STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
August 21, 2012

In the Matter of A. M. PALACIOS, Minor.

No. 308447
Oakland Circuit Court
Family Division
LC No. 11-783621-NA

Before: GLEICHER, P.J., and OWENS and BOONSTRA, JJ

PER CURIAM.

Respondent appeals as of right an order terminating her parental rights to the minor child. Respondent challenges the adjudicatory proceedings in which the trial court exercised jurisdiction over the minor child, before the proceedings and order in which the trial court terminated respondent's parental rights to the child. We affirm.

First, respondent argues that the trial court erred in finding by a preponderance of the evidence that the minor child came within its jurisdiction. We disagree.

This Court reviews a trial court's decision to exercise jurisdiction over a minor child for clear error in light of the court's findings of fact. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). The trial court has authority and may exercise jurisdiction as follows:

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

"A child may come within the jurisdiction of the court solely on the basis of a parent's treatment of another child. Abuse or neglect of the second child is not a prerequisite for jurisdiction of that child and application of the doctrine of anticipatory neglect." *In re Gazella*, 264 Mich App 668, 680-681; 692 NW2d 708 (2005), superseded by statute on other grounds in MCL 712A.19b(5). The doctrine of anticipatory neglect stands for the proposition that "how a parent treats one child

is certainly probative of how that parent may treat other children." *In re Powers*, 208 Mich App 582, 588; 528 NW2d 799 (1995), superseded by statute on other grounds in MCL 712A.19b(3)(b)(*i*).

Respondent's parental rights to her other child, A.J., had been previously terminated in December 2010.[1] Respondent's parental rights were terminated regarding A.J. because respondent failed to complete and benefit from services pursuant to a parent agency agreement. Respondent was supposed to comply with Macomb Oakland Regional Center (MORC) services to aid her with parenting skills and therapy for her anger management. She was supposed to obtain stable housing and a legal source of income. During the proceedings regarding A.J., respondent completed parenting classes through the PRISM program. However, respondent was diagnosed as mildly mentally retarded, which is why she was referred to MORC for services. Respondent's compliance with the MORC services was inconsistent and she had not successfully completed these services at the time her parental rights regarding A.J. were terminated. DHS did not believe that respondent would benefit from additional services.

DHS believed that there was a substantial risk for harm of the minor child in this case if the child was returned to respondent's care because there was no evidence that any circumstances had changed since respondent's parental rights were terminated regarding A.J. Also, there was concern regarding respondent's disability and that respondent was not able to meet the special needs of the minor child; the minor child has sickle cell anemia. Also, while in respondent's care, when the minor child was two months old, the minor child stopped gaining weight. When the minor child was three months old she started gaining weight again, but never caught back up with the normal weight range for a child her age. However, to the best of petitioner's knowledge, respondent did have housing at the time of trial.

The trial court exercised jurisdiction over the minor child based on the doctrine of anticipatory neglect. The trial court did not base its finding of anticipatory neglect solely on respondent's failure to complete the MORC services pursuant to the previous proceedings involving A.J., rather, it exercised jurisdiction over the minor child and found anticipatory neglect based on all of the above evidence, including that respondent had failed to properly care for A.J., the minor child's sister.[2] The court entered an order exercising jurisdiction over the minor child pursuant to MCL 712A.2(b), respondent's "failure to provide, when able to do so, support, education, medical, surgical, or other necessary care for health or morals." Respondent has failed to show that the trial court clearly erred by exercising jurisdiction over the minor child based on the doctrine of anticipatory neglect.

---

[1] See *In re A J Corskey-Palacios*, unpublished memorandum opinion of the Court of Appeals, issued July 19, 2011 (Docket No. 301932).

[2] Respondent's parental rights to A.J. were terminated because respondent failed to show that she could provide for A.J.'s needs. See *In re A J Corskey-Palacios*, unpub op at 1-2.

Next, respondent argues that petitioner allegedly violated its own policies and procedures and the law by filing a delayed petition for the court to take jurisdiction over the minor child and for the termination of respondent's parental rights to the child. We disagree.

