

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of JUSTIN F., RANDI LYNN F. and  
JOSHUA F., Minors.

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FAMILY INDEPENDENCE AGENCY,  
  
Petitioner-Appellee,

v

LEE ANN RIDDLE,

Respondent-Appellant,

and

RANDY FRITZ,

Respondent.

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UNPUBLISHED  
May 15, 2001

No. 229548  
Clinton Circuit Court  
Family Division  
LC No. 00-013637-NA

Before: Holbrook, Jr., P.J., and Hood and Griffin, JJ.

PER CURIAM.

Respondent Lee Ann Riddle (hereinafter referred to as “respondent mother”) appeals as of right from an order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(g), (j) and (m); MSA 27.3178(598.19b)(3)(g), (j) and (m).<sup>1</sup> We affirm.

Respondent mother first claims that the trial court lacked jurisdiction over this matter because an amended petition, containing “new, additional and different jurisdictional allegations” and seeking termination of parental rights at the initial dispositional hearing was not served on her until after the jurisdictional trial. We disagree.

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<sup>1</sup> The parental rights of the children’s father, Randy Fritz (hereinafter referred to as respondent father), were also terminated. However, he is not a party to this appeal.

MCL 712A.2(b); MSA 27.3178(598.2)(b), the statute authorizing a trial court's assumption of jurisdiction over a child, confers jurisdiction to the family division of circuit court in a proceeding concerning a child under eighteen years of age, and "[w]hose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent . . . [or] nonparent adult. . . is an unfit place for the juvenile to live in." To obtain jurisdiction, the judge must find that a statutory basis for jurisdiction exists and that the jurisdictional allegations were proven by a preponderance of the evidence. *In re Toler*, 193 Mich App 474, 476; 484 NW2d 672 (1992). The court cannot terminate a parent's rights pursuant to MCL 712A.19b(3); MSA 27.3178(598.19b)(3) unless jurisdiction exists under MCL 712A.2(b); MSA 27.3178(598.2)(b). *In re SR*, 229 Mich App 310, 314; 581 NW2d 291 (1998).

Respondent mother does not claim that the allegations against her in the original or amended petitions are insufficient to support the court's exercise of jurisdiction over the children. Even if such an argument had been made, it is clear that the allegations against respondent mother regarding abuse and neglect were sufficient to support the court's exercise of jurisdiction. What respondent mother argues is that the court lacked jurisdiction over this matter because the amended petition contained new and different jurisdictional allegations and it was not served on respondent mother until after the jurisdictional trial.

The children were taken into protective custody on March 8, 2000. On March 9, 2000, a petition was filed requesting temporary custody of the children. On March 21, 2000, an amended petition was filed. Although some of the allegations in the amended petition were renumbered and reordered, the amended petition contained essentially the same allegations that were contained in the original petition. Although there were nine allegations in the original petition and eighteen allegations in the amended petition, the amended petition did not contain new allegations; it simply restructured the allegations contained in the original petition. Allegations (1) through (3) in the amended petition correspond to allegation (1) in the original petition. Allegations (4) and (18) in the amended petition correspond to allegation (2) in the original petition. Allegations (5), (6) and (7) in the amended petition correspond to allegation (3) in the original petition. Allegations (8) and (9) in the amended petition correspond to allegation (4) in the original petition. Allegation (11) in the amended petition corresponds to allegation (5) in the original petition. Allegations (12) and (13) in the amended petition correspond to allegation (6) in the original petition. Allegations (14) and (15) in the amended petition correspond to allegation (7) in the original petition. Finally, allegations (16) and (17) in the amended petition correspond to allegation (8) in the original petition.<sup>2</sup> Hence, a comparison of the original petition and the amended petition reveals that respondent mother is incorrect in her assertion that the amended petition contained approximately eight "new, additional and different" jurisdictional allegations. The amended petition was merely a restructured version of the original petition.<sup>3</sup>

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<sup>2</sup> The only allegation contained in the amended petition that was not set forth in the original petition was that respondent mother was currently involved in a pending criminal matter involving forged stolen travelers checks.

<sup>3</sup> There is no dispute that, *prior to the jurisdictional trial*, respondent mother was aware that an amended petition had been filed and that the amended petition requested termination of her parental rights. Respondent mother does not claim that she was unaware, prior to the

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Furthermore, to the extent that the amended petition did contain additional and different jurisdictional allegations, any defect in properly serving the amended petition on respondent mother does not warrant reversal because the trial court indicated that it was exercising jurisdiction over the children only on the basis of the allegations in the amended petition that matched allegations one through nine in the original petition. Specifically, the trial court stated that it made its “findings for adjudication to correspond only to facts that are alleged or coincide to the allegations in the original petition so that there would be no prejudice [or] surprise as to the amended petition for which respondent did not get proper notice.”<sup>4</sup>

Next, respondent mother claims that the trial court abused its discretion by admitting Susan Ernst’s testimony that Randi Lynn told her that Christine Nonnenmacher (respondent mother’s live-in girlfriend) pinched her and caused the bruises found on and underneath Randi Lynn’s arms. This Court reviews a trial court’s decision regarding the admissibility of evidence for an abuse of discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998). An abuse of discretion is found if an unprejudiced person, considering the facts on which the trial court acted, would say that there was no justification or excuse for the ruling. *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996).

Hearsay is a “statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” MRE 801(c); *People v Fisher*, 220 Mich App 133, 152; 559 NW2d 318 (1996). A “statement” is “(1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.” MRE 801(a). A “declarant” is “a person who makes a statement.” MRE 801(b). Under 801(d)(2), a “statement is not hearsay if--[t]he statement is offered against a party and is (A) the party’s own statement . . . .” The rules of evidence apply at the adjudicative phase of a child protective proceeding. MCR 5.972(C)(1); *In re Gilliam*, 241 Mich App 133, 136; 613 NW2d 748 (2000). In general, hearsay testimony is not admissible during the jurisdictional trial. *Id.*

We agree with respondent mother that Randi Lynn’s statement does not qualify as a party admission, which was the basis for the trial court’s ruling admitting the statement. However, any error in the admission of this statement was harmless because, in light of the other properly admitted evidence on this point, Ernst’s testimony did not prejudice respondent mother. *People v Bartlet*, 231 Mich App 139, 158-159; 585 NW2d 341 (1998). Legally admissible evidence, including Shannon Stotenbur’s testimony and respondent mother’s own admission that Christine

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jurisdictional trial, that petitioner was seeking to terminate her parental rights. She claims only that new and different jurisdictional allegations were contained in the amended petition. As indicated above, respondent mother is incorrect in this regard.

<sup>4</sup> Because the amended petition did not contain new and additional allegations, respondent mother’s claim that the filing of an amended petition containing new and additional allegations after she had waived the finding of probable cause on the original petition violated her substantive and procedural due process rights must also fail. Furthermore, because respondent mother failed to provide the transcript of the probable cause hearing, we may deem this issue waived. *Thomas v McGinnis*, 239 Mich App 636, 649; 609 NW2d 222 (2000).

caused Randi Lynn's bruises, was presented at the jurisdictional trial to indicate that Christine grabbed Randi Lynn in a "rough" fashion and caused Randi Lynn's bruises. Therefore, any error in the admission of Ernst's testimony did not prejudice respondent mother and, therefore, reversal is not required. *Bartlett, supra*, 231 Mich App 158-159.

Lastly, respondent mother claims that MCL 712A.19b(3)(m); MSA 27.3178(598.19b)(3)(m) constitutes an impermissible ex post facto law.

Respondent mother voluntarily released her parental rights to her oldest child in 1996. In 1997, the Legislature amended MCL 712A.19b(3); MSA 27.3178 (598.19b)(3) by adding subsection (m), to provide that parental rights may be terminated in the following situation:

(m) The parent's rights to another child were voluntarily terminated following the initiation of proceedings under section 2(b) of this chapter or a similar law of another state.

The constitutional prohibition against ex post facto laws precludes congress and state legislatures from enacting such laws. US Const, art I, §§ 9 and 10; *Thomas v McGinnis*, 239 Mich App 636, 647; 609 NW2d 222 (2000). The Ex Post Facto Clause "was intended to secure substantial personal rights against arbitrary and oppressive legislation, and not to limit legislative control of remedies and procedures that do not affect matters of substance." *People v Pennington*, 240 Mich App 188, 192; 610 NW2d 608 (2000). The ex post facto protections found in both the state and federal constitutions apply only to criminal or punitive laws. *Syntex Labs v Dep't of Treasury*, 233 Mich App 286, 292; 590 NW2d 612 (1998); *Cook v Dep't of Social Services*, 225 Mich App 318, 324; 570 NW2d 684 (1997). The purpose of child protective proceedings is the protection of the child. *In re Brock*, 442 Mich 101, 107; 499 NW2d 752 (1993); *In re S R*, 229 Mich App 310, 314; 581 NW2d 291 (1998). Hence, § 19b(3)(m) is not a criminal or punitive law; therefore, the ex post facto protections do not apply to this statutory subsection. In any event, only a single statutory ground is required in order to terminate parental rights. *In re Trejo*, 462 Mich 341, 360; 612 NW2d 407 (2000); *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). Respondent mother does not claim that termination of her parental rights was improper under §§ 19b(3)(g) and (j), and in light of her continuing neglect of the children and the fact that the children had been repeatedly abused in her care, we agree that termination was proper under these subsections. Therefore, even if the trial court erred in terminating respondent mother's parental rights under § 19b(3)(m), any error was harmless in light of the fact that termination was proper under §§ 19b(3)(g) and (j).

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Harold Hood

/s/ Richard Allen Griffin