

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ANTHONY CHRISTOPHER
NAMO, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CYNTHIA LYNN HOLMES,

Respondent-Appellant.

UNPUBLISHED

December 16, 2004

No. 255338

Oakland Circuit Court

Family Division

LC No. 03-685424

Before: Markey, P.J., and Fitzgerald and Owens, JJ.

MEMORANDUM.

Respondent appeals by right from the trial court's order terminating her parental rights to the minor child under MCL 712A.19b(3)(g). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court did not clearly err in determining that the statutory ground for termination of parental rights was established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The evidence showed that respondent had a long history of drug and alcohol abuse and had only sporadically provided care for minor child who was five years old at the time of termination. She had attempted suicide and used drugs while pregnant with the minor child and was able to provide proper care for him only with the maternal grandmother's support and assistance and only for brief periods of time following completion of drug treatment programs. Respondent did not proactively ensure proper custody of the minor child with others, as she claims. The maternal grandmother stepped in to take care of the child after respondent abandoned him at the babysitter's home, later granted an unrelated person guardianship over him, and still later left him with his father who was known to sell drugs. Given that respondent had completed several drug treatment programs in the past without lasting success, and had failed to consistently provide proper care for the minor child for five years, the trial court did not err in determining that there was no reasonable expectation that she would provide proper care or custody for him within a reasonable time.

Furthermore, the evidence did not show that termination of respondent's parental rights was clearly not in the minor child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The evidence showed that the minor child was well cared

for by his maternal grandmother, that respondent could not consistently provide proper care for him, and that it was in his best interests to sever respondent's ability to make decisions regarding his custody by terminating her parental rights.

Respondent also asserts that her right to due process was violated because the trial court did not provide her with proper notice that termination might occur at the initial disposition. Respondent did not raise this due process issue in the trial court, and therefore the issue is not preserved. *Phinney v Perlmutter*, 222 Mich App 513, 544; 564 NW2d 532 (1997). Unpreserved constitutional error is reviewed for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999). No error occurred. The record establishes that respondent received notice with the petition that termination of her parental rights was sought, and notice of the disposition was properly sent to the address she provided to the court. Moreover, the maternal grandmother's testimony established that respondent knew about the proceeding and chose not to attend.

We affirm.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Donald S. Owens