

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of RP and AF, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

KESHA FRENCH,

Respondent-Appellant.

UNPUBLISHED
December 8, 2000

No. 223865
Washtenaw Circuit Court
Family Division
LC No. 96-024154-NA

Before: Wilder, P.J., and Smolenski and Whitbeck, JJ.

PER CURIAM.

Following a jury trial, respondent Kesha French appeals as of right the family court's order determining that the minor children came within the court's jurisdiction under MCL 712A.2(b)(1) and (2); MSA 27.3178(598.2)(b)(1) and (2). We affirm.

I. Basic Facts And Procedural History

Several months before the Family Independence Agency filed its petition in this case, a doctor treating French's youngest child, AF, first noticed signs of neglect. Dr. Kelly Orringer, a pediatrician, testified that in February 1999 French brought AF to her for treatment of a diaper rash and a cold. Although French told her that the rash had appeared only a week before, Orringer believed that a diaper rash could not become that severe in just a week. She said that it was the worst diaper rash she had ever seen and that it could cause scarring or an infection. French did not bring her child back the next week, as Orringer instructed her to do; however, French did bring her to the emergency room later that month for treatment of a rash, possibly the same rash. The emergency room doctor reported that the diaper rash had improved. French had been applying medication to the rash, although apparently not the medication Orringer prescribed. By April the rash had healed, and the child suffered no scarring or infection.

Because of the severe diaper rash, Orringer referred French to the county's Maternal and Infant Services Program. A registered nurse with the program visited French's home approximately five times, bringing a social worker with her on one visit. The nurse discovered that French had difficulty obtaining transportation to doctor's appointments and became

concerned that French and her children were about to be evicted from their apartment. The social worker testified that she questioned French about her housing situation and French refused to answer her questions. However, the nurse and the social worker both testified on cross-examination that French did tell them that she planned to move in with the children's father, although she refused to provide the address. The nurse and social worker had no concerns about physical abuse or drug use at that time.

Concerns about abuse and drug use arose in late April, when Renita Palmer contacted protective services. Although she is not related to the children, Palmer treats RP like a grandchild because she originally believed he was her son's child. She visits his home and spends time caring for him. Palmer testified that she visited RP at French's home on April 29, 1999, intending to ask French whether she could take RP home for several days. Her son was also at French's home during the visit. When Palmer and her son saw the child, they noticed a wide red bruise from his chin to his ear, bruises on his arm, and older bruises on his leg. RP said that "Coconut," his mother's boyfriend, hit him with a belt and had previously given him a "whopping" for breaking an egg. French told Palmer that the bruises were caused by some sort of accident. As Palmer and her son prepared to leave with the child, French lit and smoked a marijuana joint in front of both children.

Palmer and her son took RP to the protective services office, where they reported what had happened and a caseworker photographed the child's bruises. The caseworker, Joseph Lanczki, and another protective services worker, William Price, then went to French's home unannounced and knocked on her door. They immediately smelled marijuana. French eventually opened the door, leaving the chain locked. Lanczki said they needed to speak about the bruises and the marijuana; French told him that it was none of his business and shut the door. Soon, Lanczki and Price saw French carry AF out the door and quickly walk away. When Lanczki followed her, French tried to get back to her apartment, but they stopped her. She then threatened to "do something." Price called the police for assistance. After Lanczki and Price obtained an emergency court order, the police took AF from French. Palmer brought RP to the protective services office, and Lanczki placed both children in foster care.

In July 1999, the family court issued an order declaring the minor children to be temporary wards of the court, following the jury's determination that the children came within the court's jurisdiction.

II. The Court's Jurisdiction

French argues on appeal that the jury verdict was against the great weight of the evidence. She failed to preserve her claim by making an appropriate motion to raise the issue in the trial court.¹ Therefore, she must now show manifest injustice in order to prevail.² In any event, she cannot prevail on this issue because a preponderance of the evidence supported the jury's

¹ *Napier v Jacobs*, 429 Mich 222, 229; 414 NW2d 862 (1987).

² *Id.* at 235-237.

conclusion that the children came within the court's jurisdiction under MCL 712A.2(b)(1) and (2); MSA 27.3178(598.2)(b)(1) and (2).³

The family court acquires jurisdiction over minor children when the factfinder determines by a preponderance of the evidence that the children come within the statutory requirements of MCL 712A.2; MSA 27.3178(598.2).⁴ The jury in this case determined that the children came within the court's jurisdiction under subsections (b)(1) and (b)(2). The petitioner meets its burden of proof under subsection (b)(1) when a child's "parent . . . , 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" ⁵ The petitioner meets its burden under subsection (b)(2) when a child's "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."⁶

The evidence supporting the jury's conclusion that French neglected to provide proper care for RP primarily related to the alleged abuse by French's boyfriend, Coconut. Palmer testified that RP was bruised and that RP told her he was beaten with a belt and "whopped" by his mother's boyfriend. The caseworker's testimony and the photographs supported Palmer's claim that RP was bruised. Palmer did say French blamed it on an accident, but the jury was free to disbelieve this unsupported explanation. The bruises were otherwise undisputed. There was no evidence that French made any attempt to prevent the abuse or protect RP from Coconut after the first "whopping." The evidence therefore supports the jury's conclusion that French failed to provide proper care necessary for RP's health by protecting him from abuse.

Regarding French's failure to provide proper care for AF, the pediatrician testified that AF had an unusually severe diaper rash. French apparently neglected to seek any medical assistance until AF's rash became the most severe rash that the pediatrician had ever seen. Further, the pediatrician said that, although she asked French to bring AF back for a second appointment, French failed to do so. French also apparently failed to use the medication that the pediatrician prescribed. Through good fortune, AF's rash eventually healed; however, that good fortune cannot be attributed to French, who neglected to follow the pediatrician's instructions.

Further, there was evidence that French smoked marijuana in front of both children. A jury could find that a parent who used or permitted others to use illegal drugs in the children's presence failed to provide proper care. The caseworker's testimony that he smelled marijuana supported Palmer's testimony that French lit a joint in front of the children and, at the very least, supported the claim that she permitted others to smoke in the home when AF was present. These illegal acts in the children's presence also made the home unfit for the children, under subsection (b)(2), as did the abuse and neglect discussed previously. The social worker and nurse were

³ *In re Brock*, 442 Mich 101, 108-109; 499 NW2d 752 (1993).

⁴ *In re Brock*, *supra* at 108-109; *In re S R*, 229 Mich App 310, 314; 581 NW2d 291 (1998).

⁵ MCL 712A.2(b)(1); MSA 27.3178(598.2)(b)(1).

⁶ MCL 712A.2(b)(2); MSA 27.3178(598.2)(b)(2).

concerned also about whether the children would have proper housing if the family was evicted, although the only evidence to support that claim was their testimony that French refused to provide her future address. Their unsupported housing concerns alone would likely be insufficient evidence that these children were within the family court's jurisdiction. However, the petitioner sufficiently established the abuse, rash, and marijuana use, allowing the jury to find by a preponderance of the evidence that these children came within the statutory requirements under MCL 712A.2(b)(1) and (2); MSA 27.3178(598.2)(b)(1) and (2).

Affirmed.

/s/ Kurtis T. Wilder

/s/ Michael R. Smolenski

/s/ William C. Whitbeck