

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JACOB BLOUNT, Minor.

DEPARTMENT OF SOCIAL SERVICES,

Petitioner-Appellee,

v

CORINNE KAIO,

Respondent-Appellant,

and

HAROLD BLOUNT,

Respondent.

DEPARTMENT OF SOCIAL SERVICES,

Petitioner-Appellee,

v

HAROLD BLOUNT,

Respondent-Appellant,

and

CORINNE KAIO,

Respondent.

UNPUBLISHED

February 6, 1998

No. 197066

Oakland Juvenile Court

LC No. 95-060150-NA

No. 197070

Oakland Juvenile Court

LC No. 95-060150-NA

Before: Sawyer, P.J., and Wahls and Reilly, JJ.

PER CURIAM.

In these consolidated appeals, respondents challenge the probate court's order terminating their parental rights to the minor child under MCL 712A.19b(3)(b)(i) and (ii); MSA 27.3178(598.19b)(3)(b)(i) and (ii). We affirm.

I

Both respondents argue that the order of termination must be reversed due to the juvenile court's failure to follow the procedures required by the Indian Child Welfare Act (ICWA), 25 USC 1901 *et seq.* The juvenile court's failure to follow the procedures required by MCR 5.980(A) and the ICWA does not require reversal because there is no indication that the child is an Indian child as defined by the ICWA. 25 USC 1903(4); *In re Shawboose*, 175 Mich App 637, 639; 438 NW2d 272 (1989); *In re Adoption of Baby Boy W*, 831 P2d 643 (Okla, 1992).

II

Respondent Kaio argues that there was insufficient evidence to establish the statutory grounds for terminating her parental rights. We disagree. Statutory grounds for terminating respondent Kaio's rights pursuant to MCL 712A.19b(3)(b)(i); MSA 27.3178(598.19b)(3)(b)(i) were shown by clear and convincing evidence. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Clear and convincing evidence showed that the child had suffered serious physical injury on at least two occasions and that respondent Kaio had caused those injuries. Clear and convincing evidence also established a reasonable likelihood that the child would suffer injury or abuse in the foreseeable future if placed back in respondent Kaio's care.

III

Respondent Kaio argues that termination was against the child's best interests, and that MCL 712A.19b(5); MSA 27.3178(598.19b)(5) impermissibly shifts the burden of proof to the respondent-parent and thereby violates due process of law. We disagree. The juvenile court did not clearly err by concluding that termination of respondent Kaio's parental rights was not clearly contrary to the child's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Hall-Smith*, 222 Mich App 470, 473; 564 NW2d 156 (1997). While the present version of MCL 712A.19b(5); MSA 27.3178(598.19b)(5) requires that the respondent show that termination is clearly not in a child's best interests, this requirement arises only after the state has shown abuse or neglect through clear and convincing evidence. This shifting of the burden of proof does not violate constitutional guarantees of due process of law. *Santosky et al v Kramer*, 455 US 745; 102 S Ct 1388; 71 L Ed 2d 599 (1982).

IV

Both respondents argue that the juvenile court erred by refusing to change venue to Wayne County. The court did not clearly err by denying respondents' motion to change venue. The child was found in Oakland County at the time the physical abuse was discovered, and so came under the jurisdiction of the Oakland County Probate Court. MCL 712A.2(b); MSA 28.3178(598.2)(b). There is no indication that the Oakland County Probate Court was a less convenient or appropriate venue than Wayne County Probate Court.

V

Respondent Blount argues that while there may have been sufficient evidence to make the child a temporary ward of the court, the statutory basis for terminating his parental rights to the child was not shown by clear and convincing evidence. We disagree. Having carefully reviewed the record, we are satisfied that there were sufficient grounds to warrant termination, and we decline to substitute our judgment for the trial court's.

Affirmed.

/s/ David H. Sawyer

/s/ Myron H. Wahls

/s/ Maureen Pulte Reilly