

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of K.R., Minor.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ROBIN RHOADES,

Respondent-Appellant.

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UNPUBLISHED

December 13, 2002

No. 239168

Otsego Circuit Court

Family Division

LC No. 01-000147-NA

Before: Owens, P.J., and Murphy and Cavanagh, JJ.

PER CURIAM.

Respondent appeals as of right from an order of disposition entered by the circuit court following a jury determination that the child came within the jurisdiction of the court. We affirm.

Respondent first contends that the trial court abused its discretion in excluding evidence of a power of attorney she executed after the court placed the child in foster care pending trial. She contends the document was admissible to prove that the child was not “without proper custody or guardianship” as provided by MCL 712A.2(b)(1). A trial court’s decision to exclude evidence is reviewed for an abuse of discretion. *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 188; 600 NW2d 129 (1999). Any error in the exclusion of evidence is not grounds for reversal unless a party’s substantial rights were affected. *Id.* at 188.

A parent may, on a temporary basis, delegate her powers regarding the care, custody, or property of a minor child to another responsible adult. MCL 700.5103. “[A] family court has subject-matter jurisdiction when the allegations in the petition provide probable cause to believe that it has statutory authority to act because the child’s parent or guardian neglected the child, failed to provide a fit home, or committed any of the other conduct described in the statute.” *In re AMB*, 248 Mich App 144, 168; 640 NW2d 262 (2001) (footnote omitted).

Here, at the time the petition was filed, respondent had custody of the child and had not placed her with another legally responsible adult. Once respondent was incarcerated, the child was without proper care and custody, and the fact that respondent subsequently executed a power of attorney granting a third person authority to act as the child’s parent could not thwart the

court's jurisdiction. *In re Webster*, 170 Mich App 100, 106; 427 NW2d 596 (1988). Because the power of attorney "was ineffective to nullify the court's . . . jurisdiction," *id.*, it was not relevant under MRE 401. Thus, the court did not abuse its discretion in excluding it as evidence at the jurisdictional trial. *Ellsworth, supra* at 188.

Respondent next contends that the court erred in admitting a fugitive from justice complaint indicating that she was wanted in Arizona on three felony narcotics charges. She contends that evidence of those charges was inadmissible under MRE 404(b). Because respondent did not object to the document under MRE 404(b) below, this issue has not been preserved for appeal. MRE 103(a)(1); *Westland v Okopski*, 208 Mich App 66, 72; 527 NW2d 780 (1994). Respondent is not entitled to relief unless she can show a plain error that affected her substantial rights. *People v Carines*, 460 Mich 750, 763-765; 597 NW2d 130 (1999).

MRE 404(b)(1) states that evidence of other crimes or bad acts "is not admissible to prove the character of a person in order to show action in conformity therewith . . . ." However, MRE 404(b)(1) also states that such evidence may be admissible for other purposes. Here, we believe that the evidence was relevant because respondent's arrest on those charges was the basis for the allegation in the petition that her daughter was without proper care and custody. As such, the evidence was not admissible solely for character purposes. Accordingly, we are not persuaded that the evidence was plainly contrary to MRE 404(b)(1), as necessary to avoid forfeiture. *Carines, supra* at 763-765.

Respondent also contends that the evidence was more prejudicial than probative. Indeed, although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. MRE 403. "'Unfair prejudice' does not mean 'damaging.'" *Sclafani v Peter S Cusimano, Inc*, 130 Mich App 728, 735; 344 NW2d 347 (1983). Rather, it usually involves "a situation in which there exists a danger that marginally probative evidence will be given undue or pre-emptive weight by the jury." *Id.* Here, the evidence at issue was not marginally probative; it was the basis for the assumption of jurisdiction under § 2(b)(1). As such, we are not persuaded that the danger of unfair prejudice substantially outweighed the evidence's probative value. Therefore, the trial court did not abuse its discretion in admitting the evidence. *Ellsworth, supra* at 188.

Affirmed.

/s/ Donald S. Owens  
/s/ William B. Murphy  
/s/ Mark J. Cavanagh