

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of M.R.D., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

BEVERLY JOE DERRING,

Respondent-Appellant,

and

ROGER DAVIS,

Respondent.

In the Matter of M.R.D., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ROGER DAVIS,

Respondent-Appellant,

and

BEVERLY JOE DERRING,

Respondent.

UNPUBLISHED
September 16, 2004

No. 252292
Wayne Circuit Court
Family Division
LC No. 01-400892

No. 252582
Wayne Circuit Court
Family Division
LC No. 01-400892

Before: Cavanagh, P.J., and Smolenski and Owens, JJ.

PER CURIAM.

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

The trial court did not clearly err in determining that the statutory grounds for termination of parental rights were established by clear and convincing evidence with regard to both respondents. See MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The conditions leading to adjudication for respondent mother were her cocaine addiction and environmental neglect and, for respondent father, his failure to visit or support the child. The proceedings lasted for more than two years, and although respondent mother obtained suitable housing, she was not able to overcome her cocaine addiction despite inpatient and outpatient treatment and counseling. Respondent father resided in California and apparently did not know about the proceedings until the last year, but during that year he did not make adequate efforts to establish paternity, or engage in services in California or in Michigan. He established paternity only four months prior to the termination hearing and moved back to Michigan to facilitate services only one day prior to the termination hearing. He was unemployed and without housing.

The evidence clearly showed that respondents were unable to provide proper care or custody for the minor child, and that the child would likely be harmed if returned to either of them. Respondent mother's inability to overcome her cocaine addiction and respondent father's lack of effort toward taking responsibility for the minor child until the ninth hour showed that there was no reasonable likelihood that either respondent would be able to provide proper care or custody or rectify the conditions leading to adjudication within a reasonable time.

Respondent father also argues that his right to due process was violated by lack of notice because publication was not sufficient and because the agency did not properly manage his case. We find that respondent father's right to due process was not violated in either way. At the outset of these proceedings, respondent father's whereabouts were unknown, other than that he was probably in the Oakland, California area. Service was afforded by publication. Respondent father was not the child's custodial or noncustodial "parent," a "father," or a "respondent," as those terms were defined in MCR 5.903(A)(12), MCR 5.903(A)(4), and MCR 5.974(B), respectively,¹ and was therefore not entitled to notice. *In re Gillespie*, 197 Mich App 440, 446; 496 NW2d 309 (1992). However, the trial court deemed him a putative father under MCR 5.921(D), and publication was proper effected in accord with MCR 5.920(B)(4)(c).

¹ Effective May 1, 2003, the Michigan Court Rules governing child protective proceedings were amended. Notice in this case was given in 2001, and these former court rules applied.

With regard to management of respondent father's treatment plan, the agency did not provide services to respondent father in California because he had not established paternity prior to that time. After respondent father established paternity, he informed his caseworker that he would come to Michigan to facilitate services. However, respondent father did not arrive in Michigan until the day prior to the termination hearing. Respondent father waited nine months after he became aware that his child was a court ward to establish paternity and another four months to arrive in Michigan and avail himself of services. Any lack of progress in the treatment plan was caused by respondent father's delay in establishing a proper home for the child, verifying a source of income, and availing himself of services, and was not attributable to improper case management.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Michael R. Smolenski

/s/ Donald S. Owens