

STATE OF MICHIGAN
COURT OF APPEALS

In re BOOMANOTTI, Minors.

UNPUBLISHED
November 23, 2021

No. 357163
Houghton Circuit Court
Family Division
LC No. 21-000201-NA

Before: MURRAY, C.J., and MARKEY and RIORDAN, JJ.

PER CURIAM.

Respondent-mother appeals by right the trial court’s order of removal with respect to her two children, WB and RB. The court removed the children from respondent’s custody due primarily to her drug use.¹ We affirm.

In March 2021, the Department of Health and Human Services (DHHS) filed a petition requesting that the trial court exercise jurisdiction over the children. DHHS alleged that in January 2020, while respondent and the children were living in North Dakota, hair-follicle tests were performed on the children, with both WB and RB testing positive for methamphetamine. DHHS also alleged that respondent was not voluntarily participating in drug screens. Following a preliminary hearing, the trial court authorized the petition, granted in-home placement, and ordered respondent to submit to drug testing.

In April 2021, DHHS filed a petition for removal. DHHS alleged that trash was strewn throughout respondent’s house and that there was “one inflatable bed with no bedding.” DHHS further asserted that respondent recently tested positive for methamphetamine and amphetamine. At the time of the hearing on the removal petition, RB was living with his maternal grandmother and WB was living with her paternal grandmother. The trial court concluded that the children should be formally removed from respondent’s custody on the basis of her drug use and living conditions, along with other reasons touched on below. The trial court ordered that the children be placed under the care and custody of DHHS. This appeal ensued.

¹ The trial court removed WB from her father’s custody and later removed RB from his father’s custody, but they have not appealed.

On appeal, respondent argues that the trial court clearly erred by finding that removal of the children from respondent's care and custody was proper under MCL 712A.13a(9). We review a trial court's factual findings for clear error. *In re Beers*, 325 Mich App 653, 680; 926 NW2d 832 (2018). "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 Schadler*, 315 Mich App 406, 408; 890 NW2d 676 (2016) (quotation marks and citation omitted). We review de novo the interpretation and application of statutes and court rules. *In re Ferranti*, 504 Mich 1, 14; 934 NW2d 610 (2019).

At a preliminary hearing, a trial court "must decide whether to authorize the filing of the petition and, if authorized, whether the child should remain in the home, be returned home, or be placed in foster care pending trial." MCR 3.965(B)(12). If the trial court authorizes the filing of the petition, it "may release the child to a parent, guardian, or legal custodian" MCR 3.965(B)(13)(a). In the alternative, the trial court may order placement of the child in foster care but only after making required findings on certain criteria. MCR 3.965(B)(13)(b). MCL 712A.13a provides, in pertinent part, as follows:

(9) The court may order placement of the child in foster care if the court finds all of the following conditions:

(a) Custody of the child with the parent presents a substantial risk of harm to the child's life, physical health, or mental well-being.

(b) No provision of service or other arrangement except removal of the child is reasonably available to adequately safeguard the child from risk as described in subdivision (a).

(c) Continuing the child's residence in the home is contrary to the child's welfare.

(d) Consistent with the circumstances, reasonable efforts were made to prevent or eliminate the need for removal of the child.

(e) Conditions of child custody away from the parent are adequate to safeguard the child's health and welfare.

MCR 3.965(C)(2) is nearly identical to MCL 712A.13a(9); there are no substantive differences and the language in subdivisions (a) through (e) of both the statute and the court rule is in fact identical. In this case, respondent challenges the trial court's findings with respect to the factors in subdivisions (a) through (d).

First, with respect to factor (a), the trial court found that the children were at a substantial risk of harm to their health and safety. In the trial court's order, it referenced respondent's positive drug test for methamphetamine and amphetamine, her unstable home environment, the positive methamphetamine tests in North Dakota relative to the children that led to child protective proceedings in that state, incidents of domestic violence between respondent and her father, respondent's minimal participation or refusal to participate in offered services, and her "scattered" and strange behavior during the positive drug test. We hold that the trial court did not clearly err

by finding that these grounds established that respondent presented a substantial risk of harm to the children's lives, physical health, and mental well-being.

With respect to factor (b), the trial court found that no provision of service or other arrangement except removal of the children was reasonably available to adequately safeguard the children from the risk of harm. Respondent argues that placement of the children with her mother was a suitable alternative to removal. Respondent's mother, who had resided in North Dakota but was currently staying in Michigan, testified that the children spent approximately half of the time with her and that she was willing to remain in Michigan as long as needed to ensure that the children were safe. There was no testimony, however, in regard to whether she was willing to care for the children on a full-time basis. Moreover, respondent's mother was the subject of a previous child protective proceeding involving the use of marijuana, and she still occasionally used marijuana. The record does not support a determination that placement of the children with respondent's mother would be a suitable alternative to removal. We conclude that there was no clear error as to the trial court's ruling on factor (b).

With respect to factor (c), the trial court, reiterating the grounds discussed in relation to factor (a), found that continuing the children's residence in respondent's home was contrary to the children's welfare. The primary reason the children were removed from respondent's care was her continued drug use. Although respondent argues that she complied with services in North Dakota, respondent's caseworker testified to the contrary. Regardless, to the extent that respondent completed services in North Dakota to address her drug use, she did not benefit from the services because she tested positive for methamphetamine and amphetamine in Michigan. Furthermore, the caseworker testified that before the positive drug screen, respondent was yelling at RB and was "very scattered," i.e., she was "not making sense talking" and was "just not able to pay attention." Accordingly, contrary to respondent's argument, there was evidence that she was under the influence of drugs in the presence of one of her children. For these reasons, the trial court did not clearly err by finding that factor (c) was satisfied.

Finally, with regard to factor (d), the trial court did not clearly err by finding that consistent with the circumstances, reasonable efforts had been made to prevent or eliminate the need for removal of the children. The trial court originally allowed the children to remain in respondent's care and custody even though respondent had refused to voluntarily participate in drug screens. And then when she was screened, respondent tested positive for methamphetamine and amphetamine. Additionally, although respondent met with a parent aide at Dial Help on one occasion, the parent aide wanted to meet at least once per month, but respondent either did not respond to the aide or cancelled meetings. Therefore, as the trial court found, respondent only minimally participated in Dial Help. Reasonable efforts were made to avoid removal; the fault rested with respondent not DHHS.

We affirm.

/s/ Christopher M. Murray

/s/ Jane E. Markey

/s/ Michael J. Riordan