STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of CRISHON VALDEZ, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CHRISTINE VALDEZ,

Respondent-Appellant.

UNPUBLISHED
September 16, 2008

No. 284081
Oakland Circuit Court
Family Division
LC No. 07-740736-NA

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

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(i) and (l). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The trial court did not clearly err by finding that statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). There is no dispute that respondent's parental rights to five other children were previously terminated, and that this was established by legally admissible evidence. This evidence is sufficient to support the termination of respondent's parental rights under MCL 712A.19b(3)(l). Respondent contends, however, that this Court, in *In re AH*, 245 Mich App 77, 83; 627 NW2d 33 (2001), interpreted MCL 712A.19b(3)(i) and (l) as requiring a "risk of harm" showing. In *In re AH*, *supra*, this Court considered an equal protection and due process challenge to MCL 722.638, which requires the agency to seek termination at the initial disposition where the parent's rights were previously terminated and the "parent is a suspected perpetrator or is suspected of placing the child at an unreasonable risk of harm due to the parent's failure to take reasonable steps to intervene to eliminate that risk. . . ." MCL 722.638(1)(b)(i), (2). The Court concluded that the Legislature had "effectively codified the doctrine of anticipatory neglect and then added the additional element of risk of harm to the child." *In re AH*, *supra* at 84. However, MCL 722.638 does not authorize the termination of parental rights but rather delineates circumstances in which a petitioner is required to submit a petition or request termination. The Legislature's decision to require the agency to file a petition, or in some circumstances to seek termination of parental rights, does not necessarily indicate that the Legislature intended to import a separate "risk of harm" element into the statutory grounds for termination specified in MCL 712A.19b(3)(i) and (l). These statutory

subsections do not state an element of risk of harm. The Legislature is presumed to have intended the meaning that it plainly expressed, and where the statutory language is clear and unambiguous, judicial construction is neither required nor permitted *In re RFF*, 242 Mich App 188, 198; 617 NW2d 745 (2000).

Termination was also appropriate under MCL 712A.19b(3)(i), which contains the additional requirements that the prior termination was for serious and chronic neglect, or physical or sexual abuse, and that prior efforts to rehabilitate the parent were unsuccessful. *Id.* On appeal, respondent correctly notes that the statutory grounds were required to be shown by legally admissible evidence because this case is one of termination at the initial dispositional hearing. MCR 3.977(E)(3). However, because respondent did not object to the admission of hearsay in the trial court, our review is for plain error. *Meagher v Wayne State University*, 222 Mich App 700, 724; 565 NW2d 401 (1997). Furthermore, respondent has not identified the objectionable hearsay on appeal. The record contains testimony by the foster care worker in the previous case concerning the children to whom respondent's rights were previously terminated, and in many instances the basis of her knowledge was not clearly indicated on the record. This lack of clarity would certainly have been addressed if an objection had been made, and our review is greatly hampered by the lack of such objection. Under these circumstances, plain error is not evident. *Id.* Finally, we are convinced that any error was harmless, MCR 2.613(A), as the statutory ground was adequately supported by legally admissible evidence. Ms. Strand testified that the allegations in the prior case were physical abuse of a child, and respondent herself admitted that her parental rights were terminated because the children sustained injuries, which she specified as a broken arm sustained by one child and a broken leg sustained by another. Ms. Strand testified that she worked with respondent mother on a reunification plan, but respondent never demonstrated appropriate parenting. Ms. Strand testified that she had worked with respondent mother for four years, and exhausted all of the services that the agency had to offer. This record supplies legally admissible evidence adequate to establish that respondent's rights were previously terminated because of chronic neglect or physical abuse, and that efforts at rehabilitation have been unsuccessful, MCL 712A.19b(3)(i), and the trial court did not clearly err in so finding.

Respondent also claims as error the trial court's taking judicial notice of the social and legal files in the previous matter. Judicial notice may be taken of facts "(1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." MRE 201(b). A circuit court may take judicial notice of the files and records of the court in which it sits. *Snider v Dunn*, 33 Mich App 619, 625; 190 NW2d 299 (1971). The trial court did not err by taking judicial notice of the files in the previous case.

Finally, the trial court did not clearly err by finding that termination was not clearly contrary to the best interests of the child. MCL 712A.19b(5). The child, now nearly one year old, was placed in a voluntary safety plan in the care of respondent's niece at approximately five weeks of age. Respondent mother has demonstrated considerable lack of judgment in her male partners, as the two putative fathers of the child both had criminal records, and one is currently a parole absconder. More troubling is respondent's failure to clearly recognize that the abuser of her other children is a dangerous person. Respondent's psychological evaluation indicates that she is cognitively limited and has little if any insight into her psychological and emotional issues.

On this record we perceive no clear error in the trial court's determination concerning the best interests of the child.

We affirm.

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