

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of Lacey, Patricia, Sara, Tyler,
Elizabeth & Anna McMillan, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

V

Frank McMillan,

Respondent-Appellant,

and

Cindy McMillan

Respondent.

UNPUBLISHED

July 24, 2003

No. 241864

Clinton Circuit Court

Family Division

LC No. 02-15273 NA

Before: Smolenski, P.J., and Markey and Wilder, JJ.

PER CURIAM.

Respondent Frank McMillan, the biological father of the children, appeals as of right from the trial court's order assuming jurisdiction over him in this child protective proceeding. Respondent asserts that his due process rights were violated because he was denied a jury trial on the question of the trial court's jurisdiction, and because the trial court limited his opportunity to cross-examine the witnesses at the adjudication hearing. We affirm. This case is being decided without oral argument pursuant to MCR 7.214 (E)(1)(b).

On February 5, 2002, the Family Independence Agency (FIA) filed a petition against respondent and the children's mother alleging, inter alia, that respondent had engaged in a number of acts of violence against the children's mother, that the mother had claimed to be in fear for her safety and the safety of her children in two separate divorce and personal protection actions filed against respondent, and nevertheless continued to reside in the same home with respondent, and that the children were within the jurisdiction of the trial court pursuant to MCL 712A.2. Without assuming jurisdiction, the trial court entered temporary orders concerning the

welfare of the children, and directed certain action be undertaken by the children's mother and respondent. Respondent subsequently demanded a jury trial on the allegations.

At a hearing on March 26, 2002, the mother admitted all but one of the allegations contained in the FIA petition. Over respondent's objections, the trial court assumed jurisdiction over the minor children based on the mother's admissions, and began conducting a dispositional review hearing. MCR 5.973(A). Respondent contended that he was entitled to a jury trial before the trial court could assume jurisdiction over him, despite the mother's admissions. During the disposition hearing, the FIA caseworker assigned to the case testified that it was his recommendation that the trial court assume jurisdiction of the children. The caseworker also made recommendations as to visitation and the substance of a proposed Parent/Agency Agreement.

On cross-examination, respondent inquired as to the depth of the caseworker's knowledge about the allegations which caused him to recommend that the trial court assume jurisdiction of the children. The trial court permitted limited questions on this topic, but did not permit extensive cross-examination. Rather, the trial court entered a temporary disposition order and scheduled a continued disposition hearing during which the respondent was to be permitted to conduct more extensive questioning of witnesses on the question of the scope of disposition order to be entered by the trial court. This appeal ensued.

Respondent first claims the trial court erred and denied him his due process rights by assuming jurisdiction over him without conducting an adjudication trial at which his jury trial demand was honored. We disagree. We review de novo claims that a party's due process rights have been violated. *Brandt v Brandt*, 250 Mich App 68, 72; 645 NW2d 327 (2002).

This Court held in the case of *In re CR*, 250 Mich App 185, 202-203; 646 NW2d 506 (2002), that:

[O]nce the family court acquires jurisdiction over the children, MCR 5.973(A) authorizes the family court to hold a dispositional hearing "to determine measures to be taken . . . against any adult . . ." MCR 5.973(A)(5)(b) then allows the family court "to order compliance with all or part of the case service plan and *may enter such orders as it considers necessary in the interest of the child.*" Consequently, after the family court found that *the children* involved in this case came within its jurisdiction on the basis of [the mother's] no-contest plea and supporting testimony at the adjudication, the family court was able to order [the father] to submit to drug testing and to comply with other conditions necessary to ensure that the children would be safe with him even though he was not a respondent in the proceedings. This process eliminated the FIA's obligation to allege and demonstrate by a preponderance of legally admissible evidence that Richardson was abusive or neglectful within the meaning of MCL 712A.2(b) before the family court could enter a dispositional order that would control or affect his conduct. [Emphasis in original]

Pursuant to *In re CR*, when the trial court's jurisdiction over the minor children in this case was established by the mother's admissions, the trial court also gained jurisdiction over the

respondent and was not required to conduct a jury trial on the petition allegations against respondent.

Respondent next claims that the trial court erred and denied him his due process rights by limiting his opportunity to cross-examine all relevant witnesses. Again, we disagree. First, the mother's plea of admission negated the need for a full adjudicative hearing on the petition. *In re AMB*, 248 Mich App 144, 176 n 43; 640 NW2d 262 (2001). Second, the trial court adjourned the dispositional review hearing to another date within 91 days of the trial court's assumption of jurisdiction, in compliance with MCR 5.973(B)(2). At the time of the adjournment, the trial court expressly stated that respondent would be entitled to fully explore the credibility of the allegations against him, insofar as they were relevant to the trial court's determination of the appropriate disposition of the case. Thus, the trial court's compliance with MCR 5.973(B)(2) accorded respondent all due process rights to which he was entitled.

Affirmed.

/s/ Michael R. Smolenski

/s/ Jane E. Markey

/s/ Kurtis T. Wilder