

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

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In the Matter of FREDERICK THOMAS and  
MARIA THOMAS, Minors.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TAMMY DAVIS,

Respondent-Appellant.

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UNPUBLISHED

December 22, 1998

No. 208292

Wayne Juvenile Court

LC No. 97-355436

Before: Markman, P.J., and Bandstra and J.F. Kowalski\*, JJ.

MEMORANDUM.

Respondent appeals as of right a juvenile court order assuming jurisdiction over the minor children. We affirm.

Respondent argues that the juvenile court erred in exercising jurisdiction over her minor children, Frederick and Maria. We disagree. The evidence presented in this case leads to the conclusion that respondent was present when Frederick's arm was injured and either inflicted the injury herself or failed to protect the child from her boyfriend, Ken Davis. First, two physicians testified that the child's arm injury was consistent with an intentional injury. Further, in examining the case history to determine whether it is more likely that the child's injuries were intentionally inflicted, we conclude that the referee did not clearly err in finding that the arm injury occurred while Frederick was in the sole care of respondent and her boyfriend. This finding is supported by grandmother Merkersen's testimony that Frederick had no signs of distress when she left respondent's house during the evening of May 29 and that she saw no deformities on Frederick's arm. In addition, respondent failed to give an explanation for the injury that would infer an accidental injury.

Based on the facts of this case, the juvenile court did not clearly err in finding that respondent failed to protect the younger child, Frederick, from injury. *In re Miller*, 433 Mich 331, 337; 445

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\* Circuit judge, sitting on the Court of Appeals by assignment.

NW2d 161 (1989).<sup>1</sup> The court's exercise of jurisdiction over the minor children pursuant to MCL 712A.2(b)(1) and (2); MSA 27.3178(598.2)(b)(1) and (2) was supported by a preponderance of the evidence. MCR 5.972(C)(1); *In re Brock*, 442 Mich 101, 108-109; 499 NW2d 752 (1993).<sup>2</sup>

We affirm.

/s/ Stephen J. Markman

/s/ Richard A. Bandstra

/s/ John F. Kowalski

<sup>1</sup> If respondent caused the injury, the finding of a statutory basis for jurisdiction would not be clearly erroneous because the children would be at risk of harm in the home. If respondent failed to protect Frederick from her boyfriend, the children would still be at risk in the home in light of the evidence of respondent's continued relationship with the boyfriend, respondent's testimony that she did not believe that it was possible that the boyfriend would hurt her child, and the fact that a reasonable inference could be made from the evidence, based on respondent's changes to her story about what occurred, that respondent was covering up for her boyfriend or herself.

<sup>2</sup> Because jurisdiction was properly exercised over Frederick, it follows that jurisdiction was properly exercised over Maria pursuant to the rule of anticipatory neglect or abuse. *In re Powers*, 208 Mich App 582, 588-589; 528 NW2d 799 (1995).