STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
January 5, 2012

In the Matter of I.B., Minor

No. 304858
Gogebic Circuit Court
Family Division
LC No. 2011-000012-NA

Before: HOEKSTRA, P.J., and K. F. KELLY and BECKERING, JJ.

PER CURIAM.

Respondent-father appeals as of right the trial court's exercise of jurisdiction over the minor child pursuant to MCL 712A.2(b). We affirm.

I. INTRODUCTION AND FACTS

This case arises from child protective proceedings initiated by a petition alleging multiple instances of domestic violence by respondent-father against both respondent-mother and the child. The petition also alleged that both parents engaged in substance abuse, respondent-mother had unstable housing, and respondent-father was unemployed and refused to seek employment.

As provided by MCR 3.971,[1] respondent-mother admitted to the following paragraphs of the petition during a pretrial hearing:

> 8. [Respondent-mother] chose to move in with [respondent-father] in Ironwood last December 2010 on a "temporary" basis.
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> 12. [Respondent-mother] spent one night at DOVE due to domestic violence concerns since [respondent-father] had threatened to kill her and chop up her body. DOVE was unable to house her for more than one night since she was a

[1] MCR 3.971(A) provides that "[a] respondent may make a plea of admission or of no contest to the original allegations in the petition."

> previous employee. DOVE did offer to make arrangements with another shelter for [respondent-mother] but she refused and chose to return to [respondent-father].
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> 16. [Respondent-mother] recently pled out her possession of marijuana case in 98th District Court and received a six month delay of sentence.
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> 17. On Monday, March 21st [respondent-mother] contacted [DHS] claiming [respondent-father] was becoming verbally abusive towards her and she wanted help located [sic] to a new residence.
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> 18. [Respondent-mother] has been on a housing waiting list for some time at Bessemer Housing and is currently the next in line.
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> 24. [Respondent-mother] is currently a resident of New Day in Ashland, Wisconsin. She has not had a residence of her own since her move to Gogebic County.

As part of her admission to the above paragraphs, respondent-mother conveyed through her lawyer an explanation of the following paragraphs: with respect to paragraph 16, she pleaded to use of marijuana; with respect to paragraph 24, she was a resident of New Day and then became a resident of Wildwood Manor; and with respect to paragraphs 8 and 12, she acted for "the best interest of [the minor]." Respondent-father denied (and continues to deny) all of the petition's allegations.

The trial court exercised jurisdiction over the minor on the basis of the respondent-mother's admissions, explaining in relevant part:

> Paragraph 8 talks about going back with [respondent-father]; Paragraph 12 then talks about him threatening her [with violence] and basically talks about the fact that she had voluntarily gone back into a violent situation. Paragraph 16 talks about the fact that she has a drug conviction. . . . Paragraph 24 talks about her seeking substance abuse treatment, in other words acknowledging a substance abuse problem; read together the issues of the two of them basically having a domestically violent situation [that] she went back into; the fact that there was a drug problem; the fact that there continued to be an acknowledgement of a drug problem, and a criminal conviction; all read together are sufficient [to take jurisdiction].

II. ANALYSIS

This Court "review[s] the trial court's decision to exercise jurisdiction [in a child protective proceeding] for clear error in light of the court's findings of fact." *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). "[F]actual findings are clearly erroneous where there is no evidentiary support for them or where there is supporting evidence but the reviewing court is nevertheless left with a definite and firm conviction that the trial court made a mistake." *Hill v City of Warren*, 276 Mich App 299, 308; 740 NW2d 706 (2007). Because this Court "affords

great deference" to the trial court's opportunity to consider the facts, *Lumley v Bd of Regents for the Univ of Mich*, 215 Mich App 125, 135; 544 NW2d 692 (1996), a reversal under the clear error standard is only warranted where this Court is "definitely and firmly convinced that a mistake was made." *Hill*, 276 Mich App at 308-309.

When a child protective proceeding is initiated, "the trial court [first] determines whether it may exercise jurisdiction over the minor child pursuant to MCL 712A.2(b)." *In re Utrera*, 281 Mich App 1, 15-16; 761 NW2d 253 (2008). MCL 712A.2(b) provides a list of circumstances where jurisdiction may be exercised over a child, two of which are pertinent in this case:

> (1) [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 or her health or morals, [the juvenile] is subject to a substantial risk of harm to his or her mental well-being, [the juvenile] is abandoned by his or her parents, guardian, or other custodian, or [the juvenile] is without proper custody or guardianship.
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> * * *
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> (2) [the] home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in. [MCL 712A.2(b)(1)-(2).]

