proving at least one ground for termination." *In re Trejo Minors*, 462 Mich 341, 350; 612 NW2d 407 (2000). The court is not required to find that termination is in the children's best interests. *Id.* at 357, 364 n 19. Rather, once a statutory ground for termination has been proved, "the court shall order termination of parental rights . . . unless the court finds that termination of parental rights to the child is clearly not in the child's best interests." MCL 712A.19b(5). The best interest provision does not "impose any further burden of proof on the petitioner once the petitioner has carried its burden of establishing one or more grounds for termination." *Trejo, supra* at 352. Thus, "the court may consider evidence introduced by either party when determining whether termination is clearly not in a child's best interest." *Id.* at 353 (footnote omitted). Even if no best interest evidence is offered after a ground for termination has been established, the court may "find from the evidence on the whole record that termination is clearly not in a child's best interests." *Id.*

A psychologist testified that allowing respondent to maintain a relationship with the children, who were afraid of and angry at respondent, was contrary to their best interests. Moreover, respondent murdered the mother of his children, which crime "demonstrates a callous disregard for the welfare of one's children." *In re Mudge*, 116 Mich App 159, 162; 321 NW2d 878 (1982). Given the circumstances of this case, the trial court's refusal to delay permanency and stability for the children during the whole of their minority was not clearly erroneous. *Trejo, supra* at 356-357.

Affirmed.

/s/ David H. Sawyer

/s/ Hilda R. Gage

/s/ Donald S. Owens