

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MALIK XAVIER WEBSTER,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

KIMBERLY WEBSTER,

Respondent-Appellant,

and

FORREST NEAL,

Respondent.

UNPUBLISHED
September 16, 2008

No. 285091
Washtenaw Circuit Court
Family Division
LC No. 08-000001-NA

Before: Whitbeck, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Respondent Kimberly Webster appeals as of right from a circuit court order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(l) (the parent's rights to another child were terminated as a result of a proceeding under MCL 712A.2(b)). Because respondent has failed to show plain error, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Respondent does not argue that § 19b(3)(l) was not established by clear and convincing evidence. Rather, she posits a general due process challenge to the use of a 2001 termination order to satisfy § 19b(3)(l). She contends that due to the passage of time, the previous termination order was no longer a sufficient predictor of parental behavior to justify termination of her parental rights to the instant child, especially where the conditions that led to the prior termination were not at issue in this case. Because respondent did not raise this issue in the trial court, it is not preserved. *Rooyakker & Sitz, PLLC v Plante & Moran, PLLC*, 276 Mich App 146, 162; 742 NW2d 409 (2007). Therefore, the issue is reviewed for plain error affecting respondent's substantial rights. *Kloian v Schwartz*, 272 Mich App 232, 242; 725 NW2d 671 (2006).

The trial court may terminate parental rights at the initial dispositional hearing if a preponderance of the evidence adduced at trial establishes grounds for the assumption of jurisdiction under MCL 712A.2(b) and the court finds on the basis of clear and convincing legally admissible evidence that one or more facts alleged in the petition are true and establish grounds for termination under MCL 712A.19b(3). MCR 3.977(E); *In re Archer*, 277 Mich App 71, 73; 744 NW2d 1 (2007). Termination is appropriate under MCL 712A.19b(3)(l) if the court finds by clear and convincing evidence that “[t]he parent’s rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state.”

The plain language of § 19b(3)(l) does not impose any age limit on the prior involuntary termination or limit its use to cases in which the conditions that led to the prior termination have recurred, and a court may not read into a statute anything “that is not within the manifest intent of the Legislature as gathered from the act itself.” *In re S R*, 229 Mich App 310, 314; 581 NW2d 291 (1998). In other words, a court cannot “judicially legislate by adding into a statute provisions that the Legislature did not include.” *In re Wayne Co Prosecutor*, 232 Mich App 482, 486; 591 NW2d 359 (1998). Petitioner presented clear and convincing legally admissible evidence in the form of a certified copy of an order involuntarily terminating respondent’s parental rights to another child that established a statutory basis for termination, and alone eliminated respondent’s liberty interest in the custody and control of her child. *In re Trejo*, 462 Mich 341, 355-356; 612 NW2d 407 (2000). Further, while the prior termination established a statutory basis for termination in this case, that alone did not mandate termination of respondent’s parental rights. The trial court still had to consider whether termination of respondent’s parental rights would be clearly contrary to the child’s best interests, MCL 712A.19b(5), which further protected respondent’s rights. *In re Trejo*, *supra* at 356. Therefore, respondent has failed to show plain error.

Contrary to what respondent asserts, the trial court did not terminate her parental rights under § 19b(3)(j). The record clearly shows that termination was sought and ordered under § 19b(3)(l) only. The prior neglect proceeding involving Malik and respondent’s continued substance abuse were relevant to the court’s jurisdictional and best interests determinations, but were not offered to prove a statutory ground for termination.

Finally, there is no merit to respondent’s argument that her admission to continued drug use violated the corpus delicti rule. That rule is intended “to prevent the use of a defendant’s confession to convict him of a crime that did not occur.” *People v Schumacher*, 276 Mich App 165, 180; 740 NW2d 534 (2007). Here, respondent was not charged with, tried for, or convicted of a criminal offense. Therefore, the rule is not applicable.

Affirmed.

/s/ William C. Whitbeck
/s/ Richard A. Bandstra
/s/ Pat M. Donofrio