

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of GJERCARDO GJEEN  
WILLIAMS, Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

GJERMAINE WILLIAMS,

Respondent-Appellant.

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UNPUBLISHED

March 4, 2008

No. 280072

Wayne Circuit Court

Family Division

LC No. 04-435348-NA

Before: Whitbeck, P.J., and Jansen and Davis, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating his parental rights to the minor child under MCL 712A.19b(3)(h), (i), (k)(ii), (k)(iii), and (l). We affirm. This appeal is being decided without oral argument. MCR 7.214(E).

The minor child Gjercardo was born after the termination trial for his four siblings began. Gjercardo's mother pleaded no contest to allegations in the amended petition, which established jurisdiction over Gjercardo. When the termination trial for the siblings continued, respondent had not been personally served with the amended petition adding Gjercardo. Therefore, the trial court did not consider Gjercardo during that proceeding. Ultimately, respondent's parental rights to Gjercardo's siblings were terminated.

Respondent argues that his due process rights were violated when the trial court took jurisdiction over Gjercardo at a hearing at which he was not present. The trial court's exercise of jurisdiction over Gjercardo, based on his mother's admissions, allowed the trial court to make determinations with regard to respondent's parental rights. Respondent's absence did not violate his due process rights. MCL 712A.6; *In re CR*, 250 Mich App 185, 202-203; 646 NW2d 506 (2002). Further, the trial court considered the issue of jurisdiction anew at the trial regarding termination of respondent's parental rights to Gjercardo. The court found that jurisdiction was established over Gjercardo then as well.

Respondent argues that the trial court erred in finding jurisdiction under MCL 712A.2(b)(2) at this hearing because Gjercardo lived with his mother in an appropriate home, and because respondent had never had contact with Gjercardo or lived with him. We agree, but

find that the error was harmless because jurisdiction was properly exercised under MCL 712A.2(b)(1).<sup>1</sup> We review the trial court's decision to exercise jurisdiction for clear error. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). "To properly exercise jurisdiction, the trial court must find that a statutory basis for jurisdiction exists. Jurisdiction must be established by a preponderance of the evidence." *Id.* (citations omitted).

The trial court's exercise of jurisdiction over Gjercardo was proper because petitioner established section MCL 712A.2(b)(1) by a preponderance of the evidence. *Id.* Respondent had sexually and physically abused Gjercardo's siblings, and petitioner established that Gjercardo was subject to a substantial risk of harm. "A child may come within the jurisdiction of the court solely on the basis of a parent's treatment of another child. Abuse or neglect of the second child is not a prerequisite for jurisdiction of that child and application of the doctrine of anticipatory neglect." *In re Gazella*, 264 Mich App 668, 680-681; 692 NW2d 708 (2005).

Respondent next argues that the trial court violated his due process rights by terminating his parental rights under statutory grounds that were not included in the petition. He also argues that the court clearly erred in finding that any one of the statutory grounds for termination was established by clear and convincing evidence.

Because respondent's due process argument is unpreserved, it is reviewed for plain error. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Due process requires that a respondent be provided with notice of the allegations against him. *In re Slis*, 144 Mich App 678, 683; 375 NW2d 788 (1985).

The petition to terminate respondent's parental rights listed MCL 712A.19b(3)(a)(ii), (g), (h), (j), (k)(i), (k)(iii), (k)(iv), and (k)(v). Respondent accordingly had notice that petitioner would seek termination under these statutory grounds. The trial court ultimately terminated respondent's rights under MCL 712A.19b(3)(h), (i), (k)(ii), (k)(iii), and (l). We recognize that respondent did not receive notice that petitioner would seek termination under sections (i), (k)(ii), and (l). However, this error was harmless. As discussed below, respondent father received notice that petitioner was seeking termination under sections (h) and (k)(iii), and both of these subsections were established by clear and convincing evidence. Thus, no plain error occurred. *Carines*, *supra* at 763-764.

We review decisions terminating parental rights for clear error. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The trial court did not clearly err in finding that subsection (h) was established by clear and convincing evidence. The trial court was aware of respondent's maximum release date, but nonetheless found that respondent father could not provide proper care and custody for Gjercardo within two years under the doctrine of anticipatory neglect. Respondent had sexually abused Gjercardo's sister and had physically abused Gjercardo's siblings and mother. Even if the court had determined that respondent might be able to provide sufficient care for Gjercardo at some future date, much counseling and other

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<sup>1</sup> This Court will not reverse where the trial court reached the right result for the wrong reasons. *Amerisure Ins Co v Auto-Owners Ins Co*, 262 Mich App 10, 21; 684 NW2d 391 (2004).

work would be required over an extended period of time before respondent could even be trusted with the unsupervised visitation necessary to establish that he could provide proper care and custody. The trial court did not clearly err in finding that subsection (h) was established by clear and convincing evidence.

Respondent argues that the trial court clearly erred by finding that subsections (k)(ii) and (k)(iii) were established because the court relied on the referee's report from the prior proceedings and because he had been acquitted of the criminal charges against him. There is no requirement that a respondent be convicted of any crime to establish subsections (k)(ii) and (k)(iii). Moreover, the referee's report was part of the file and the trial court properly took judicial notice of its own file. MRE 201. As noted above, there was evidence that respondent had sexually abused Gjercardo's sister and had physically abused Gjercardo's siblings. There was other evidence of harsh abuse as well; for instance, even respondent admitted to physically beating the children with a belt. The trial court did not clearly err in finding that subsections (k)(ii) and (k)(iii) were established by clear and convincing evidence.

As stated earlier, respondent received proper notice that petitioner sought termination under subsections (h) and (k)(iii), and only one statutory ground need be proven in order to terminate parental rights. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000). The court did not err by concluding that subsections (h) and (k)(iii) had been established by clear and convincing evidence in this case. MCR 3.977(J).

The trial court must terminate a respondent's parental rights if it finds that the petitioner has established at least one statutory ground for termination, unless the court finds that termination is clearly contrary to the child's best interest. MCL 712A.19b(5); *Trejo, supra* at 344. We cannot conclude that the trial court clearly erred in reaching its best-interests determination in this case. MCR 3.977(J).

Affirmed.

/s/ William C. Whitbeck  
/s/ Kathleen Jansen  
/s/ Alton T. Davis