STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of JASIAH BONSELL, a/k/a JASARA BONSELL, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

PATRICIA ROSE MITCHELL and BRIAN PAUL BONSELL,

Respondents-Appellants.

UNPUBLISHED
December 29, 1998

No. 210428; 210758
Grand Traverse Circuit Court
Family Division
LC No. 95-000442 NA

Before: Gage, P.J., and MacKenzie and White, JJ.

PER CURIAM.

In these consolidated cases, respondents appeal as of right from an order terminating their parental rights to their minor child under MCL 712A.19b(3)(g) and (j); MSA 27.3178(598.19b) (3)(g) and (j). We affirm.

Respondents contend that the trial court lacked jurisdiction on a number of grounds. Whether a court has subject matter jurisdiction is a question of law that can normally be raised at any time, including for the first time on appeal. *Watson v Bureau of State Lottery*, 224 Mich App 639, 642-643; 569 NW2d 878 (1997). Questions of law are reviewed de novo on appeal. *In re Hamlet (After Remand)*, 225 Mich App 505, 521; 571 NW2d 750 (1997).

Respondents argue that the trial court lacked jurisdiction because the circuit court, which had prior jurisdiction over the child pursuant to a pending custody case, did not waive jurisdiction. However, MCR 3.205(A), made applicable to juvenile proceedings by MCR 5.112 and MCL 712A.2(b)(2); MSA 27.3178(598.2)(b)(2), provides that waiver or transfer of jurisdiction is not

required for the full and valid exercise of jurisdiction. Further, although respondents argue that the trial court lacked jurisdiction because they had placed the child in the temporary care of relatives, we decline to consider this argument because respondents have not addressed the basis of the trial court's decision on this matter. *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 175; 568 NW2d 365 (1997). In any event, there was evidence that respondent Patricia Mitchell attempted to take the child against her parents' will. Also, the issue of whether sufficient evidence was presented to establish the court's jurisdiction over the child is not properly before this Court because respondents did not directly appeal the order taking jurisdiction and they may not now collaterally attack the trial court's exercise of jurisdiction on appeal from the order terminating parental rights. *In re Hatcher*, 443 Mich 426; 505 NW2d 834 (1993); *In re Powers*, 208 Mich App 582, 587-588; 528 NW2d 799 (1995). Further, there was abundant evidence of jurisdiction.

Respondents argue that the trial court abused its discretion in denying their motion for separate trials. Apart from the fact that respondents failed to show that MCR 2.505 is applicable to juvenile proceedings, see MCR 5.001(A) and MCR 5.901(A), they failed to make the persuasive showing necessary for "such drastic action." *Detloff v Taubman Co, Inc*, 112 Mich App 308, 310-311; 315 NW2d 582 (1982). Furthermore, any prejudice that one party might have suffered as a result of the evidence admitted against the other party was sufficiently dispelled by the court's repeated instructions that the jury was to evaluate the evidence separately with respect to each respondent and to decide the issue of jurisdiction independently as to each respondent based on the allegations made and evidence offered against each.

Respondents also claim that the trial court erred in failing to hold the adjudication hearing within the sixty-three-day time limit prescribed by MCR 5.972(A). However, respondents agreed in writing to waive the sixty-three-day period at a hearing on March 20, 1997, and they cannot predicate error requiring reversal on their own actions. *Phinney v Perlmutter*, 222 Mich App 513, 558; 564 NW2d 532 (1997). In any event, failure to comply with the rule does not affect the court's jurisdiction. *In re Prater*, 189 Mich App 330, 333; 471 NW2d 658 (1991).

Respondents assert that the trial court erred in denying their motions in limine to exclude evidence of their criminal histories, including convictions. The trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion. "An error in the admission of evidence is not a ground for vacating, modifying, or otherwise disturbing a judgment unless refusal to do so would be inconsistent with substantial justice." *Davidson v Bugbee*, 227 Mich App 264, 266; 575 NW2d 574 (1997).

