

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of WILLIAM SMEDBERG, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

WALTER SMEDBERG and GRACE
SMEDBERG,

Respondents-Appellants.

UNPUBLISHED

August 2, 2005

No. 260750

Delta Circuit Court

Family Division

LC No. 04-000082-NA

Before: Zahra, P.J., and Gage and Murray, JJ.

PER CURIAM.

Respondents appeal as of right from an order terminating their parental rights to their minor child pursuant to MCL 712A.19b(3)(j) and (l). We affirm.

The minor child was removed from respondents' care when he was born at a hospital in Delta County because there was concern that respondents were unable to care for the minor child and their parental rights to the minor child's sister had previously been terminated. Respondents objected to the Delta Circuit Court exercising jurisdiction because respondents lived in another county and the trial court overruled the objection. A jury trial was held on the issue of jurisdiction and the jury unanimously concluded that the court had jurisdiction over the minor child. At the initial disposition, the trial court found that MCL 712A.19b(3)(j) and (l) had been established by clear and convincing evidence and that the best interests of the minor child did not preclude termination of respondents' parental rights.

This Court reviews the trial court's decision to exercise jurisdiction for clear error. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). The trial court did not clearly err in overruling respondents' objection that the court did not have jurisdiction over the minor child in that county because respondents lived in another county. The Family Division of the Delta Circuit Court had authority to assume jurisdiction in proceedings concerning any juvenile "found within the county." MCL 712A.2(b). A child is "found within the county" under this statute if the child is "physically present" in that county. MCR 3.926(A). Although it would not have been incorrect for the court to transfer venue to the county where respondents resided, that decision was discretionary and the court's decision to retain the case in Delta County does not

require reversal of its exercise of jurisdiction over the minor child. MCR 3.926(B); *In re Pasco*, 150 Mich App 816, 824; 389 NW2d 188 (1986).

The court also did not clearly err in finding that statutory grounds for termination had been established by clear and convincing evidence. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). Respondent-mother admitted that she could not care for the minor child herself and needed help. She had received services in the past and was unable to understand and grasp basic parenting concepts and skills. Respondent-father was an alcoholic, attended the termination hearing smelling of alcohol, and did not understand that respondent-mother was unable to care for the minor child. It is irrelevant whether a visit to respondents' home was done by the FIA because the court accepted that the home was appropriate. The focus of the court was not on whether respondents had improved because they had an appropriate home but whether respondents could care for the minor child so he would not be at risk of harm. It was proper for the court to look at respondent's prior actions with regard to the minor child's sister under the doctrine of anticipatory neglect. *In re Dittrick*, 80 Mich App 219, 222; 263 NW2d 37 (1977); *In re LaFlure*, 48 Mich App 377, 392; 210 NW2d 482 (1973). Respondents were unable to care for their other child and efforts to assist them provided no benefit. However, the court ultimately concluded that there was a reasonable likelihood that the minor child would be harmed not only because of how they treated the minor child's sister but because they were in no better position at the time of the termination trial to better parent this child. Although respondents argue that the minor child's sister was sickly, making it more difficult for respondents to care for her, and that the minor child was "normal," the evidence showed that the minor child has difficulty with his eyes and may require surgery, was not on target in terms of development and was receiving therapy to assist him, and had tremors that may have indicated fetal alcohol syndrome.

Respondents also argue that the trial court made no specific findings with regard to the minor child's best interests. The trial court was very clear with regard to MCL 712A.19b(5). The court specifically addressed the statutory language and gave the parties the opportunity to provide evidence. When the court stated that it was not in the best interests of the minor child for respondents to have "care and custody" of him, this was in the context of addressing MCL 712A.19b(5), which requires termination if a statutory subsection is met unless the court finds that termination of parental rights is not in the best interests of the minor child. The court actually went beyond the requirements of MCL 712A.19b(5), stating that even if a higher standard were imposed, requiring a finding that it was in the best interests of the minor child to terminate respondents' parental rights, that standard was met as well.

Affirmed.

/s/ Brian K. Zahra
/s/ Hilda R. Gage
/s/ Christopher M. Murray