

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
July 26, 2012

In the Matter of J.D.K., Minor.

No. 308365
Ingham Circuit Court
Family Division
LC No. 11-000071-NA

Before: STEPHENS, P.J., and SAWYER and OWENS, JJ

PER CURIAM.

Respondent mother appeals as of right from the trial court’s order terminating her rights to her son JDK (DOB 4/20/04) pursuant to MCL 712A.19b(3)(b)(i) (child has suffered sexual abuse caused by parent’s act). We affirm.

On appeal, respondent first argues that the trial court erred in finding a preponderance of evidence to support its exercise of jurisdiction pursuant to MCL 712A.2(b)(1) and (2). We disagree.

“We review the trial court’s decision to exercise jurisdiction for clear error in light of the court’s findings of fact” *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). “To properly exercise jurisdiction, the trial court must find that a statutory basis for jurisdiction exists.” *Id.* “Jurisdiction must be established by a preponderance of the evidence.” *Id.*; MCR 3.972(C)(1). The basis for jurisdiction must exist at the time of the filing of the petition for jurisdiction. *In re MU*, 264 Mich App 270, 279; 690 NW2d 495 (2004).

MCL 712A.2 sets out the bases for exercising jurisdiction, and provides in pertinent part:

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

(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, nonparent adult, or other custodian, is an unfit place for the juvenile to live in.

The trial court based its decision to exercise jurisdiction on testimony given by psychologists and a forensic interviewer that the child reported that respondent French kissed him and placed her hand inside his pants, touching his penis and buttocks. The significant evidence of prior sexual abuse by respondent demonstrated a substantial risk of harm to JDK's mental well-being at the time of the petition. The trial court correctly exercised jurisdiction under MCL 712A.2(b)(1).

“. . . [I]n order for the trial court to assume jurisdiction over the minor [child] on the basis of criminality, the petitioner does not need to prove that the respondent was convicted of a crime.” *In re MU*, 264 Mich App at 279. Rather, the petitioner “must demonstrate by a preponderance of the evidence only that the respondent engaged in criminal behavior.” *Id.* Here, the alleged sexual abuse amounted to a criminal act because it met the definition of “sexual contact” in MCL 750.520a(q). The trial court did not clearly err in finding by a preponderance of evidence that respondent's criminality made her home an unfit place for JDK, and that jurisdiction was properly exercised under MCL 712A.2(b)(2).¹

Respondent also argues that the trial court erred in finding clear and convincing evidence supporting termination of her parental rights pursuant to MCL 712A.19b(3)(b)(i). We disagree.

We review a trial court's finding that a ground for termination has been proven by clear and convincing evidence under the clear error standard. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). “A finding is ‘clearly erroneous’ when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.” *In re Riffe*, 147 Mich App 658, 671; 382 NW2d 842 (1985).

“If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.” MCL 712A.19b(5). The trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(b)(i), which provides:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

¹ Respondent argues that MCL 712A.2(b)(2) “contemplates that jurisdiction may be exercised where there is a risk of physical harm such that the home is an unfit place for the child to live”. However, nothing in the cited statutory section imposes a requirement that a risk of physical harm exist in order for jurisdiction to be appropriate pursuant to this provision.

(b) The child or a sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstances:

(i) The parent's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.

For purposes of MCL 712A.19b(3)(b)(i), "abuse" is defined in MCL 712A.13a(15)(a) as "[h]arm or threatened harm by a person to a juvenile's health or welfare that occurs through nonaccidental physical or mental injury," (b) "[e]ngaging in sexual contact or sexual penetration as defined in section 520a of the Michigan penal code, 1931 PA 328, MCL 750.520a, with a juvenile, (c) "[s]exual exploitation of a juvenile . . ." or (d) "[m]altreatment of a juvenile." The trial court found credible JDK's statements that respondent had repeatedly French kissed him and touched his penis and buttocks beneath his pants:

Do I doubt that [JDK] said these things? No, four year old kids don't make this stuff up. For a four year old child to say the things that this child said and repeated it indicates to me that something clearly, clearly occurred between child and mother that should not have occurred.

The evidence that JDK indicated to more than one person that respondent inappropriately tongue kissed him and placed her hand inside his pants and rubbed his penis and touched his buttocks established by clear and convincing evidence that respondent sexually abused JDK and supported the trial court's termination of respondent's parental rights.

We reject respondent's assertion that the trial court erred in making insufficient findings of fact with regard to whether there was a reasonable likelihood that JDK would suffer injury or abuse in the foreseeable future if placed in respondent's home. MCR 3.977(I)(1) provides that in a termination of parental rights proceeding "[t]he court shall state on the record or in writing its findings of fact and conclusions of law. Brief, definite, and pertinent findings and conclusions on contested matters are sufficient." The court did not specifically make factual findings with regard to likelihood of future harm, but did note that JDK's trust had been violated by respondent's sexual abuse and that the damage might not be reparable. Further, the court specifically found that all requirements of the proffered ground for termination, MCL 712A.19b(3)(b)(i), were demonstrated by clear and convincing evidence. This was not clear error.

Respondent argues that her testimony was contrary to a finding that future abuse would be reasonably likely because she took necessary steps to address JDK's developmental delay when she was the primary caretaker. However, this argument ignores respondent's troubling psychological profile and personal history, as well as her history of sexual abuse directed at JDK. The mere fact that respondent previously addressed JDK's developmental issues does nothing to lessen the likelihood of future abuse. Given respondent's previous sexual abuse of JDK as well as her own history of sexual abuse and psychological issues, the trial court did not clearly err in finding clear and convincing evidence that there would be a reasonable likelihood that JDK would suffer injury or abuse in the foreseeable future if placed in respondent's home.

Affirmed.

/s/ Cynthia Diane Stephens

/s/ David H. Sawyer

/s/ Donald S. Owens