The trial court reserved ruling on the admissibility of the personal protection orders and any violations thereof, and respondents did not renew their objections to this matter when testimony relating thereto was later elicited. Therefore, respondents have not preserved this aspect of the issue for appeal. MRE 103(a)(1); *In re Weiss*, 224 Mich App 37, 39; 568 NW2d 336 (1997). Respondent Mitchell's drunk driving conviction was relevant and admissible because it related to an allegation in the petition. Moreover, Mitchell did not object to the evidence regarding the assault charges or convictions or the illegal entry conviction and, therefore, has not preserved this aspect of the issue for appeal. *Id.*

Respondent Bonsell's conviction for use of marijuana was relevant and admissible because it related to the allegations in the petition. While his other convictions and criminal complaints which did not result in convictions may not have been relevant, considering that the allegations in the petition were sufficient to establish a finding of neglect absent Bonsell's criminal activity, we cannot find that it would be inconsistent with substantial justice to refuse to set aside the termination order based on the improper admission of evidence of respondent's criminal history.

Respondent Bonsell raises two separate issues on appeal. However, he does not cite any law or other authority in support of his contention that a defendant in a civil proceeding has a right to a transcript at public expense of a proceeding in a different court and for a purpose other than appeal, and, therefore, has not preserved the issue for appeal. *In re Futch*, 144 Mich App 163, 166; 375 NW2d 375 (1984). Nor is the right apparent. Also, Bonsell has not provided a transcript of the preliminary hearing and, therefore, has not preserved for appeal his claim that the trial court failed to comply with MCR 5.965(B)(7). *Admiral Ins Co v Columbia Casualty Ins Co*, 194 Mich App 300, 304-305; 486 NW2d 351 (1992). In any event, while the evidence showed at best that the child may have Indian heritage, that alone does not qualify her as an Indian child as defined under the Indian Child Welfare Act, 25 USC 1903(4), so as to make the provisions of the act or MCR 5.980 applicable, *In re Johanson*, 156 Mich App 608, 613; 402 NW2d 13 (1986), and no other evidence was ever presented showing that the child is an Indian child under the ICWA.

Both respondents contend that the trial court erred in terminating their parental rights. The court's finding that at least one statutory ground for termination exists is reviewed for clear error. A finding of fact is clearly erroneous if, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Vasquez*, 199 Mich App 44, 51-52; 501 NW2d 231 (1993). Once the court finds grounds for termination, it "shall order termination of parental rights . . . unless the court finds that termination of parental rights to the child is clearly not in the child's best interests." MCL 712A.19b(5); MSA 27.3178(598.19b)(5). The burden is on respondents to come forward with evidence that termination is clearly not in the child's best interests. *In re Hall-Smith*, 222 Mich App 470, 472-473; 564 NW2d 156 (1997). This nondiscretionary ruling is reviewed for clear error. *Id.*

The trial court did not clearly err in finding that clear and convincing evidence was presented to establish the statutory ground for termination under § 19b(3)(g). Both parents subjected the child to harm by engaging in verbal and physical altercations in the child's presence. They were even known to engage in a literal tug of war over the child. Respondent Mitchell was unable to provide proper care and custody on a consistent basis despite counseling and child-care services and, rather than attempt to work toward reunification, she left the state. Respondent Bonsell was unable to provide proper care and custody on a consistent basis due to his lack of suitable housing and a steady income, and he refused to go to counseling or to comply with other aspects of the parent/agency agreement. The child was at a critical age where she needed permanency and consistency in her life and, given the fact that the child had been in and out of care since she was two months old, respondents were not reasonably

likely to be able to provide proper care and custody within a reasonable time considering the age of the child. Finally, respondents failed to show that termination of their parental rights was clearly not in the child's best interests. MCL 712A.19b(5); MSA 27.3178(598.19b)(5). Thus, the trial court did not err in terminating respondents' parental rights to the children. *In re Hall-Smith, supra*.

Affirmed.

/s/ Hilda R. Gage
/s/ Barbara B. MacKenzie
/s/ Helene N. White