

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of LELIA VALENTINE QUINN,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LATOYA MARIA PORTER,

Respondent-Appellant.

UNPUBLISHED

May 19, 2009

No. 288300

Oakland Circuit Court

Family Division

LC No. 07-737170-NA

Before: Wilder, P.J., and Meter and Fort Hood, JJ.

PER CURIAM.

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

To justify the termination of a respondent's parental rights, a petitioner must establish at least one statutory basis for termination by clear and convincing evidence. *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003). In the present case, petitioner and the trial court acknowledged that there was insufficient evidence that respondent directly caused the child's injuries. Therefore, it was improper to find sufficient evidence for termination under MCL 712A.19b(3)(b)(i). However, we will reverse only if the trial court's finding under every statutory ground was clearly erroneous. See MCR 3.977(J); *In re Trejo Minors*, 462 Mich 341, 355-357; 612 NW2d 407 (2000); and *In re Huisman*, 230 Mich App 372, 384-385; 584 NW2d 349 (1998), overruled in part on other grounds by *In re Trejo*, *supra* at 353.

The trial court did not clearly err when it found that the child was reasonably likely to be harmed if returned to respondent's care, MCL 712A.19b(3)(j). The court was convinced that respondent either injured the child or was covering for the person who did. The court was in the best position to judge witness credibility. See *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Respondent argues that she could not be expected to recognize that the child was in pain when medical personnel did not. However, experts also testified that the child suffered fractures more than once, which gave respondent an additional opportunity to recognize that something was seriously wrong. Further, the evidence contradicted respondent's claim that she was told she could remove the child from the hospital and was not told of the fractures. If the pediatrician's

testimony was believed,¹ respondent refused to follow her medical advice that the child needed to be admitted. She also left the child with unsuitable caregivers.

Under the circumstances, we are not left with a definite and firm conviction that the trial court erred in finding a statutory basis for termination under at least MCL 712A.19b(3)(j). See *In re JK*, *supra* at 209-210.

Under the amended version of MCL 712A.19b(5), applicable when the order was issued in the present case, the trial court was also required to find that termination was in the child's best interests before terminating respondent's parental rights. Respondent argues that it was improper for the trial court, in evaluating the child's best interests, to rely on evidence in the psychological report. However, unlike the cases respondent cites, e.g., *In re Hulbert*, 186 Mich App 600, 602, 605; 465 NW2d 36 (1990), the present case included evidence of actual injury, not mere speculation about future abuse or neglect.

Respondent also argues that she should have had the opportunity to demonstrate her ability to parent with the assistance of proper services, citing *In re Newman*, 189 Mich App 61, 70; 472 NW2d 38 (1991). However, petitioner is not required to provide services in all circumstances, *In re Terry*, 240 Mich App 14, 26 n 4; 610 NW2d 563 (2000), and given the injuries at issue here, we cannot fault petitioner's choices in this case. Respondent also argues that petitioner should have offered services after the first referral; however, the absence of services was justifiable given that the only injury was a small bruise and the public health nurse reported no concerns. Further, although respondent obtained some assistance on her own during these proceedings, she testified that she believed she did not need services, and she declined to discuss why the child was removed with the person who was supposed to help her become a better parent.

Respondent argues that she took the child to the hospital. However, she removed the child from another hospital when it was unlikely the child abuse pediatrician told her she could leave. Respondent also admitted that she spent "not too many" hours with the child in the two months before the child's removal. In addition, the trial court was permitted to consider the child's need for permanence. See *In re McIntyre*, 192 Mich App 47, 52; 480 NW2d 293 (1991). The court did not clearly err when it found that it was in the child's best interests to terminate respondent's parental rights.

Finally, respondent argues that the trial court violated her due process rights when it did not hold a jury trial regarding jurisdiction after the child's father pleaded no contest. However, the right to a jury trial at the adjudication phase is waived when a respondent makes a plea of admission or no contest, MCR 3.971(B)(3)(a); *In re AMAC*, 269 Mich App 533, 536 n 2; 711 NW2d 426 (2006), and the court need not make a separate adjudication regarding each parent, *In re CR*, 250 Mich App 185, 202-206; 646 NW2d 506 (2001).

¹ The trial court did indeed place an emphasis on the evidence provided by the pediatrician.

Additionally, respondent failed to appeal the written finding of jurisdiction. See *In re Bechard*, 211 Mich App 155, 159-160; 535 NW2d 220 (1995). Moreover, according to the trial court record, it was not even respondent, but instead the father, who initially requested a jury trial in the trial court.² Basically, respondent did not preserve this issue for appeal; therefore, we review for plain error affecting her substantial rights. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999).

A parent's interest in the custody of her children is an element of liberty protected by due process, *In re JK*, *supra* at 210, and respondents in termination proceedings have significant procedural due process rights, see, e.g., *In re Vasquez*, 199 Mich App 44, 46-50; 501 NW2d 231 (1993). Procedural due process requires fundamental fairness, which generally involves consideration of the private interest involved, the state's interest, and the risk of erroneous deprivation and the probable value of additional safeguards. *In re Brock*, 442 Mich 101, 111; 499 NW2d 752 (1993). Fundamental fairness did not require that respondent be granted a jury trial regarding jurisdiction when the other parent's plea brought the child under the court's jurisdiction. Also, she was granted a hearing on the issues of statutory grounds and best interests. No plain error occurred.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood

² We note that the record does not support respondent's argument that the adjournments that occurred were somehow intended to prevent a jury trial. The record contains adequate reasons for the adjournments. Nor does the record support respondent's suggestion that petitioner removed the initial request to terminate the father's parental rights in order to, again, prevent a jury trial. The record indicates that petitioner allowed the father a chance to demonstrate his parenting ability but later sought termination of his rights because he failed to complete his treatment plan.