

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

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In the Matter of MASON EMANUEL, Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CYNTHIA MILLS,

Respondent-Appellant,

HARLON EMANUEL,

Respondent.

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UNPUBLISHED

June 29, 2006

No. 267139

Berrien Circuit Court

Family Division

LC No. 2005-000084-NA

Before: Davis, P.J., and Sawyer and Schuette, JJ.

PER CURIAM.

Respondent Cynthia Mills appeals as of right from the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(g), (h), (i), (j) and (l). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

**I. FACTS**

Respondent Cynthia Mills is the mother of five children. Her parental rights to her four oldest children were terminated in January and March 2005. The youngest child, Mason Emanuel, of concern here, was born while respondent was incarcerated for retail fraud. The child's putative father, Harlon Emanuel, is also incarcerated and has not objected to the termination of his parental rights. Respondent signed a power of attorney to give her mother, Brenda Moore, care and custody of her newborn child, despite Moore's own parental rights of respondent previously being terminated because of a drinking problem that caused Moore to neglect, mentally abuse and fail to care for her own children.

Moore did not know respondent's child had been born until a children's protective services specialist, Faith Hamilton, visited her house and told her. Hamilton saw minimal supplies in Moore's home with which to care for an infant and did not observe a crib in Moore's room. Hamilton also observed an individual who she believed to be respondent's daughter, who had run away from her foster care home, walking out of a bedroom in Moore's home. This was

allegedly confirmed by Moore's significant other, although he later claimed not to remember making the statement and denied respondent's daughter was there that day. Respondent claims a crib and other supplies were purchased and present at Moore's house in order to care for the infant when it was born and that she believed Moore was an appropriate caregiver for her child.

## II. JURISDICTION

### A. Standard of Review

Although the exercise of a court's jurisdiction may only be challenged on direct appeal, lack of subject matter jurisdiction may be collaterally attacked. *In re Powers*, 208 Mich App 582, 587-588; 528 NW2d 799 (1995). Whether a trial court had subject matter jurisdiction over a claim presents a question of law that is reviewed de novo. *Ryan v Ryan*, 260 Mich App 315, 331; 677 NW2d 899 (2004).

### B. Analysis

The court had subject matter jurisdiction over respondent's case. Subject-matter jurisdiction in child protective proceedings is established when the action is of a class that the court is authorized to adjudicate. *In re Hatcher*, 443 Mich. 426, 437; 505 NW2d 834 (1993).

The valid exercise of jurisdiction is established by the contents of the petition after the court conducts a probable cause hearing on the allegations. *In re Hatcher, supra* at 438. If the trial court finds probable cause to believe that the allegations are true, it may enter preliminary, limited orders concerning the care and placement of the child pending the adjudicative trial. *Ryan, supra* at 342. Full jurisdictional authority may be exercised after one or more statutory grounds in MCL 712A.2(b) is established. *Id.* at 342. The court's jurisdiction in child protective proceedings is governed by MCL 712A.2(b), which grants subject-matter jurisdiction of cases concerning children under eighteen years of age (1) if the parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his health or morals, if the juvenile is subject to a substantial risk of harm to his mental well-being, if the juvenile is abandoned by his parents, guardian, or other custodian, or if the juvenile is without proper custody or guardianship, or (2) the juvenile's home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, non-parent adult, or other custodian, is an unfit place for the juvenile to live in. *In re Foster, supra* at 354; MCL 712A.2(b).

Here, the petition clearly alleged facts bringing the matter within the court's jurisdiction. The petition alleged that the child was without proper custody or guardianship because the respondent was incarcerated and had attempted to grant custody to non-parent adult who had previously had her own parental rights terminated and who was allegedly housing a runaway. Given these facts, the trial court did not clearly err in finding jurisdiction over respondent's case.

Additionally, although it appears respondent attempts to argue that the court improperly asserted jurisdiction in the same argument that she claimed that the court lacked jurisdiction, it should be noted that both respondent and Moore waived probable cause findings and agreed to

the exercise of temporary jurisdiction and authorization of the petition at the August 23, 2005, preliminary hearing.

### III. STATUTORY GROUNDS FOR TERMINATION

#### A. Standard of Review

In order to terminate parental rights, 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 re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1993). The trial court's decision is reviewed under the clearly erroneous standard. MCR 3.977(J); *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). A finding of fact is clearly erroneous if a reviewing court is left with a definite and firm conviction that a mistake was made. *Id.* In applying the standard, this Court should recognize the special opportunity the trial court has to assess the credibility of the witnesses. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

#### B. Analysis

The trial court did not clearly err in finding that a statutory ground for termination existed. Respondent's parental rights were terminated under MCL 712A.19b(3)(g), (h), (i), (j) and (l). Under subsection (l), parental rights may be terminated if the parent's rights to another child were terminated as a result of proceedings under MCL 712A.2(b) or a similar law of another state. Respondent does not specifically challenge any of the statutory grounds relied upon by the court and instead appears to advance a general argument that termination should not have occurred where respondent executed a power of attorney granting custody to Moore. Respondent fails to support this proposition with either law or argument. However, petitioner must demonstrate clear and convincing evidence of only one statutory ground to support termination. The evidence was uncontested that respondent's rights to four other children were terminated for serious and chronic neglect and physical abuse only seven months before the birth of the child of concern here. The evidence further shows that respondent failed to participate in any rehabilitative services to allow reunification with these children. Respondent's alleged grant of custody to Moore does not affect the statutory grounds found for terminating her parental rights. Thus, termination was proper under subsection 19b(3)(l). As only one statutory ground needs to be found, the trial court's determination of subsections 19b(3)(g), (h), (i) and (j) will not be addressed.

### IV. BEST INTERESTS OF THE CHILD

#### A. Standard of Review

Once a statutory ground for termination has been established by clear and convincing evidence, the trial court shall order termination of parental rights unless the court finds from evidence on the whole record that termination is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich App 346, 352-354; 612 NW2d 407 (2000). Decisions terminating parental rights are reviewed for clear error. *Id.* at 356-357. A finding of fact is clearly erroneous if a reviewing court is left with a definite and firm conviction that a mistake was made. *In re JK, supra* at 209-210. In applying the standard, this Court should recognize the

special opportunity the trial court has to assess the credibility of the witnesses. MCR 2.613(C); *In re Miller, supra* at 337.

#### B. Analysis

The trial court did not clearly err in finding that termination of her parental rights was not contrary to the best interests of the child. When her previous four children were taken from her, she failed to participate in any of the rehabilitation services offered to her. Respondent has been a drug addict for over two years but has never completed a substance abuse program. She did not have housing, employment or a source of income prior to being incarcerated. Her past conduct show a cycle of being unable to provide a stable environment for her children. The child here was taken from respondent shortly after she gave birth in prison so that no significant bond exists between mother and child. The child is still very young and has not yet been impaired significantly by respondent's neglect and lack of parenting skills. The trial court did not clearly err in finding the best interests of the child were that the respondent should not have the opportunity to expose the child to her neglectful parenting shown through previous conduct and thus did not err in terminating respondent's parental rights.

Affirmed.

/s/ Alton T. Davis  
/s/ David H. Sawyer  
/s/ Bill Schuette