

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

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In the Matter of ANDRE BAKER, minor.

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DEPARTMENT OF SOCIAL SERVICES,

Petitioner-Appellee,

v

DWIGHT BAKER,

Respondent-Appellant,

and

CATHY GRIFFETH,

Respondent.

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UNPUBLISHED

May 23, 1997

No. 193022

Wayne Juvenile Court

LC No. 86-204070

Before: McDonald, P.J., and Reilly and O'Connell, JJ.

PER CURIAM.

Following a bench trial, the probate court found minor Andre Baker's home to be an unfit place for him to live by reason of "neglect, cruelty, drunkenness, criminality or depravity" on the part of his parents. Accordingly, the court assumed jurisdiction over the minor. MCL 712A.2(b)(2); MSA 27.3178(598.2)(b)(2). Subsequently, Andre was made a temporary ward of the state and ordered to be placed with a suitable relative or in a foster care facility. Respondent Dwight Baker, Andre's father, now appeals as of right, contending that the court clearly erred in concluding that Andre's home was an unfit place to live. We affirm.

The probate court may assume jurisdiction over a child only when it is proven by a preponderance of the evidence that such a measure is necessary. MCR 5.972(C)(1). In general, this Court reviews the probate court's findings of fact when assuming jurisdiction over a juvenile under the clearly erroneous standard. See *In re Hatcher*, 443 Mich 426; 505 NW2d 834 (1993); MCR 5.974(I). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with

a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

In the present case, petitioner Department of Social Services alleged that jurisdiction existed over Andre pursuant to MCL 712A.2(b)(1) and (2); MSA 27.3178(598.2)(b)(1) and (2). These statutory subsections provide as follows:

The juvenile division of the probate court shall have the following authority and jurisdiction:

\* \* \*

(b) Jurisdiction in proceedings concerning any child under 18 years of age found within the county:

(1) Whose parent or other person legally responsible for the care and maintenance of the child, 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 child to live in.

The court expressly concluded that jurisdiction over Andre did not exist pursuant to MCL 719A.2(b)(1); MSA 27.3178(598.2)(b)(1).

However, the probate court found that a preponderance of the evidence supported a conclusion that neglect, cruelty, drunkenness, criminality or depravity rendered Andre's home an unfit place for him to live. MCL 719A.2(b)(2); MSA 27.3178(598.2)(b)(2). The court reached this conclusion largely because of an incident in which respondent, who may have been intoxicated at the time, was arrested for disorderly conduct at a hospital after Andre was physically taken from respondent by a social worker while Andre's mother was being treated. The social worker testified that respondent attempted to take Andre from her arms, causing the baby to fall "or something like that." The court also considered an incident in which respondent, again alleged to have been drinking, cursed at a social worker, and relied on admissible hearsay statements indicating that respondent was verbally and physically abusive to Andre and Andre's mother. Respondent also testified that he had been treated for alcoholism in 1984, had been placed on probation for felonious assault prior to Andre's birth, and was presently taking medication for a psychological ailment.

Our review reveals no clear error in the probate court's conclusion. *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996). The testimony below strongly suggested at least two incidents of drunkenness on the part of respondent, minor criminality in his arrest for disorderly conduct, and verbal and physical abuse directed toward Andre and Andre's mother. While the present case is not egregious, we would emphasize that the applicable evidentiary standard concerning assumption of jurisdiction over a minor is relatively undemanding, i.e., the preponderance of the evidence. MCR 5.972(C)(1). Based on our review of the record, we do not conclude that the probate court clearly erred in finding that a preponderance of the evidence supported its findings.

Affirmed.

/s/ Gary R. McDonald  
/s/ Maureen Pulte Reilly  
/s/ Peter D. O'Connell