

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of K.H., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MICHELLE R. HARRIS,

Respondent-Appellant,

and

DONORLANDO GAYTON,

Respondent.

UNPUBLISHED

April 15, 2003

No. 244050

Kent Circuit Court

Family Division

LC No. 94-000315-NA

Before: Jansen, P.J., and Kelly and Fort Hood, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights pursuant to MCL 712A.19b(3)(a)(i), (a)(ii), (e), (f)(i), (f)(ii), (g), (i), and (l). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E)(1)(b).

Respondent first argues that the Kent Circuit Court lacked jurisdiction to terminate her parental rights. We disagree.

It is undisputed that the minor child in this case was born in Wayne County while the respondent was incarcerated. Therefore, this case was properly initiated in the Wayne Circuit Court. See MCL 712A.2(b). The Wayne Circuit Court subsequently transferred the case to Kent County because proceedings were already pending there involving respondent's other child. Because respondent did not object to this transfer, we review this issue for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999); see also *In re Hatcher*, 443 Mich 426, 438-439; 505 NW2d 834 (1993).

Pursuant to MCR 5.926(D)(1), a child protection proceeding may be transferred to another county for the convenience of the parties and witnesses. See also MCR 5.961(B)(7);

MCR 3.206(A)(4). Contrary to respondent's argument, the fact that a trial court may change venue upon a party's motion, does not limit a trial court's own discretion to transfer a case to an otherwise appropriate county. In the instant case, proceedings involving respondent's other child were pending in Kent County at the time of the transfer. Kent County had previously terminated respondent's parental rights to four of her other children. Respondent lived in Kent County. Finally, the initial petition essentially anticipated respondent's neglect of the child based upon the prior termination proceedings. This anticipated neglect was sufficient for Wayne County to assume jurisdiction under MCL 712A.2(b)(2), transfer the case to Kent County and permit Kent County to proceed with termination proceedings. Respondent has failed to demonstrate plain error.

Next, respondent argues that the trial court improperly assumed jurisdiction because, although she was incarcerated at the time of the child's birth, she nevertheless provided a suitable home environment in and through the home of her relatives and accordingly did not leave her child "without proper custody or guardianship" for purposes of MCL 712A.2b(1). Again, we do not agree.

In support of her position, respondent substantially relies on *In the Matter of Curry*, 113 Mich App 821; 318 NW2d 567 (1982), and *In the Matter of Taurus F*, 415 Mich 512; 330 NW2d 33 (1982). In both *Taurus* and *Curry*, the deciding courts found that, without court intervention, a parent may provide "proper custody" for the child by vesting custody in a third party, thus precluding the assumption of jurisdiction over the child. See *Taurus*, *supra* at 535. Further, according to *Curry*, a parent's criminal status alone is insufficient for a court to exercise jurisdiction for purposes of termination proceedings absent evidence establishing that the selected custodial environment is unfit. *Curry*, *supra* at 830.

Respondent's reliance on these cases, however, is misplaced considering that in neither case did the parents at issue have their rights to other children previously terminated. Indeed, to accept respondent-appellant's position would effectively preclude the state from protecting the interests of children by preventing it from seeking to terminate parental rights based on prior acts of neglect and abuse where the parent successfully places the child in the home of a suitable relative. See *In re Jacobs*, 433 Mich 24; 444 NW2d 789, 796 (1989); *In re Ramsey*, 229 Mich App 310, 314; 581 NW2d 291 (1998). We cannot sanction such a result and thus find that the trial court did not err by assuming jurisdiction and moving forward with termination proceedings.

Affirmed.

/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood