

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of N.M.F., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MANUEL FULLER,

Respondent-Appellant,

and

LYNETTE PARKER,

Respondent.

UNPUBLISHED

January 21, 2003

No. 238944

Washtenaw Circuit Court

Family Division

LC No. 92-020465-NA

Before: Murray, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Respondent, the biological father of the minor child, appeals as of right from an order terminating his parental rights under MCL 712A.19b(3)(g) and (j). We affirm.

Petitioner initiated this child protection proceeding upon the child's birth and requested termination of the mother's parental rights at the initial dispositional hearing based on allegations that the mother had a long history of substance abuse and that her parental rights to other children had previously been terminated. Respondent was named in the petition as the child's alleged putative father. In a second amended petition, Greg Parker was named as the child's alleged legal father, and the petition sought to terminate the parental rights of respondent, Greg Parker, and the mother. The trial court allowed respondent to participate in the proceeding without formally resolving an objection to respondent's standing, given that the child was born during the marriage of the mother and Greg Parker. Following an adjudicative jury trial, the child was found to come within the court's jurisdiction with regard to respondent, the mother, and Greg Parker. At the subsequent dispositional hearing, the court terminated the parental rights of respondent, the mother, and Greg Parker.

On appeal, respondent raises six claims of error pertaining to the adjudicative and dispositional phases below.¹ First, we reject respondent's claim that the trial court abused its discretion in denying his motion for severance relative to the adjudicative jury trial. Respondent's reliance on case law applying the civil standards in MCR 2.505, *LeGendre v Monroe Co*, 234 Mich App 708, 719; 600 NW2d 78 (1999), and criminal standards in MCR 6.121, *People v Hana*, 447 Mich 325, 345; 524 NW2d 682, amended 447 Mich 1203 (1994), is misplaced, given respondent's failure to show that either rule applies to a child protection proceeding. MCR 5.901(A). See also *In re Brock*, 442 Mich 101, 108; 499 NW2d 752 (1993) (the rules for child protective proceedings differ from criminal cases). In light of this deficiency, and considering that the function of the adjudicative trial is to determine whether the court has jurisdiction over the *child*, we are not persuaded that the court erred by denying respondent's request for separate jury trials in this matter. *Id.*; see also *In re CR*, 250 Mich App 185, 205; 646 NW2d 506 (2002) (the trial court's jurisdiction is tied to the child).

Respondent next claims that the trial court gave improper jury instructions at the adjudicative trial with regard to the doctrine of anticipatory neglect and the criminality element. Because respondent does not support his argument with appropriate citations to the specific instructions that he claims constituted error, we could decline to consider this claim. An appellant may not leave it to this Court to search for a factual basis to sustain or reject a position. *People v Norman*, 184 Mich App 255, 260; 457 NW2d 136 (1990). Nevertheless, limiting our review to the jury instructions given by the trial court after the parties' closing arguments, we find no basis for relief.

MCR 2.516 governs jury instructions in a child protection proceeding. See MCR 5.901(B)(1) and MCR 5.911(C). Because respondent did not object to the jury instructions as provided in MCR 2.516(C), appellate relief is precluded absent manifest injustice. *Phinney v Perlmutter*, 222 Mich App 513, 537; 564 NW2d 532 (1997). However, when examined as a whole, respondent has failed to show that the court's instructions were improper or inadequate. See MCL 712A.2(b)(2); *In re Powers*, 208 Mich App 582, 588; 528 NW2d 799 (1995); *Bordeaux v Celotex Corp*, 203 Mich App 158, 168-169; 511 NW2d 899 (1993).

Respondent next challenges the trial court's jurisdiction on the basis that the child was not found within Washtenaw County. Although the trial court did not specifically rule on this issue, it was preserved for our review because it was presented to the court before its dispositional ruling. See generally *Peterman v Dep't of Natural Resources*, 446 Mich 177, 183; 521 NW2d 499 (1994). We disagree with respondent's claim that the trial court lacked the statutory authority to act in this matter. *In re Hatcher*, 443 Mich 426, 437; 505 NW2d 834 (1993); *In re AMB*, 248 Mich App 144, 168; 640 NW2d 262 (2001). Although a parent's residency does not provide a basis for jurisdiction under MCL 712A.2(b), *In re Mathers*, 371 Mich 516, 526; 126 NW2d 722 (1963), the definition of "found within the county" in MCR 5.926(A) accurately reflects our Legislature's intent in MCL 712A.2(b). See generally *People v Philabaun*, 461 Mich 255, 261; 602 NW2d 371 (1999). As applied in this case, the trial court was authorized to act from the outset because the initial petition was based on the doctrine of

¹ For purposes of our review, we shall assume that the trial court appropriately allowed respondent to participate without formally addressing the question of respondent's standing.

anticipatory neglect and Washtenaw County was the alleged situs for the mother's anticipated neglect. Thus, the county where the offense against the child occurred was Washtenaw County. See MCR 5.903(C)(5) and MCR 5.926(A). The child's temporal presence at a hospital in Wayne County did not deprive the Washtenaw court of its authority to exercise jurisdiction over the child.

Respondent also claims that the cumulative effect of the foregoing errors rise to a level of constitutional error. Because we have not found any error, however, this claim fails. We note that respondent raises a number of other alleged constitutional errors that are not properly before us because they are not set forth in the statement of questions presented. See *Meagher v McNeeley & Lincoln, Inc*, 212 Mich App 154, 156; 536 NW2d 851 (1995) (an argument that is not raised as a claim in the statement of the issue is not preserved for appeal). In passing, however, giving due regard to the fact that respondent was allowed to participate in this matter even though the court failed to formally resolve the dispute below concerning the question of respondent's standing, respondent has failed to establish that he was denied his right to due process. See generally *In re Brock, supra* at 111; *In re Perry*, 148 Mich App 601, 614-615; 385 NW2d 287 (1986). See also *In re AMB, supra* at 173; *In re Juvenile Commitment Costs*, 240 Mich App 420, 440; 613 NW2d 348 (2000); *In re Gillespie*, 197 Mich App 440, 446; 496 NW2d 309 (1992). We decline to consider respondent's cursory claim that his right to petition the courts was infringed upon. *Eldred v Ziny*, 246 Mich App 142, 150; 631 NW2d 748 (2001).

Respondent next argues that the trial court clearly erred in terminating his parental rights under MCL 712A.19b(3)(g) and (j). We disagree. The trial court gave appropriate consideration to the evidence concerning respondent's deceptive conduct relative to the guardianship proceeding and bogus federal order in concluding that respondent would continue to expose the child to the mother, an unfit parent, notwithstanding the termination of her parental rights. MCR 5.974(D)(3). The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 5.974(I); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Limiting our review to the record on appeal, we also reject respondent's final claim of error. Respondent has not identified any statutory language in MCL 712A.19b(3)(g) or (j) that is unconstitutionally vague when evaluated in light of the facts at hands. *People v Howell*, 396 Mich 16, 20-21; 238 NW2d 148 (1976); *In re Gosnell*, 234 Mich App 326, 334; 594 NW2d 90 (1999). See also *Michigan Soft Drink Ass'n v Dep't of Treasury*, 206 Mich App 392, 401; 522 NW2d 643 (1994).

Affirmed.

/s/ Christopher M. Murray

/s/ David H. Sawyer

/s/ E. Thomas Fitzgerald