

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

August 19, 2010

In the Matter of C. ANDERSON, Minor.

No. 296227

Wayne Circuit Court

Family Division

LC No. 09-489201

Before: GLEICHER, P.J., and ZAHRA and K. F. KELLY, JJ.

PER CURIAM.

Respondent mother appeals as of right the order of the trial court entered after a November 19, 2009 dispositional hearing. Respondent challenges the dispositional order and the exercise of jurisdiction over the minor child pursuant to MCL 712A.2(b)(1). Initially, these proceedings related to two children: respondent's 16 year-old son and her nine year-old daughter. After these proceedings were initiated, a guardianship was established which placed the son in Cleveland, Ohio, with his older brother. Thus, this appeal relates only to respondent's daughter. We reverse.

On August 18, 2009, police responded to a complaint made by respondent's 16 year-old son, who alleged that he feared for his safety and the safety of his nine year-old sister because drugs were being sold from their home and loaded firearms were kept in their home. Additionally, respondent's son alleged that the brother of respondent's boyfriend was beating him.

Upon arriving at the home, police encountered the two children in the home without an adult present. Police smelled the odor of marijuana. Respondent's son took police to respondent's bedroom, and directed the police to a loaded rifle that was located under respondent's bed. Police also found three bags of marijuana in the bedroom. Outside, police found 5 marijuana plants growing in the yard. Before police departed the home, respondent arrived.

The children were removed from the home and initially placed with a relative. Thereafter, respondent consented to the guardianship that placed her son in Cleveland, Ohio, with his older brother. Respondent's daughter was eventually placed in foster care. The trial court held a trial to determine jurisdiction on October 27, 2009. The trial court found jurisdiction and conducted a dispositional hearing on November 19, 2009. In both the trial to establish jurisdiction and the dispositional hearing, the referee's recommendation, signed by the trial

court, cited drug exposure, physical abuse, failure to protect, and improper supervision as the reasons respondent's daughter came within the trial court's jurisdiction.

"To properly exercise jurisdiction, the trial court must find that a statutory basis for jurisdiction to exists. Jurisdiction must be established by a preponderance of the evidence." *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004) (citations omitted). Here, the trial court found that petitioner established part of MCL 712A.2(b)(1), which provides for jurisdiction over a child whose 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, who is subject to a substantial risk of harm to his or her mental well-being, . . . , or who is without proper custody or guardianship. . . ."

There was evidence of exposure to drugs. As stated above, there was a small amount of marijuana found in the bedroom, an officer testified that he smelled marijuana upon entering the home and there were five marijuana plants growing in the backyard. However, there was no evidence to establish the distribution of drugs. There were no indicia of drug sales or purchases, and respondent's 16-year-old son who made the accusation of drug sales also made statements that he was angry with respondent and did not want to live in her home. This exposure to marijuana, although highly inappropriate, does not establish evidence of neglect or substantial risk of harm. Thus, the evidence of drug exposure did not establish jurisdiction over respondent's daughter.

There was also no evidence of physical abuse. Statements made by respondent's 16-year-old son claiming physical abuse were later contradicted by his statements that the brother of respondent's boyfriend had only restrained him. Further, there was a total absence of physical evidence to support a finding of physical abuse. The failure to protect with regard to this allegation of abuse was clearly not established.

Finally, the trial court found improper supervision. The evidence that the children were alone at the time police arrived is not evidence of improper supervision where the eldest child was 16 years old, the child at issue here was nine years old, and respondent returned home while the police were there. That respondent kept under her bed a loaded rifle is evidence that could be considered in determining whether there was improper supervision or the failure to protect. However, we also note that respondent has a right to keep loaded firearms in her home. The fact that she kept a loaded firearm under her bed, standing alone, is insufficient to establish by a preponderance of the evidence improper supervision or the failure to protect.

In total, we conclude petitioner did not establish by a preponderance of the evidence that the child was neglected or that she was at risk of harm. Although respondent should not have had marijuana in her home and should have secured her rifle, these are things that respondent mother should have been advised to change without the trial court asserting jurisdiction. The trial court, therefore, clearly erred in finding jurisdiction was established by a preponderance of the evidence.

Because the allegations of the petition, even if established by a preponderance of the evidence, do not establish that respondent mother neglected the child or even placed her at

substantial risk of harm, the trial court clearly erred in finding that petitioner established MCL 712A.2(b)(1) by a preponderance of the evidence.

Reversed. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher

/s/ Brian K. Zahra

/s/ Kirsten Frank Kelly