

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MATTHEW TASKER, BRETT
TASKER, and TODD LOUIS TASKER, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

TINA TASKER,

Respondent-Appellant.

UNPUBLISHED

July 25, 2006

No. 268181

Sanilac Circuit Court

Family Division

LC No. 03-034378-NA

Before: Fitzgerald, P.J., and Saad and Cooper, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating her parental rights to her minor children under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

Respondent argues that the lower court erred when it accepted her plea and took jurisdiction over the children. Respondent failed to preserve this issue by raising it in the lower court, *In re SD*, 236 Mich App 240, 243 n 2; 599 NW2d 772 (1999), and could not collaterally attack the jurisdictional finding because the proceeding was of a class the court was authorized to adjudicate and the claim was not clearly frivolous. *In re Hatcher*, 443 Mich 426, 433-434; 505 NW2d 834 (1993).

Further, respondent's argument fails substantively. The entry of plea advised respondent of her rights and the consequences of her plea, as required by MCR 3.971(B). Respondent's only evidence contradicting this was a mistake in filling out the form; either the wrong box was checked or respondent signed where someone who read it to her should have signed. However, respondent does not claim that someone forged her signature or that she did not either read the form or have it read to her. Her attorney also signed. The signed document was sufficient evidence for the court to find that the plea was "knowingly, understandingly, and voluntarily made," as required by MCR 3.971(C)(1). The court did not err when it accepted the plea following a mediation agreement.

Respondent also challenges on appeal the procedure the lower court followed when it accepted her statutory grounds admissions, found termination against the children's best interests, and preserved the statutory grounds finding when it later reconsidered the children's

best interests. Respondent claims that this was an agreement made pursuant to *In re Adrianson*, 105 Mich App 300; 306 NW2d 487 (1981), which is not permitted under the current court rules. *In re Gazella*, 264 Mich App 668, 674; 692 NW2d 708 (2005). In *In re Adrianson, supra*, the lower court entered an order terminating the respondent's parental rights but suspended the order on the condition that the respondent comply with certain rehabilitation requirements. *In re Gazella, supra* at 673. This violated MCL 712A.19b(5), which states that the court *must* terminate the respondent's rights after it finds a statutory ground, unless the court also finds that termination is clearly against the child's best interests. *In re Gazella, supra* at 674.

In the present case, the lower court avoided this procedural error because it did not issue an order terminating respondent's rights and then suspend it, and respondent did not give up her right to a hearing on the children's best interests. The issue instead was whether the lower court could preserve its statutory findings and reconsider only the best interests decision. The court rules and statutes do not directly address this issue. However, when there is clear and convincing evidence of a statutory ground for termination, a parent's liberty interest no longer includes the right to custody and control of her children; it gives way to the state's interest in protecting the child. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). The parent no longer has the same due process rights. *In re Fried*, 266 Mich App 535, 544 n 3; 702 NW2d 192 (2005). Therefore, the lower court may treat a respondent differently after finding statutory grounds for termination, including preserving those grounds and continuing to monitor the children's best interests.

To determine whether termination was still against the children's best interests, the court was required to weigh all evidence available. See *In re Trejo, supra* at 354. Respondent's continued failure to find stable, appropriate housing and stable income was relevant. Respondent's multiple explanations regarding her positive drug screen and guilty plea went beyond believability, and the lower court had a better opportunity to judge witness credibility. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The lower court did not err when it held that termination was no longer clearly against the children's best interests and terminated respondent's parental rights.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Henry William Saad

/s/ Jessica R. Cooper