

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of DEJEUNER PIERCE, GINA  
PIERCE, and CINNAMON PIERCE, Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

STARELLEN CARTER,

Respondent-Appellant,

and

EUGENE PIERCE,

Respondent.

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UNPUBLISHED

January 20, 2009

No. 286337

Wayne Circuit Court

Family Division

LC No. 08-475921

Before: Talbot, P.J., and Bandstra and Gleicher, JJ.

PER CURIAM.

Respondent Starellen Carter appeals as of right from the trial court's order of disposition following a determination that the minor children came within the court's jurisdiction in this child protection proceeding. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The trial court's findings of fact are reviewed for clear error. *Chapdelaine v Sochocki*, 247 Mich App 167, 169; 635 NW2d 339 (2001). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004). The trial court's decision to exercise jurisdiction is reviewed "for clear error in light of the court's findings of fact." *Id.* at 295.

MCL 712A.2(b) authorizes a court to exercise jurisdiction over a child found within the county under the age of 18 in either of the following circumstances:

- (1) Whose 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 or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. . . .

(2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, or other custodian, is an unfit place for the juvenile to live in.

Thus, the statute grants the court “subject-matter jurisdiction of cases concerning children under eighteen years of age if . . . the child’s parents or guardians are neglectful as defined in subsection 1 or have failed to provide a fit home as defined in subsection 2.” *In re AMB*, 248 Mich App 144, 167; 640 NW2d 262 (2001). The court acquires jurisdiction when the fact-finder determines by a preponderance of the evidence that the allegations in the petition establish that the child comes within the statutory requirements of MCL 712A.2(b). *In re Brock*, 442 Mich 101, 108-109; 499 NW2d 752 (1993); *In re PAP*, 247 Mich App 148, 152-153; 640 NW2d 880 (2001); MCR 3.972(C)(1) and (E).

The petition alleged that the children were within the court’s jurisdiction due to physical abuse of respondent’s oldest child and threatened harm to all the children. The evidence presented at trial showed that the oldest child reported that respondent had physically abused her, and a school worker observed a welt across her back. According to the Protective Services worker, respondent admitted to striking the child with a charger cord. In her testimony, respondent admitted using corporal punishment, but denied using anything other than an open hand, and admitted threatening to beat the two older children when they returned home, although she passed that off as a joke. It is clear from the trial court’s findings that it did not believe respondent’s testimony regarding the form and extent of corporal punishment. Giving due regard to the trial court’s unique ability to observe the witnesses who appeared before it, its finding that respondent deliberately struck the oldest child with an object is not clearly erroneous. Under the doctrine of anticipatory neglect or abuse, “[a] child may come within the jurisdiction of the court solely on the basis of a parent’s treatment of another child.” *In re Gazella*, 264 Mich App 668, 680; 692 NW2d 708 (2005). “Abuse or neglect of the second child is not a prerequisite for jurisdiction of that child and application of the doctrine of anticipatory neglect.” *Id.* at 680-681. The trial court did not clearly err in assuming jurisdiction over the children.

Affirmed.

/s/ Michael J. Talbot  
/s/ Richard A. Bandstra  
/s/ Elizabeth L. Gleicher