

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of J.M.-J. M., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

V

BERTHA PEARL USSERY,

Respondent-Appellant,

and

JAMAL MALIK FAREED MOORE

Respondent.

UNPUBLISHED
November 1, 2002

No. 235962
Wayne Circuit Court
Family Division
LC No. 99-379917

Before: Griffin, P.J., and Gage and Meter, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(b)(ii), (g) and (j). We reverse.

Respondent contends that the trial court erred when it found a statutory basis for jurisdiction in the child's medical records. We agree.

Petitioner proposed at the adjudicative trial that it would offer the child's medical records and rest on those records as establishing a statutory basis for jurisdiction under MCL 712A.2(b). In response, respondent's attorney stipulated that the records could be entered into evidence while arguing the evidence would not be sufficient to establish jurisdiction. The trial court stated that it had not reviewed the records but would accept them as a basis for jurisdiction pending review of the records. It also stated that it would hear arguments on the issue.

The trial court never subsequently made any findings of fact regarding the records or did it ever explain how the records established a statutory basis for jurisdiction. Nonetheless, when the trial court reconvened for the dispositional hearing, the trial court proceeded to hear testimony with regard to petitioner's request to terminate respondent's parental rights at the

initial dispositional hearing. The trial court found that petitioner sufficiently established grounds for termination under MCL 712A.19b(b)(ii), (g) and (j).

The trial court erred in failing to make its own determination of jurisdiction. To properly exercise jurisdiction, the court must find that a statutory basis for jurisdiction exists. *In re PAP*, 247 Mich App 148, 152-153; 640 NW2d 880 (2001). Jurisdiction must be established by a preponderance of the evidence, MCR 5.972(C)(1); *In re Snyder*, 223 Mich App 85, 88; 566 NW2d 18 (1997); see also *In re Hatcher*, 443 Mich 426, 433; 505 NW2d 834 (1993). The trial court was therefore obligated to review the records and make its own determination that they established a statutory basis for jurisdiction.

After conducting our own review of the medical records, we conclude that they do not establish a basis for jurisdiction under MCL 712A.2(b). The records show only that the child sustained an unusual pattern of scald burns, that doctors consulted a hospital social worker, and that the worker suspected child abuse because of an alleged inconsistency between respondent's explanation of the scalding incident and the pattern of burns. The records do not identify any respect in which the pattern of burns was inconsistent with respondent's explanation or indicative of abuse. They do not show either that respondent neglected to provide the child with proper care or the child's home was unfit. MCL 712A.2(b)(1) and (2). The mere fact a child sustains an unusual injury while in a parent's care is not enough to establish that the parent was neglectful or abusive. *In re Waite*, 188 Mich App 189, 195; 468 NW2d 912 (1991).

Because the trial court improperly asserted jurisdiction,¹ the subsequent proceedings were void *ab initio* and it is unnecessary to consider the remainder of respondent's issues.

Reversed.

/s/ Richard Allen Griffin

/s/ Hilda R. Gage

/s/ Patrick M. Meter

¹ Unlike *In re Hatcher*, *supra*, this is a direct appeal of the assumption of jurisdiction, not a collateral attack.