"An unpreserved claim of constitutional error is reviewed for plain error affecting substantial rights." *In re Williams*, 286 Mich App 253, 274; 779 NW2d 286 (2009).

"The essence of due process is 'fundamental fairness." *In re Beck*, 287 Mich App 400, 401; 788 NW2d 697 (2010). "The fundamental requirements of procedural due process are notice and a meaningful opportunity to be heard before an impartial decision maker." *Id.* at 401-402.

Respondent appears to argue that DHS did not comply with its own policies and procedures and violated the law by its delay in filing a petition for jurisdiction over the minor child and for the termination of respondent's parental rights. Respondent appears to cite *In re Rood*, 483 Mich 73; 763 NW2d 587 (2009), to support her argument that she was denied due process. However, in *In re Rood*, the court held that "the state deprived [the] respondent of even minimal procedural due process by failing to adequately notify him of proceedings affecting his parental rights and then terminating his rights on the basis of his lack of participation without attempting to remedy the failure of notice." *Id.* at 118. Respondent does not assert that she was not given proper notice or an opportunity to be heard in these proceedings. Respondent's argument is without merit. Thus, respondent has failed to show that she was denied procedural due process.

Next, respondent argues that the trial court violated her right to due process of law by allowing hearsay testimony into evidence during the adjudication. We disagree.

"Evidentiary rulings are reviewed for an abuse of discretion." *Michigan Dept of Transp v Haggerty Corridor Partners Ltd Pship*, 473 Mich 124, 133-34; 700 NW2d 380 (2005). "A trial court abuses its discretion when it admits evidence that is inadmissible as a matter of law." *Id*. at 134.

At the adjudication phase of child protective proceedings the petitioner must prove by a preponderance of legally admissible evidence that the minor child comes within the court's jurisdiction. *In re CR*, 250 Mich App 185, 200-201; 646 NW2d 506 (2002). "Hearsay is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." MRE 801(c) (internal quotation marks omitted.) "Hearsay is not admissible except as provided by these rules." MRE 802.

Respondent objected, on the basis of hearsay, to the testimony of a DHS foster care specialist, Ebony Jeffries, regarding a PRISM employee's assertion that respondent had completed parenting classes during the previous proceedings involving A.J., but did not benefit from them. The court responded that "as long as it's offered not for the truth but to explain what might have happened, I'll allow it in, okay, it won't be in to show that it, this happened . . . ." It appears that Jeffries's testimony was not hearsay because it was not admitted to prove the truth of the matter asserted. Therefore, respondent has failed to show that the trial court abused its discretion by allowing the testimony into evidence.

Last, respondent presented the issue that the trial court erred by allowing the speculative testimony of a psychologist into evidence during the adjudicative phase of the proceedings. However, respondent did not brief this issue. Failure to brief a question on appeal is tantamount to abandoning it. *State Treasurer v Sprague*, 284 Mich App 235, 243; 772 NW2d 452 (2009). Respondent simply asserts that the testimony was speculative and that it did not prove any risk of harm to the minor child. Respondent does not argue in her brief that the evidence was inadmissible. Respondent appears to argue that the trial court erred by taking jurisdiction over the minor child based on the testimony. Respondent appears to support this argument by *Matter of Hurlbut*, 154 Mich App 417; 397 NW2d 332 (1986), which is a completely inapplicable case. In *Matter of Hurlbut*, "the child remained without proper custody or guardianship since the child's father was serving a mandatory term of life imprisonment for first-degree murder, and the father had no relatives willing to provide proper care for the child. [The] Respondent testified that he had never seen the child and did not even learn of the mother's pregnancy or the child's existence until after his incarceration." *Id*. at 423. Accordingly, this Court held that the court had jurisdiction pursuant to MCL 712A.2(b)(1). *Id*. Therefore, respondent has abandoned this issue on appeal. Furthermore, as held above, the trial court properly exercised jurisdiction over the minor child based on anticipatory neglect pursuant to MCL 712A.2(b).

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Donald S. Owens
/s/ Mark T. Boonstra