

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of LEGENDE GREENE, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

KEVIN GREENE,

Respondent-Appellant,

and

LINDA HUNT,

Respondent.

UNPUBLISHED

November 19, 2009

No. 292404

Wayne Circuit Court

Family Division

LC No. 08-479580-NA

Before: Talbot, P.J., and O'Connell and Davis, JJ.

MEMORANDUM.

Respondent Kevin Greene appeals by leave granted the adjudicative order that made the minor child a temporary ward, pursuant to MCL 712A.2(b). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The trial court properly asserted jurisdiction over the minor child. To properly exercise jurisdiction, the trial court must find by a preponderance of the evidence that a statutory basis for jurisdiction exists. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). Under the doctrine of anticipatory neglect, a child may come within the jurisdiction of the court based solely on a parent's treatment of another child, and application of the doctrine is not limited to situations where a parent abuses his own child. *In re Gazella*, 264 Mich App 668, 680; 692 NW2d 708 (2005), superseded in part on other grounds *In re Hansen*, ___ Mich App ___, ___ NW2d ___ (Docket No. 289903, issued July 21, 2009), slip op at 3-4; *In re Powers*, 208 Mich App 582, 588, 591-592; 528 NW2d 799 (1995), superseded in part on other grounds *In re Jenks*, 281 Mich App 514, 517-518 n 2; 760 NW2d 514 (2008). The minor child's older half-sister testified that respondent repeatedly sexually and physically abused her over a number of years. Although respondent claims that the minor child's half-sister was not credible or worthy of belief, this Court defers to the special opportunity of the trial court to judge the credibility of the

witnesses who appeared before it. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Respondent also argues that he was denied the effective assistance of counsel. Despite her occasional unprofessional behavior, respondent's counsel forcefully cross-examined witnesses and was able to set forth her theory of the case without actually calling any witnesses of her own. Counsel elicited from the Protective Services investigator that she did not consult anyone at school or look at the older half-sibling's medical records, instead relying solely on her allegations. Counsel then vigorously cross-examined the older half-sibling and revealed that she was experiencing problems with school and her friends and had a history of acting out behavior in an effort to obtain attention. Counsel pointed out the lack of evidence that the older half-sibling actually attempted suicide and that her toxicology report the day following the alleged attempt was negative for substances. Counsel used the evidence to argue that the older half-sibling's claim of sexual abuse, like her claim of attempted suicide, was merely an attempt to get attention. Although counsel dramatically refused to continue questioning witnesses after a confrontation with the judge, it is clear from the record that her theory of the case was not compromised. This case hinged on the trial court's credibility assessment. There was nothing that counsel could have done differently that would have changed the outcome, and therefore respondent was not denied the effective assistance of counsel. *In re CR*, 250 Mich App 185, 198; 646 NW2d 506 (2002).

Affirmed.

/s/ Michael J. Talbot
/s/ Peter D. O'Connell
/s/ Alton T. Davis