

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JOSHUA GARCIA, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MICAH GARCIA and OFELIA GARCIA,

Respondents-Appellants.

UNPUBLISHED

June 19, 2007

No. 273626

Kent Circuit Court

Family Division

LC No. 04-053306-NA

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

PER CURIAM.

Respondents appeal as of right the trial court's order terminating their parental rights to the minor child pursuant to MCL 712A.19b(3)(b)(i), (c)(i), (g), and (j). We affirm.

Respondents first argue that they were denied due process at the adjudicative stage when the trial court instructed the jury on a jurisdictional ground not alleged in the initial or amended petition. Respondents' claim of instructional error involves an attack on the trial court's exercise of jurisdiction, and does not affect the court's subject-matter jurisdiction. *In re Hatcher*, 443 Mich 426, 437-439; 505 NW2d 834 (1993). Matters affecting a trial court's exercise of its jurisdiction may be challenged only on direct appeal of the jurisdictional decision, not by collateral attack in a subsequent appeal of an order terminating parental rights. *Id.* at 444; *In re Gazella*, 264 Mich App 668, 680; 692 NW2d 708 (2005). Although a direct appeal was available from the trial court's initial dispositional order entered after the adjudicative stage, pursuant to which the trial court made the minor child a temporary court ward and placed him in the custody of petitioner, see MCR 3.993(A)(1), respondents did not appeal the jurisdictional decision. Accordingly, respondents are barred from collaterally attacking the trial court's exercise of jurisdiction in this subsequent appeal from the order terminating their parental rights. *In re Hatcher*, *supra* at 444; *In re Gazella*, *supra* at 680.¹

¹ Respondents' reliance on *In re Waite*, 188 Mich App 189, 205-206; 468 NW2d 912 (1991), is misplaced. Although the Court in *In re Waite* characterized errors during the adjudicative stage as "jurisdictional errors" that may be collaterally attacked, it reached this conclusion only

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Respondents additionally argue, however, that the amended petition contained only allegations relating to another child, and lacked allegations sufficient to sustain subject-matter jurisdiction with regard to their son. We disagree. Subject-matter jurisdiction is established initially by the pleadings, such as the petition, and exists “when the proceeding is of a class the court is authorized to adjudicate and the claim stated in the complaint is not clearly frivolous.” *In re Hatcher, supra* at 444.

Legally, the amended petition alleged that respondents’ son came within the provisions of MCL 712A.2(b)(2) because “his home or environment by reason of neglect, drunkenness, criminality, or depravity on the part of a parent, guardian, or other custodian is an unfit place for such child to live in, and he is at substantial risk of harm to his mental well being.” Thus, the petition alleged legal grounds for jurisdiction. Factually, the petition alleged that respondents were the biological parents of their son. It further alleged that respondents had custody of another child, whom they intended to adopt, and that the other child was hospitalized with second- and third-degree burns and had other bruising on her body, which doctors did not believe were consistent with respondents’ explanation for the injuries. “A child may come within the jurisdiction of the court solely on the basis of a parent’s treatment of another child.” *In re Gazella, supra* at 680. “[H]ow a parent treats one child is certainly probative of how that parent may treat other children,” *In re Powers*, 208 Mich App 582, 588; 528 NW2d 799 (1995), regardless of whether the abused child is the respondents’ biological child. The doctrine of anticipatory neglect alone may be a sufficient basis for the court’s jurisdiction over a child. *In re Gazella, supra* at 681.

Because the petition included legal grounds for jurisdiction and alleged facts that would support a finding of jurisdiction over respondents’ child based on their treatment of another child, the petition was sufficient on its face to bring this case within the class of cases the court was authorized to adjudicate. Therefore, the trial court had subject-matter jurisdiction over the case. To the extent that respondents also argue that the evidence at the adjudicative trial was insufficient to factually establish a statutory basis for jurisdiction over respondents’ child, such an argument involves a challenge to the trial court’s exercise of jurisdiction. *In re Hatcher, supra* at 437-439. As indicated above, respondents are prohibited from collaterally attacking the trial court’s exercise of jurisdiction in this appeal. *Id.* at 444.

Respondents also argue that the trial court erred in finding that the statutory grounds for termination were established by clear and convincing evidence. We review the trial court’s findings of fact in termination proceedings for clear error. MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). “Once a ground for termination is established, the court must issue an order terminating parental rights unless there exists clear evidence, on the whole record, that termination is not in the child’s best interests.” *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000).

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because it felt it was compelled by our Supreme Court’s decision in *Fritts v Krugh*, 354 Mich 97; 92 NW2d 604 (1958). *In re Waite, supra* at 205-207. The Supreme Court subsequently overruled *Fritts* in *In re Hatcher, supra* at 444. Thus, *In re Waite* is no longer good law.

Initially, we agree that the trial court erred in terminating respondents' parental rights under §§ 19b(3)(b)(i) and (g). Neither of these grounds was alleged in the supplemental petition. Furthermore, § 19b(3)(b)(i) was not applicable because there was no evidence that respondents' son suffered physical injury or abuse and the injured child was not a sibling. *In re Powers, supra* at 591.

However, the trial court did not clearly err in finding that §§ 19b(3)(c)(i) and (j) were each established by clear and convincing evidence. More than 182 days had elapsed since the January 4, 2006, dispositional order. The evidence showed that another child in respondents' home was severely scalded approximately 16 hours before respondents sought medical care. She had deep second- and third-degree burns to her lower body and required several surgeries and skin grafts. The burns were especially severe on her pubic area and the front and inside of her thighs, and her legs from the knees down. However, the bottoms of her feet, the backs and creases in her thighs, her hands, and parts of her legs were not affected. Medical experts agreed that the child's injuries were not consistent with respondents' explanation of an accidental injury. When respondents' son entered foster care, he too was very afraid of bathrooms and of bathing.

Respondents continually refused to acknowledge personal responsibility for the child's injuries and maintained that they were caused accidentally, despite clear evidence to the contrary. Although respondents took parenting classes, they demonstrated little insight from the classes and reported that the classes merely reinforced what they had always done. The treatment of the injured child, and the "deep denial" of how she received her injuries, is probative of how respondents might treat their minor child. Considering respondents' lack of insight and refusal to accept responsibility for the other child's injuries, it was reasonable to expect that respondents' son would be harmed if returned to respondents' home. For these reasons, the trial court did not clearly err in finding that termination was warranted under §§ 19b(3)(c)(i) and (j).

Once the trial court finds that a statutory ground for termination has been established by clear and convincing evidence, it must terminate parental rights unless to do so is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo, supra* at 354. In this case, respondent's never acknowledged harming the other child, though physicians testified that her injuries could not have been accidental. Further, respondents' child showed signs of trauma in his behavior, which improved during his two years in foster care with no visitation from respondents. The evidence did not clearly show that termination of respondents' parental rights was not in the child's best interests. *Id.*

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Jane E. Markey
/s/ Michael R. Smolenski