

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DILLON MICHAEL JOHNSON,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ANGELA JACQUES,

Respondent-Appellant.

UNPUBLISHED

April 17, 2007

No. 271915

Oakland Circuit Court

Family Division

LC No. 05-712709-NA

Before: Donofrio, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating her parental rights to her minor child pursuant to MCL 712A.19b(3)(b)(i), (g) and (j). We affirm.

Respondent first argues that the trial court's failure to hold a jury trial at the adjudication stage violated her right to procedural due process. The determination whether proper procedure was followed in a child protective proceeding presents a question of law subject to de novo review. *In re CR*, 250 Mich App 185, 200; 646 NW2d 506 (2002). In child protective proceedings, the trial portion of the proceedings involves whether the trial court may exercise jurisdiction over the child. *In re Brock*, 442 Mich 101, 108; 499 NW2d 752 (1993). "To acquire jurisdiction, the factfinder must determine by a preponderance of the evidence that the child comes within the statutory requirements of MCL 712A.2[.]" *Id.* at 108-109. Once jurisdiction over the child is found, 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 order to terminate the parental rights to the child. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1993).

MCR 3.911 provides:

(A) The right to a jury in a juvenile proceeding exists only at the trial.

(B) A party who is entitled to a trial by jury may demand a jury trial by filing a written demand with the court. . . .

MCR 3.903(A)(18) provides, in pertinent part:

“Party” includes the

* * *

(b) petitioner, child, respondent, and parent, guardian, or legal custodian in a protective proceeding.

In addition, MCR 3.977(A)(3) provides that respondent has no right to a jury determination with regard to the issue of termination of parental rights.

Respondent timely requested a jury trial and was entitled to a trial by jury with respect to the jurisdictional issue. The allegations raised in the petition addressed both respondent and the child’s father, Michael Johnson. Both respondent and Johnson were named in the petition, and it was not improper for the trial court to conduct the bench trial regarding jurisdiction of the minor child as it related to the allegations against Johnson first. Once jurisdiction over the child was found, a second trial was not necessary. In *In re CR, supra*, the trial court had previously obtained jurisdiction over the minor children following their mother’s no contest plea to the allegations in the petition. In that case, this Court found that it was not error for the trial court to fail to adjudicate the father’s rights before terminating his parental rights. The trial court in the instant case was within its discretion to hold Johnson’s bench trial first. Once the trial court took jurisdiction over the minor child, respondent was afforded her due process rights because she was given a hearing on the issue of whether her parental rights to the minor child would be terminated. *In re CR, supra* at 202-205. Therefore, the trial court did not clearly err when it did not allow respondent a jury trial after it found that the allegations with respect to Johnson were proven by a preponderance of the evidence and assumed jurisdiction over the child. *Id.*

Moreover, respondent was not denied due process because the right to a jury trial applies only to the issue of jurisdiction. The trial court cannot terminate a parent’s parental rights without a hearing and a finding that the evidence clearly and convincingly supports termination pursuant to one of the statutory bases. Respondent was provided a hearing on this issue, was provided the opportunity to question the testimony and evidence brought against her, and presented her own evidence regarding termination. No error occurred.

Also, at the time of the hearing on the jurisdictional issue, respondent’s attorney argued that the jury and the trial court should have heard the evidence contemporaneously, and that the jury should have decided the jurisdictional issue regarding respondent, and the court should have decided the jurisdictional issue regarding Johnson. Clearly, the outcome would not have been different in those circumstances because the trial court did hear the evidence and found that the allegations in the petition regarding Johnson were proven by a preponderance of the evidence and took jurisdiction over the child. Accordingly, even if respondent’s argument was correct, any error would have been harmless.

Respondent next argues that the trial court improperly assumed jurisdiction over the child. This issue is not properly before this Court because matters affecting the 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. *In re Hatcher,*

443 Mich 426, 438-439, 444; 505 NW2d 834 (1993); *In re Gazella*, 264 Mich App 668, 680; 692 NW2d 708 (2005); *In re Powers*, 208 Mich App 582, 587-588; 528 NW2d 799 (1995). Because respondent did not appeal the May 10, 2006, order of adjudication, she lost her right to challenge the court's exercise of jurisdiction. In any event, the trial court properly found that the child came within its jurisdiction under MCL 712A.2(b)(2) on the basis of its determination that Johnson could not provide care and custody for the child and his home was an unfit place for the child to live in by reason of Johnson's criminality.

Respondent next contends that the statutory bases for terminating her parental rights were not proven by clear and convincing evidence. This Court reviews a trial court's decision to terminate parental rights for clear error. MCR 3.911(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). If the trial court determines that petitioner established the existence of one or more statutory grounds for termination by clear and convincing evidence, the court must terminate parental rights unless it determines that to do so is clearly not in the child's best interests. *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000). A finding of fact is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake was made. *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000). In applying the clearly erroneous standard, the Court should recognize the special opportunity of the trial court to assess the credibility of the witnesses. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The evidence showed that respondent put the eight-month-old child on the floor to play, and the child subsequently fell asleep. Although there was a playpen in another room, respondent did not put the child in the playpen. A hair dryer, which was plugged in, was on the floor in the vicinity of the child. Respondent also fell asleep in a reclining chair within a few feet from the child. A dog was loudly barking nearby. Respondent awoke when the child's grandmother exclaimed that the child had been burned. The grandmother had come home from work, heard the dog barking inside the house, and found the child on the floor with the hair dryer turned on. The grandmother turned off the hair dryer and discovered the burns. She and respondent took the child to the hospital after respondent made a bottle and fed him. The child suffered first and second-degree burns to his leg and back.

The trial court found that respondent's acts caused the physical injury. Respondent placed the child on the floor near a plugged in hair dryer, allowed him to fall asleep there rather than in a playpen or crib, fell asleep herself, and did not wake up even though the child was crying from being burned by the hair dryer and the dog was barking. Hospital employees testified that respondent seemed detached from what was going on with the child and respondent's further actions did not indicate that she had learned from the incident and would do whatever it took so that the child would not be harmed again. Respondent's actions showed that she could not properly supervise and protect the child. Thus, the trial court did not clearly err by terminating respondent's parental rights to the child under MCL 712A.19b(3)(b)(i), (g), and (j).

The trial court did not err in its best interests determination. MCL 712A.19b(5); *In re Trejo*, *supra* at 356-357. Although the child was happy when he saw respondent, he was purportedly just as happy to see others. Respondent could have spent more time bonding with the child because she had flexible and generous visitation supervised by the child's grandmother with whom respondent had a good relationship. Respondent, however, visited the child for only an hour once a week even though she only worked 30 hours a week and attended parenting

classes for only 1-½ hours a week. The trial court considered respondent's efforts made since the petition was filed in September 2005. Nine months later, respondent had almost completed parenting classes that she started only a couple of months before the best interests hearing and had not yet begun therapy. She had no explanation for not starting parenting classes earlier, and she purportedly had not begun therapy because she did not have time and was waiting until she had completed parenting classes, even though she worked only 30 hours a week, went to parenting classes 1-½ hours a week, and was not responsible for the child's care. Based on the lack of bonding between respondent and the child and the lack of effort to strengthen any bond they did have as well as the lack of effort to atone for her actions that resulted in first and second-degree burns to the child, the trial court did not clearly err in its best interests determination.

Finally, respondent argues that the trial court erred by refusing to appoint a burn expert. We review for an abuse of discretion a trial court's decision denying a request to appoint an expert witness. *People v Herndon*, 246 Mich App 371, 398; 633 NW2d 376 (2001). The trial court did not abuse its discretion by refusing to appoint a burn expert. The issue was not whether the child was burned or what burned him. It was uncontroverted that a noncontact burn from a hair dryer caused the child's injuries. The issues concerned whether respondent's acts caused the injury, whether she failed to provide proper care and custody, whether she failed to adequately supervise the child and would be able to protect the child from injury, and whether she would be able to provide proper care and custody within a reasonable time. Another issue was whether the child would be at risk of harm if returned to respondent's care. A burn expert would not have provided any helpful information regarding these issues.

Affirmed.

/s/ Pat M. Donofrio
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey