

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
March 19, 2013

In the Matter of ELKINS, Minors.

No. 310735
Ingham Circuit Court
Family Division
LC No. 10-002055-NA

Before: STEPHENS, P.J., and HOEKSTRA and RONAYNE KRAUSE, JJ.

MEMORANDUM.

Respondent appeals as of right the order terminating his parental rights to the minor children under MCL 712A.19b(3)(g), (j), and (k). Because respondent may not collaterally attack the trial court's initial assumption of jurisdiction, we affirm.

Respondent's first issue on appeal raises a question regarding the decision of the trial court to admit hearsay evidence pursuant to MCR 3.972(C)(2) during the adjudicatory phase of the proceedings from several professionals that were investigating the allegations of abuse in this case. Because this issue is not properly before us, we decline to address it.

"Matters affecting the court's exercise of its jurisdiction may be challenged only on direct appeal of the jurisdictional decision, not by collateral attack in a subsequent appeal of an order terminating parental rights." *In re Gazella*, 264 Mich App 668, 679-680, 692 NW2d 708 (2005), superseded by statute on other grounds; see also *In re SLH*, 277 Mich App 662, 668; 747 NW2d 547 (2008). Failure to appeal an order of adjudication results in the loss of the right to challenge the court's exercise of jurisdiction. *In re Gazella*, 264 Mich App at 680.

In this case, respondent failed to take an appeal of right from the October 5, 2011 adjudicatory order of the trial court taking jurisdiction over the minor children. Instead, respondent now raises the issue in this appeal which is from the May 7, 2012 order of the trial court that terminated his parental rights. Under these circumstances, respondent has lost his right to appeal the trial court's decision to admit hearsay evidence during the adjudicatory phase to this Court. *Id.*

Respondent next argues that the court erred when it considered the children's hearsay statements during the dispositional phase of the proceedings. "In contrast to an adjudication, the hearings conducted during the dispositional phase do not depend on legally admissible evidence." *In re CR*, 250 Mich App 185, 201; 646 NW2d 506 (2002). "The parent who has been subject to an adjudication . . . can have her parental rights terminated on the basis of all the

relevant and material evidence on the record, including evidence that is not legally admissible.” *Id.* at 205. Thus, we conclude that respondent’s argument that the trial court improperly relied on inadmissible evidence during the termination hearing is meritless.

Affirmed.

/s/ Cynthia Diane Stephens

/s/ Joel P. Hoekstra

/s/ Amy Ronayne Krause