

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of LEAH MARIE KRESUK and
RACHEL ANNE KRESUK, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LEO KRESUK, JR.,

Respondent-Appellant.

UNPUBLISHED

November 10, 2009

No. 292504

Oakland Circuit Court

Family Division

LC No. 09-756736-NA

Before: Stephens, P.J., and Cavanagh 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)(b)(i), (g), (j), and (k)(ii). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Respondent pleaded no contest to an original petition for jurisdiction and termination of his parental rights to the children based on allegations of sexual abuse of one of the children. Respondent had not been convicted of criminal sexual conduct, but he was serving a prison sentence of two to 15 years and was subject to a no-contact order until the children were 18 years old. Based on respondent's plea and the testimony of a Department of Human Services employee, the court found that it had jurisdiction over the children, that termination of respondent's parental rights was warranted under the grounds stated, and that termination was in the children's best interests. See MCR 3.977(E); MCL 712A.19b(5).

Respondent now contends that the circuit court erred because the employee's testimony did not establish the statutory grounds for termination by clear and convincing, legally admissible evidence or that termination was in the children's best interests. See MCR 3.977(E)(3)(b); MCL 712A.19b(5).

However, respondent's counsel admitted at the plea proceeding that the testimony offered by the DHS employee was sufficient to support the statutory grounds for termination. Counsel further stated that she had no objection to the court finding, on the basis of that testimony, that termination was in the children's best interests and added that respondent did not contest such a finding. Therefore, this issue has been waived. *Holmes v Holmes*, 281 Mich App 575, 587-588;

760 NW2d 300 (2008) (a party may not take a position in the trial court and then seek relief based on a position contrary to that taken in the trial court); *People v Matuszak*, 263 Mich App 42, 57; 687 NW2d 342 (2004) (an affirmative statement that a party does not object to the trial court's action constitutes express approval of such action that waives appellate review).

Affirmed.

/s/ Cynthia Diane Stephens

/s/ Mark J. Cavanagh

/s/ Donald S. Owens