The trial court must decide that jurisdiction is proper under MCL 712A.2(b) by a preponderance of the evidence. *In re CR*, 250 Mich App 185, 200-201; 646 NW2d 506 (2002). A plea is a valid method of proving the allegations in a petition by a preponderance of the evidence and a valid basis for a trial court's exercise of jurisdiction. *In re Riffe*, 147 Mich App 658, 669; 382 NW2d 842 (1985); MCR 3.971(A). In the absence of a plea, the respondent or respondents may demand a jury trial on the issue of jurisdiction. See *In re PAP*, 247 Mich App 148, 153; 640 NW2d 880 (2001).

A respondent to a petition may make a plea to admit one or more allegations in the petition. See MCR 3.971(A). A "respondent" is "the parent, guardian, legal custodian, or nonparent adult who is alleged to have committed an offense against a child." MCR 3.903(C)(10). An "offense against a child" is "an act or omission by a parent, guardian, nonparent adult, or legal custodian asserted as grounds for bringing the child within the jurisdiction of the court pursuant to the Juvenile Code." MCR 3.903(C)(7). Only a respondent, i.e., a person alleged to have committed an act or omission against a child, may enter a plea to a petition. *In re SLH*, 277 Mich App 662, 669-670; 747 NW2d 547 (2008).

Respondent-father contends that respondent-mother's limited pleas did not provide a sufficient basis for the trial court to take jurisdiction. Specifically, he argues that (1) the marijuana conviction was minor and insufficient to support jurisdiction, (2) respondent-mother's place of residence was unrelated to abuse or neglect of the minor, and (3) respondent-mother cannot admit to domestic violence or other wrongdoing by respondent-father. We disagree.

Respondent-father's appeal considers each admission in isolation, but, when considered together, they provide sufficient support for the trial court's exercise of jurisdiction.

At the outset, we conclude that the trial court clearly erred when it found that Paragraphs 16 and 24 of the petition indicate that respondent-mother had a continuing substance abuse problem. There is no basis in the record for the trial court's finding that the purpose of respondent-mother's residence at New Day, referred to in Paragraph 24 of the petition, was to address substance abuse. Indeed, petitioner concedes in its appellate brief that New Day is a shelter for victims of domestic violence. Accordingly, based on the paragraphs admitted to by respondent-mother, the trial court's finding that respondent-mother had a continuing substance abuse problem was clearly erroneous.

Viewing respondent-mother's plea without the trial court's clearly erroneous finding, we acknowledge that this is a close jurisdictional question but, nevertheless, conclude that the trial court's decision to exercise jurisdiction was not clear error. Respondent-mother's plea explanation implies that the minor was present in the home when the conduct between respondent-father and respondent-mother occurred that prompted respondent-mother to seek shelter at DOVE, because respondent-mother returned to respondent's home the next day "for the best interest of [the minor]." And because respondent-mother "refused" to accept DOVE's offer to make arrangements with another domestic violence shelter and instead chose to return to respondent-father, even though she admitted that he "had threatened to kill her and chop up her body," regardless of her stated intentions the admissions show that respondent-mother willingly exposed herself and her child to ongoing issues of domestic violence.[2] And in fact, paragraphs 17 and 24 reveal that respondent-mother eventually had to leave again due to issues of domestic violence, as she sought refuge at another domestic violence shelter. Further, the plea shows that respondent-father allowed respondent-mother to live with him and the child even though she used marijuana. A child may, depending on the circumstances, suffer abuse and neglect merely by residing in a household where one partner physically or verbally assaults the other, especially where substance abuse is involved. The trial court did not clearly err when it found, based on respondent-mother's plea to Paragraphs 8, 12, 16, and 17, that the minor's mental well-being was subject to a substantial risk of harm and that the minor's home environment was unfit because of the parents' criminality. Under MCL 712A.2(b)(1)-(2), this finding was sufficient for the trial court to exercise jurisdiction.

Respondent-father also argues that respondent-mother was not a respondent to the petition under paragraphs 8, 12, 16, 17, 18, and 24, so her plea to these paragraphs could not provide a basis for the exercise of jurisdiction. However, respondent-mother was being accused of placing herself in a situation of domestic violence and was also being accused of substance

[2] We need not consider whether respondent-father actually threatened to kill respondent-mother and chop up her body. Rather, at issue is whether respondent-mother's conduct in returning to respondent-father's home after she indicated that such comments were made warranted the trial court's exercising jurisdiction in this child protective proceeding.

abuse. This made her a respondent.[3] Because she was a respondent, she had the ability to enter a plea to the petition. See MCR 3.971. Thus, the trial court properly considered her admissions to paragraphs 8, 12, 16, 17, 18, and 24. We note the absence of any statute, court rule, or case law restricting a respondent's admissions to the allegations that made the person a respondent. Once a petition makes a person a respondent, the respondent may then admit to any of the allegations contained in the petition. Of course, a respondent's admissions are governed by MCR 3.971(C)(2), which requires a trial court to have "*support for a finding* that one or more of the statutory grounds alleged in the petition are true." MCR 3.971(C)(2) (emphasis added).

Respondent-father's reliance on *In re SLH* for the proposition that a respondent must "[admit] to his/her own wrongdoing rather that [sic] the acts or omissions of another respondent" is misplaced. *In re SLH* does not support this proposition; rather, it stands for the proposition that a person cannot make himself or herself a respondent by simply "admitting" the wrongdoing of another. See *In re SLH*, 277 Mich App at 670.

Finally, respondent-father argues that the trial court did not follow the procedures outlined in MCR 3.971(C)(2) for accepting a plea. This rule states in part that "[t]he court shall not accept a plea of admission or of no contest without establishing support for a finding that one or more of the statutory grounds alleged in the petition are true, preferably by questioning the respondent unless the offer is to plead no contest." Here, the trial court asked respondent-mother: "[Y]ou've read those allegations with your lawyer, and the facts in there are basically true?" She responded affirmatively. In addition, the trial court knew that respondent-mother had a master's degree in social work, was trained as a social worker, was familiar with family court, and was represented by counsel. She was intelligent and was informed regarding the nature of the petition's allegations. She certainly had personal knowledge of the allegations contained in the subject paragraphs, as each of those paragraphs addressed her conduct. This case is distinguishable from *In re SLH* because the mother in *In re SLH* was unrepresented by counsel at the time of her purported admissions. *Id.* at 665. Also, the trial court in *In re SLH* merely asked, "[D]o you admit that allegation?" *Id* at 673. This is substantially different from asking if "the

[3] Respondent-father contends that respondent-mother's alleged passive role in the household is not sufficient to make her a respondent. See *In re SLH*, 277 Mich App at 670. In *In re SLH*, this Court affirmed the general principle that "the failure of one parent to protect a child from abuse or neglect by the other parent can be grounds for taking jurisdiction over the child." *Id* at 671. This Court voided the trial court's exercise of jurisdiction, however, because "[t]he mother never admitted that she failed to protect her children in any way; to the contrary, the evidence indicates that she protected the children by immediately removing [the father] from the home and by not letting the children have further contact with him." *Id*. Although the mother was a "party" to the proceeding under MCR 3.903(A)(18)(b), "by definition, she was not a respondent." *Id*. at 670. Here, in contrast, there is no evidence to indicate that respondent-mother protected the child from the substance abuse and domestic violence in the household. In fact, the petition suggests the opposite: the child remained in the household despite these problems. *In re SLH* is therefore distinguishable and does not control the outcome of this case.

facts in there are basically true?" The former is a purely legal question, whereas the latter is a question about the underlying facts themselves.

In sum, the trial court had adequate evidentiary support to find that the minor resided in a household with domestic violence. This finding, coupled with respondent-mother's admission of illegal drug use, supports the exercise of jurisdiction on the grounds of a substantial risk of harm to the minor's mental well-being and an unfit home or environment by reason of respondent-parents' criminality. See MCL 712A.2(b)(1)-(2). We are not "definitely and firmly convinced" that the trial court's exercise of jurisdiction was mistaken. See *Hill*, 276 Mich App at 308-309.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kirsten Frank Kelly
/s/ Jane M. Beckering