

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SELENA NEVAEH CRUZ,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

THERESA YEARY-CRUZ and LUIS CRUZ,

Respondents-Appellants.

UNPUBLISHED

September 20, 2007

No. 275993

Oakland Circuit Court

Family Division

LC No. 06-727456-NA

Before: Bandstra, P.J., and Talbot and Fort Hood, JJ.

PER CURIAM.

Respondents appeal as of right from the trial court's order assuming jurisdiction over their minor child, Selena, pursuant to MCL 712A.2(b)(1) and (2). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

"We review the trial court's decision to exercise jurisdiction for clear error in light of the court's findings of fact." *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). "To properly exercise jurisdiction, the trial court must find that a statutory basis for jurisdiction exists." *Id.* "Jurisdiction must be established by a preponderance of the evidence." *Id.*

We find that the preponderance of the evidence supported the trial court's assumption of jurisdiction over Selena. Respondent-mother's parental rights to another child were previously terminated less than one year before Selena's birth after neglect proceedings were initiated and after she failed to make progress towards the goals of her Parent/Agency Agreement within a reasonable time. *In re Annalycia Yeary, Minor*, unpublished opinion per curiam of the Court of Appeals, issued July 20, 2006 (Docket No. 266848). Selena, the child at issue in the instant case, was removed from respondents' care when she was two months old after respondents engaged in a domestic dispute, wherein respondent-father slapped respondent-mother and she hit him in the head with a beer bottle. Significantly, the dispute occurred while respondent-father was holding Selena, while a "safety plan" established by petitioner was in place because of respondent-mother's prior termination, and after respondents had been "drinking." It was also discovered that respondent-mother's mental health issues were not being addressed.

Considering the totality of these facts, we find no clear error in the court's determination that a preponderance of the evidence supported a finding that Selena's home environment was unfit by reason of neglect, MCL 712A.2(b)(2), or that Selena was subject to a substantial risk of harm, MCL 712A.2(b)(1). *In re BZ*, *supra* at 295-296. The anticipated neglect stemming from respondent-mother's past inability to properly care for her child during prior neglect proceedings¹, considered in conjunction with the current, serious domestic violence incident that occurred while respondent-father held Selena, which clearly placed the child at a risk of harm, provided sufficient support for the court to invoke its jurisdiction over Selena. Contrary to respondents' argument, the domestic dispute between respondents provided relevant evidence to support jurisdiction, especially in light of respondent-mother's past mental instability, assaultive behavior and current lack of treatment to address her mental health issues. Contrary to respondents' argument, on this record, it was appropriate for the court to anticipate neglect of Selena based on respondent-mother's past adjudicated neglect of her other child and her inability to rectify the identified issues that led to the termination of her parental rights to that child in a timely manner. *In re Gazella*, 264 Mich App 668, 679-680; 692 NW2d 708 (2005). Respondents' argument that petitioner presented insufficient evidence to support jurisdiction is simply not supported by the record.

We also reject respondents' argument respondent-mother's prior termination prevents her from ever regaining custody of Selena in violation of her constitutional rights. Respondents' note that respondent-mother cannot prevail with regard to at least one statutory ground for terminating her parental rights, that being MCL 712A.19b(3)(l), providing for termination where, as in this case, a parent's rights to another child were previously terminated as a result of neglect proceedings. However, application of subsection (3)(l) does not mean that any parent with a prior termination automatically loses their parental rights to subsequent children. Instead, the statutory scheme "preserves to the court the opportunity to find that termination is 'clearly not in the child's best interests' despite the establishment of one or more grounds for termination." *In re Trejo Minors*, 462 Mich 341, 352-54; 612 NW2d 407 (2000); MCL 712A.19b(5). The requirement that a court terminate parental rights once a statutory ground for termination is established does not violate the parent's due process rights and, in fact, the best interests provision affords the parent with additional protection. *In re Trejo*, *supra* at 354-356. Accordingly, during the termination proceedings, respondent-mother has an opportunity to persuade the court that termination is not in Selena's best interests.

Affirmed.

/s/ Richard A. Bandstra
/s/ Michael J. Talbot
/s/ Karen M. Fort Hood

¹ Michigan courts recognize the doctrine of anticipatory neglect or abuse. *In re Gazella*, 264 Mich App 668, 679-680; 692 NW2d 708 (2005); *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001); *In re Powers*, 208 Mich App 582, 589, 591-593; 528 NW2d 799 (1995).