

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of JOHN JAY HARRIS, JR., Minor.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JOHN J. HARRIS, SR. and MICHELL ROBERTS,

Respondents-Appellants.

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UNPUBLISHED

May 20, 1997

No. 199386

Gladwin Probate Court

LC No. 96-000104-NA

Before: Bandstra, P.J., and Griffin and Fitzgerald, JJ.

PER CURIAM.

Respondents appeal as of right a probate court order terminating their parental rights to the minor child, John Jay Harris, Jr. (d/o/b 5/23/96), pursuant to MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g). We reverse and remand.

John, who was born with a cleft palate, was released from the hospital two days following his birth weighing approximately four pounds eight ounces. After two days in respondents' care, his weight began to steadily decrease. John was admitted into the hospital on June 13, 1996, with a diagnosis of failure to thrive. After he was hospitalized, John gained weight, and it was determined that his failure to thrive was not organic but was caused by environmental conditions. John was placed in foster care, and respondents' parental rights were terminated on September 30, 1996.

Respondents first argue that they should be permitted to challenge the adjudicative finding of jurisdiction, as well as the termination of their parental rights, because no order of jurisdiction from which they could appeal was entered. A jury determined that the probate court had jurisdiction over John following a two-day jury trial held on September 5 and September 6, 1996. Because a petition seeking termination had been filed, the probate court considered the petition after hearing the testimony. On September 30, 1996, the probate court ordered termination of respondents' parental rights. The

order stated that the jury had found that the court had jurisdiction. It is from this order that respondents appeal. Their appeal is a direct appeal from the finding of jurisdiction, and is therefore proper.

Respondents next argue that the probate court erred in admitting testimony of certain witnesses who had not been qualified as experts. We disagree. Because respondents failed to preserve this issue for appeal by raising objections to the challenged testimony, it is unpreserved. MRE 103(a)(1). We need not review the admission of evidence to which a respondent did not object absent manifest injustice. *People v Asevedo*, 217 Mich App 393, 398; 551 NW2d 478 (1996). The challenged testimony was all based on personal observations of the witnesses. We find no manifest injustice.

Respondents next assert that the probate court erred in allowing a physician to testify about the diagnosis of his team. We disagree. Respondents properly preserved this issue by raising objections to the testimony. MRE 103(a)(1). The probate court's decision to admit evidence will not be overturned absent an abuse of discretion. *People v McElhaney*, 215 Mich App 269, 280; 545 NW2d 18 (1996). The physician was limited by the court to testifying based on his own diagnosis of John. Although phrased in terms of his team, the witness' testimony clearly was that of his own diagnosis, with which the team apparently agreed. The probate court did not abuse its discretion in admitting the testimony.

Respondents also argue that the court erred in permitting the physician to testify as to how Respondent Roberts fed John because it was not based on his personal observation, but on what he had learned from his team. We find that even if the witness' testimony was inadmissible hearsay, it was merely cumulative and its admission was harmless error. MCR 2.613(A); *Sackett v Atyeo*, 217 Mich App 676, 685-686; 552 NW2d 536 (1996); *People v Rodriguez (On Remand)*, 216 Mich App 329, 332; 549 NW2d 359 (1996).

Respondents also argue that the probate court's questioning of witnesses denied them a fair trial. We disagree. Respondents failed to raise an objection to the court's questioning of the witnesses. MRE 103(a)(1); MRE 614(c). We need not review the admission of evidence to which a respondent did not object absent manifest injustice. *Asevedo, supra*.

In the criminal context, this Court reviews the trial court's questioning of witnesses to determine whether the defendant was denied a fair trial. *People v Davis*, 216 Mich App 47, 52; 549 NW2d 1 (1996). A court may interrogate witnesses, MRE 614(b), but its questioning must not "pierce the veil of judicial impartiality." *Id.* at 50. When the questions indicate judicial partiality, we must determine whether any error was harmless. *Id.* at 51, citing *People v Weathersby*, 204 Mich App 98, 109; 514 NW2d 493 (1994).

Respondents challenge the probate court's questioning of two witnesses. We find no indication of partiality in the questions. We also find that the questions did not further support petitioner's case, but merely clarified some of the facts. Moreover, some of the questions provided answers that were cumulative. Hence, any error in the court's questioning of the witnesses was harmless.

Respondents also contend that the probate court erred in terminating their parental rights without holding a dispositional hearing. This issue presents a question of law, which is reviewed de novo. *Cardinal Mooney High School v Mich High School Athletic Ass'n*, 437 Mich 75, 80; 467 NW2d 21 (1991).

This matter was initiated in the probate court on June 17, 1996, by the filing of a petition requesting the court to take temporary custody of the child. An order to take the child into temporary custody was entered on that date. A preliminary hearing pursuant to MCR 5.962 was held on July 3, 1996, following which the court entered an order authorizing the petition.

On August 2, 1996, petitioner filed a petition requesting the termination of respondents' parental rights. The probate court then held a jury trial to determine whether the child was within the court's jurisdiction. Following a two-day jury trial, a jury determined that a statutory basis for jurisdiction existed and that the allegations contained in the petitioner were proven by a preponderance of the evidence. Hence, the jury found sufficient evidence to authorize the assumption of jurisdiction.

Once it is determined that a child comes within the jurisdiction of the probate court, a dispositional hearing is conducted to determine measures to be taken by the court with respect to the child properly within its jurisdiction. MCR 5.973(A). Although there need not be any time interval between the trial and dispositional hearing, MCR 5.973(A)(1), the parties must be advised by the court when the adjudicative phase has been completed and the dispositional phase has begun. *In re Nunn*, 168 Mich App 203; 423 NW2d 619 (1988) (this Court reversed a probate court's termination of the respondent's parental rights where the termination was ordered following an adjudicative hearing). Before parental rights may be terminated under the juvenile code, the court must hold a dispositional hearing, MCR 5.973(A), MCR 5.974(D). The failure of the probate court to hold an initial dispositional hearing deprived respondents of the opportunity to examine and controvert any written reports received by the court and of the opportunity to cross-examine the individuals making the reports before their parental rights were terminated. MCR 5.973(4)(b). Hence, we conclude that the probate court's termination of respondents' parental rights prior to the conducting of the dispositional phase was erroneous. *Nunn, supra*. The order terminating respondents' parental rights is vacated, and the case is remanded to afford the court the opportunity to conduct a dispositional hearing.<sup>1</sup>

Reversed and remanded. We do not retain jurisdiction.

/s/ Richard A. Bandstra

/s/ Richard Allen Griffin

/s/ E. Thomas Fitzgerald

<sup>1</sup> Having determined that the termination of respondents' parental rights by the probate court prior to the conducting of the dispositional phase of the proceeding was erroneous, we need not determine whether the evidence produced during the adjudicative phase alone was sufficiently clear and convincing to

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justify a termination of respondents' parental rights on the basis of MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g).