STATE OF MICHIGAN

COURT OF APPEALS

In re A. HUGHES, Minor.

UNPUBLISHED
May 24, 2016

No. 330095
Kent Circuit Court
Family Division
LC No. 15-052480-NA

Before: O'BRIEN, P.J., and K. F. KELLY and FORT HOOD, JJ.

PER CURIAM.

Respondent appeals as of right the circuit court's order of adjudication assuming jurisdiction over the minor child. We affirm.

Respondent, as well as her children, have been consistently involved in child-protective proceedings over the past several years. In 2010, respondent's first child was removed from her care based on allegations of medical neglect and improper supervision. One year later, in 2011, respondent's second child was removed from her care based on allegations that the child tested positive for marijuana at birth. Respondent eventually released her parental rights to both of these children. In 2014, respondent's third child was also removed from her care based on allegations that the child tested positive for marijuana at birth as well, and respondent admitted that she used marijuana throughout her pregnancy. During the proceedings involving the third child, respondent became incarcerated.

The instant matter involves respondent's fourth child, whom she gave birth to in 2015 while still incarcerated. On the day of the child's birth, respondent, with the assistance of a prison counselor, executed a power of attorney in favor of a friend, giving the friend legal authority over the child. Several days later, respondent executed a second power of attorney in favor of the friend's daughter, giving her legal authority over the child as well. The Department of Health and Human Services did not learn of the fourth child's existence, or the fact that she was living with the friend's daughter, until one month after the child's birth. At that time, a caseworker visited the friend's daughter's home and determined that it was inappropriate for the child because of the daughter's criminal history, the daughter's fiancé's "rather lengthy criminal history," and the fact that "at least five or six" people lived in the three-bedroom home, not including five additional children from the fiancé's previous relationship that "come and visit on the weekends." The caseworker also expressed concerns that the daughter would be unable to obtain Medicaid or WIC benefits for the child. Thus, the child was removed from the daughter's home, and the petition underlying this matter was filed.

At the preliminary hearing and subsequent adjudication, the parties addressed the impact that each power of attorney would have on the circuit court's ability to assume jurisdiction over the child. The hearing referee concluded that the powers of attorney did not divest the circuit court of jurisdiction because the child was placed with nonrelatives, because the placement was only temporary in nature, and because the temporary placement was inappropriate as discussed above. Thus, the referee recommended authorization of the petition. Subsequently, at the adjudication hearing, the circuit court adopted the referee's findings and concluded that the child's "temporary placement in an inappropriate non-relative's home" was insufficient to divest the circuit court of otherwise proper jurisdiction. In light of that conclusion, respondent entered a plea, admitting, among other things, to having previously released her parental rights to two children, to having a third child currently in the Department's custody based on her drug use, to having failed multiple drug tests, and to being incarcerated with an earliest-release date of August 2016. The circuit court accepted respondent's plea, and it assumed jurisdiction over the child pursuant to MCL 712A.2(b)(1) and (2). This appeal followed.

"In Michigan, child protective proceedings comprise two phases: the adjudicative phase and the dispositional phase." *In re Sanders*, 495 Mich 394, 404; 852 NW2d 524 (2014). It is during the adjudicative phase when courts generally determine whether they can take jurisdiction over the child. *Id*. Jurisdiction is established pursuant to MCL 712A.2(b), which provides, in pertinent part, that a circuit court has jurisdiction in proceedings concerning a minor child

> [w]hose 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. [MCL 712A.2(b)(1).]

To exercise jurisdiction over a child, a circuit court is required to find that a statutory basis has been proved by a preponderance of the evidence. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004); MCR 3.977(E)(2). We review that determination for clear error. *In re BZ*, 264 Mich App at 295. "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed[.]" *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013) (citation and internal quotation marks omitted).

In this case, we conclude that the circuit court did not clearly err in finding, by a preponderance of the evidence, that the child was without proper custody or guardianship pursuant to MCL 712A.2(b)(1). It is undisputed that respondent was and would remain incarcerated until, at the earliest, August 2016 at the time that the petition was filed. And, while respondent attempted to provide care and custody for her child during her incarceration, the execution of the two powers of attorneys, alone, did not divest the circuit court of jurisdiction. First, as the circuit court recognized, the powers of attorney were temporary in nature, see MCL 700.5103, and respondent would remain incarcerated for, at a minimum, seven months beyond their expiration. Once they expired, the friend and her daughter would "no longer ha[ve] legal power, authority, or obligation with regard to the welfare of the child." *In re Martin*, 237 Mich App 253, 257; 602 NW2d 630 (1999). Thus, the powers of attorney "did not address the long

term needs of the child[.]" *Id*. Additionally, again as the circuit court recognized, neither the friend nor her daughter was a relative of the child. While this fact is not necessarily dispositive in and of itself, it is certainly relevant and was properly considered by the circuit court. See, e.g., *In re Mason*, 486 Mich 142, 163-164; 782 NW2d 747 (2010). Finally, and most importantly in our view, is the fact that the caseworker determined that the daughter's home, i.e., the home where the child was placed, was inappropriate for a variety of reasons, and that simply cannot be ignored.

On appeal, respondent maintains that the outcome of this case is controlled by our Supreme Court's decision in *In re Tauras F*, 415 Mich 512; 330 NW2d 33 (1982). Respondent relies on *Tauras F* for the proposition "that parents have the right to entrust their children to the care of others as long as the child is adequately cared for and that the law does not require that parents get permission from a court before doing so." This is, arguably, an accurate statement summarizing part of the Supreme Court's decision. See *id*. at 535-537. Thus, she claims, because "the new custodial environment was appropriate" in this case, the circuit court was divested of jurisdiction. But, as stated above, the daughter's home was *not* adequate. The facts of this case are more analogous to those of *In re Webster*, 170 Mich App 100; 427 NW2d 596 (1988). In that case, this Court concluded that where a parent executes a power of attorney to a nonrelative and places the child in an inadequate custodial environment, a circuit court is not divested of jurisdiction, and it expressly recognized that this was nevertheless true despite our Supreme Court's decision in *Taurus F*. See *id*. at 105-106. Accordingly, we conclude that the circuit court did not clearly err in finding, by a preponderance of the evidence, that the child was without proper custody or guardianship pursuant to MCL 712A.2(b)(1).

Affirmed.

/s/ Colleen A. O'Brien
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood