STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of BETTY BRIANNAN BANKS,
Minor

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

WINNIA NEWBY,

Respondent-Appellant,

and

TYRONDA HOSKINS and LIVEL J. BANKS,

Respondents.

UNPUBLISHED
August 31, 2004

No. 251448
Wayne Circuit Court
Family Division
LC No. 02-411992

Before: Hoekstra, P.J. and Cooper and Kelly, JJ.

PER CURIAM.

Respondent, the minor child's guardian, appeals as of right from an order affirming the referee's exercise of jurisdiction over the minor child pursuant to MCL 712A.2. We affirm.

Respondent, the minor child's paternal grandmother, resided in the Detroit area. While she was guardian of the minor child, she allowed the minor child to live in the Lansing area with her father and his girlfriend, purportedly so that the child would be able to attend a Head Start program. The minor child's father was on parole as the result of a conviction for possession of a controlled substance at that time, had prior convictions, and he had not yet established legal parenthood. Respondent did not advise the court that she allowed the child to live outside the county with her father. While the child was in her father's care, she claimed that her father whipped her for urinating on the sofa where she slept. The minor child was examined by the school, a protective services worker for Ingham County, and a physician. Marks on the back of the minor child's thigh were consistent with being hit with a belt. A petition was filed, and respondent acknowledged that she allowed the minor child to live with her father and she was unable to provide an address where they were living. Following a tender years hearing was held, the trial court found that the child's statements were credible and that there was evidence to corroborate her statements.

The adjudicative hearing took over ten months to complete. Respondent did not object to the adjournments that took place over the course of the ten months. Adjournments took place for a variety of reasons, including determining where the hearings should take place (Ingham or Wayne County), allowing time for the father to establish paternity, and the schedules of the attorneys including respondent's attorney who was unavailable for two months because of a hip replacement surgery. In fact, at one scheduled hearing, respondents attorney did not appear, and the trial court gave respondent the opportunity to continue with new counsel at that time or to adjourn the hearing so that her attorney could be present. Respondent chose to adjourn the hearing. At the conclusion of the adjudicative hearings, the trial court found that there was sufficient evidence for the court to take jurisdiction and the minor child was continued in temporary custody. The trial court set a date the following week for a treatment plan and at that time, the court adopted the recommendations of the FIA and also included a requirement that the guardian be evaluated due to the fact that the guardian had made certain allegations about the referee who presided over the proceedings after she had given her opinion. Respondent filed a petition for review of the referee's recommendations and order, and the circuit court judge affirmed the order finding that the referee had made no error of law.

On appeal, respondent contends that the FIA did not make reasonable efforts to place the child in the least restrictive environment, the home of the guardian, or that in-home services were ever considered or offered to her. She also argues that the pretrial began in August 2002 in Wayne County, and no testimony was offered or requested concerning the need for continued placement or the child's well-being. According to the transcripts, the pretrial was adjourned so that the father could sign paternity papers and have counsel appointed to represent him. Since the alleged abuse took place while the minor child was in the care of the father, this was a reasonable basis to adjourn the pretrial. Respondent did not object to this adjournment or raise the issues raised in this appeal. A party is not allowed to assign as error on appeal something that the party or her counsel deemed proper at trial. *Dresselhouse v Chrysler Corp*, 177 Mich App 470, 477; 442 NW2d 705 (1989). The case was also adjourned so that the court could hold a tender years hearing as well as a trial on the adjudicative portion of this case. Several more adjournments took place to accommodate the schedules of the attorneys. Once the court completed the hearing and heard all of the testimony, the trial court continued the minor child in the temporary custody of the court and adopted plans aimed at reunification. We find that the trial court did not clearly err in placing the child in the temporary custody of the court.

Respondent also contends that the length of time it took to complete the adjudicative trial in this case is incomprehensible. Respondent did not raise this issue in the lower court and in fact did not object to any adjournments of the trial. Furthermore, several of the adjournments were caused by the unavailability of respondent's attorney and respondent was given the opportunity to continue the trial with a new attorney or wait for her attorney to be available, and she chose to wait. Accordingly, this issue was not preserved. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999).

Respondent also argues that the trial court erred in finding that she failed to protect the child. We disagree. Findings of fact by a trial court may not be set aside unless the findings are clearly erroneous. MCR 2.613(C). A finding of fact is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake was made. *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000). The evidence established that respondent gave custody of the

minor child to the child's father and his girlfriend, she was aware that the child's father was on parole from a conviction involving substance abuse and had prior drug-related convictions, she did not know the address where the child was living, and the child was in fact harmed while in her father's care. The trial court's findings were not, therefore, clearly erroneous.

Affirmed

/s/ Joel P. Hoekstra
/s/ Jessica R. Cooper
/s/ Kirsten Frank Kelly