

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

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In the Matter of TONY THORNTON,  
CHRISTOPHER THORNTON, HEIDI BUCK  
THORNTON, and ADRIANA THORNTON  
ORMSBY, Minors.

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DEPARTMENT OF HUMAN SERVICES,  
  
Petitioner-Appellee,

UNPUBLISHED  
October 19, 2006

v

KATHY ORMSBY,

Respondent-Appellant.

No. 269070  
Newaygo Circuit Court  
Family Division  
LC No. 04-006282-NA

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Before: White, P.J., and Zahra and Kelly, JJ.

PER CURIAM.

Respondent appeals as of right from the order that terminated her parental rights to the minor children pursuant to MCL 712A.19b(3)(b)(ii), (c)(i), (g), and (j). We affirm.

The original petition seeking removal of the children alleged that respondent had been involved in a prior protective proceeding in the state of Idaho before moving to the state of Michigan, respondent's mental health was uncertain, and that respondent had recently left the children in the care of a person who had been convicted of criminal sexual conduct despite being warned by the Department of Human Services ("DHS") not to do so. An investigation into possible sexual abuse had been initiated and, on one of the occasions that respondent took a girl to the hospital for a sexual abuse exam, they were accompanied by the suspected perpetrator. At the first review hearing, evidence was presented that respondent was in continued contact with a person of concern to the DHS. By the time of the second review hearing, respondent had not yet obtained housing. Respondent did attend some counseling but stopped; she also attended weekly visitations but acted erratically and made bizarre statements to the children. Sometime around July of 2005, respondent moved to Idaho. Once there, she provided no documentation that she was receiving any services. She also failed to return to Michigan to attend the permanency planning hearing or the termination trial.

Respondent argues that her plea of no contest was never entered at the trial level and, therefore, the trial court never properly obtained jurisdiction over the children, thus rendering all further proceedings void. Respondent failed to preserve this issue by raising it in the lower court

and cannot collaterally attack the jurisdictional finding in a subsequent appeal of an order terminating parental rights. *In re Gazella*, 264 Mich App 668, 679-680; 692 NW2d 708 (2005). Moreover, no plain error that affected respondent's substantial rights occurred in this case.<sup>1</sup> *People v Carines*, 460 Mich 750, 764-765; 597 NW2d 130 (1999).

Respondent next argues that the evidence was insufficient for the trial court to terminate her parental rights. In order to terminate parental rights, the trial court needed clear and convincing evidence of only one statutory ground to support its termination order. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000). This Court reviews that finding under the clearly erroneous standard. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

The trial court did not clearly err when it based its termination of respondent's parental rights upon MCL 712A.19b(3)(c)(i). The dispositional order was issued on January 5, 2005, which was more than 182 days before the February 15, 2006 termination trial. The conditions alleged in the original petition were that respondent had a prior protective services history, her mental health was uncertain, and that she had recently failed to protect the children by leaving them in the care of a convicted sex offender. At the first review hearing, concern was raised over respondent's continued contact with a person of concern to DHS. By the time of the termination trial, respondent had been in Idaho for approximately seven months with no documentation that she was participating in any services.<sup>2</sup> Respondent's lack of participation in counseling while in Idaho resulted in no opportunity for her to address her mental health problems or her ability to protect the children. This evidence clearly and convincingly established that the conditions that led to the adjudication had not been rectified, and that there was no reasonable likelihood that they could be rectified within a reasonable time given the ages of the minor children. Since the termination order was properly based upon at least one statutory ground, it is unnecessary for this Court to determine if other statutory grounds were also established by clear and convincing evidence.

<sup>1</sup> A reading of the hearing transcript shows that the trial court complied with MCR 3.971, which governs pleas of admission or no contest, and requires a court to state why a plea of no contest was appropriate. MCR 3.971(C)(2). The court met this requirement when it said that it had reviewed the file and found that the elements of the offense had been established. Furthermore, the petition and its supporting documents established by a preponderance of evidence that respondent had left the children with a convicted sex offender, thus establishing at least one of the statutory grounds for jurisdiction set forth in MCL 712A.2(b).

<sup>2</sup> Respondent points to documentary evidence that indicated she had received counseling and obtained housing while in Idaho. This evidence had not been presented at the trial level and, on appeal, respondent attempts to portray such evidence as being "necessary to an understanding of the controversy and the questions involved," and, therefore, properly included in an appellate brief's statement of facts pursuant to MCR 7.212(C)(6)(g). However, respondent is improperly attempting to expand the lower court record. MCR 7.210(A).

Finally, the trial court did not clearly err in its determination regarding the children's best interests. MCL 712A.19b(5); *Trejo, supra* at 353.

Affirmed.

/s/ Helene N. White  
/s/ Brian K. Zahra  
/s/ Kirsten Frank Kelly