STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of D.S.B. and D.D.A., Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TERRENCE DARNELL MATTHEWS, a/k/a TERRANCE DARNELL MATTHEWS, a/k/a TORRENCE ANNEZ NEALON, a/k/a TORRANCE NEALON,

Respondent-Appellant.

UNPUBLISHED
July 9, 2002

No. 230837
Wayne Circuit Court
Family Division
LC No. 98-372109

In the Matter of D.S.B., D.B.A. and D.D.A., Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

STARLETTA BANKS,

Respondent-Appellant.

No. 231071
Wayne Circuit Court
Family Division
LC No. 98-372109

Before: Holbrook, Jr., P.J., and Jansen and Wilder, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the trial court's orders terminating their parental rights to the minor children under MCL 712A.19b(3)(b)(ii), (c)(i), (g) and (j). We affirm.

Docket No. 230837

Respondent-father argues that he was unfairly prejudiced by the trial court's bifurcating the termination hearing for respondents. Specifically, respondent-father asserts that the procedure denied him the right to hear important medical evidence regarding injuries sustained by DBA, and denied him the opportunity to object to a bench trial. Because respondent-father failed to object to the procedure below, we review for plain error. *In re Snyder*, 223 Mich App 85, 92; 566 NW2d 18 (1997). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain . . . , 3) and the plain error affected substantial rights. . . . The third requirement generally requires a showing of prejudice . . . ." *Id*. at 763. Further, if the three elements of the plain error rule are established, "[r]eversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error '"seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings" independent of the defendant's innocence.'" *Id.* at 763-764, quoting *United States v Olano*, 507 US 725, 736-737; 113 S Ct 1770; 123 L Ed 2d 508 (1993) (quoting *United States v Atkinson*, 297 US 157, 160; 56 S Ct 391; 80 L Ed 555 [1936]).

The bifurcated hearing was directly attributable to respondent-father's lack of presence on the first day of the scheduled hearing, his failure to provide his proper address, and his disappearing for significant periods of time during the proceedings. Indeed, the trial court bifurcated the termination hearing solely to provide respondent-father an opportunity to be present when the proofs against him were presented. Further, contrary to respondent-father's claim, there was nothing precluding him from being "privy" to the medical evidence regarding DBA's injuries offered against respondent-mother at her termination hearing. Moreover, the substance of the medical evidence was identical to that presented at the adjudication trial more than a year earlier. We also note that, contrary to respondent-father's suggestion, he had no right to a jury trial at the dispositional phase. MCR 5.911(A); *In re Brock*, 442 Mich 101, 108; 499 NW2d 752 (1993). Accordingly, we find no error in the trial court's decision to bifurcate the termination hearing.

We also reject respondent-father's assertion that the trial court erred in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Despite overwhelming evidence that DBA had suffered a series of serious injuries while in the care of respondent-mother, respondent-father took the position that the injuries were non-existent. Respondent-father also failed to comply or make any significant progress with complying with his parent-agency treatment plan. In addition, respondent-father has chosen to absent himself from significant portions of the proceedings below, as well as accumulating nearly $10,000 in child support arrearage. We hold that this evidence supports the trial court's findings regarding the statutory grounds for termination. Further, the evidence did not show that termination of respondent-father's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 354; 612 NW2d 407 (2000).

Docket No. 231071

Respondent-mother argues that reversal of the termination of her parental rights with respect to DDA is warranted because the trial court erred in not holding a jury trial on the issue of jurisdiction over DDA, who was born after jurisdiction was assumed over the other two

minors. We agree that the court erred in concluding that it was not required to hold an adjudication in order to assume jurisdiction over DDA because it had continuing jurisdiction over the family pursuant to the prior adjudication. Pursuant to court rule, jurisdiction must be established with respect to each child involved. MCR 5.972. Jurisdiction over children born after jurisdiction has been established over other children cannot be presumed or somehow transferred, and a proper adjudicative hearing must be held. However, we find this error harmless in these circumstances. During the hearing the court did hold that the court took judicial notice of the existing court file. Within that file was sufficient competent evidence to support a finding of jurisdiction over DDA.

Finally, we reject respondent-mother's assertion that the trial court erred in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 5.974(I); *In re Miller*, *supra* at 337. As with respondent-father, despite the medical evidence, respondent-mother continued to deny the existence of DBA's injuries. Respondent-mother also failed to comply with her parent-agency treatment plan. Further, the evidence did not show that termination of respondent-mother's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *In re Trejo Minors*, *supra* at 354.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Kathleen Jansen
/s/ Kurtis T. Wilder