

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SHANNON BOUDRO, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

V

MATTHEW BOUDRO,

Respondent-Appellant.

UNPUBLISHED

June 20, 2006

No. 266216

Shiawassee Circuit Court

Family Division

LC No. 04-010962-NA

Before: Kelly, P.J., and Markey and Meter, JJ.

PER CURIAM.

Respondent appeals by right from the trial court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(b)(i). We affirm.

When the minor child was three years old respondent was incarcerated for what would be the first of many times over the next four years. The child's mother placed the child into a guardianship with the child's maternal grandmother. In 2003, allegations that respondent had sexually abused the minor child arose but were unsubstantiated. New allegations led to an investigation in 2004, and, ultimately, to the filing of an original petition that sought to terminate respondent's parental rights. At trial, the child testified about the sexual abuse respondent inflicted upon her. Her testimony was conflicting at times but also steadfast regarding the main details. Although respondent denied the abuse allegations and argued that the child had been coached, the trial court disagreed and specifically found the child's testimony to be credible. It also found that a jurisdictional basis had been established at the trial and that "legal justification" existed to terminate respondent's parental rights. Following the presentation of best interests evidence at a later dispositional hearing, the trial court terminated respondent's parental rights.

Respondent's first argument on appeal is that the petition improperly sought jurisdiction on the bases set forth in MCL 712A.2(b)(1) and (2).¹ Respondent asserts that the court should

¹ The trial court did not specify which statutory basis it relied upon when it assumed jurisdiction but merely said that petitioner had "met their burden to sustain the petition."

have looked to MCL 712A.2(b)(5) instead because a guardianship arrangement was in place. Respondent did not preserve this argument for review by filing a direct appeal of the jurisdictional decision; therefore, this Court's review is limited to plain error that affected respondent's substantial rights. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999); *In re Osborne (On Remand, After Remand)*, 237 Mich App 597, 606; 603 NW2d 824 (1999).

To properly exercise jurisdiction, the trial court must find that a statutory basis for jurisdiction has been established by a preponderance of the evidence. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). This Court has held that a guardianship arrangement does not restrict a court to only using subsection (b)(5) of the jurisdictional statute, MCL 712A.2. See *In re BZ, supra* at 294-296. Since MCL 712A.2(b)(1) applies when a child "is subject to a substantial risk of harm to his or her mental well-being," as is true in this case because of respondent's sexual abuse of the child, the trial court did not commit clear error when it based jurisdiction upon MCL 712A.2(b)(1). See *In re S R*, 229 Mich App 310, 314-315; 581 NW2d 291 (1998).

Next, respondent argues that the trial court may have improperly terminated respondent's parental rights on the basis of a "preponderance of the evidence" because it failed to specify which evidentiary standards it employed when it took jurisdiction and also found "legal justification" to terminate respondent's parental rights. Shifting evidentiary burdens are a fact of life in child protective proceedings (e.g., different standards of evidence are set forth in MCR 3.977). Without any affirmative evidence that the court was confused with regard to the proper standard of evidence, this Court finds that no error occurred.

Next, this Court finds that the trial court did not clearly error in basing termination upon MCL 712A.19b(3)(b)(i).² The child's testimony provided clear and convincing evidence that she had been sexually abused and that respondent had been the perpetrator. This Court gives deference to the trial court's special opportunity to judge the credibility of the witnesses. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Furthermore, given respondent's continued denial of and refusal to accept responsibility for the abuse, it was reasonably likely that the child would be abused during any potential future contact with respondent.

Lastly, the trial court committed harmless error when it shifted the burden of proof to respondent concerning the child's best interests. The trial court did not accept respondent's argument that the child was coached. In addition, respondent's life was very unstable with repeated incarcerations and criminal activity. The fact that the child was in a guardianship protected her from much of respondent's abuse and instability; however, she was still at risk during visitations, and evidence was also presented that the child had conflicting feelings about respondent. On one hand, she firmly professed her love for respondent and clearly missed him. But she also was anxious that respondent would come and get her. Even the child's mother, who did not believe the allegations, admitted telling a caseworker that the child cried at the prospect

² The trial court did not base the termination order upon MCL 712A.19b(3)(h), so respondent's argument about that statutory basis is not addressed on appeal.

of being alone with respondent. Given this evidence from the whole record, the trial court did not clearly err in finding that termination was in the child's best interests.

We affirm.

/s/ Kirsten Frank Kelly

/s/ Jane E. Markey

/s/ Patrick M. Meter