STATE OF MICHIGAN

COURT OF APPEALS

In re STEVENS, Minors.

UNPUBLISHED
March 15, 2018

No. 339681
Antrim Circuit Court
Family Division
LC No. 16-007652-NA

Before: O'CONNELL, P.J., and HOEKSTRA and SWARTZLE, JJ.

PER CURIAM.

Petitioner, the Department of Health and Human Services (DHHS), filed a petition requesting that the trial court assume jurisdiction and remove the minor children, CS and KS, from respondent-mother's custody. A jury determined that respondent subjected the children to a substantial risk of harm to their mental well-being and the court took jurisdiction over the children pursuant to MCL 712A.2(b)(1). Respondent filed a motion for judgment notwithstanding the verdict (JNOV) or for a new trial. The trial court denied respondent's motion. Respondent appeals as of right. Because the evidence was sufficient to support the jury's verdict and respondent's evidentiary claims are without merit, we affirm.

In 2008, respondent adopted CS and KS as well as SS, who is now an adult. That same year, the children were placed in foster care after respondent broke down a bathroom door and beat SS with a hammer. The children remained in foster care for approximately one year before they were returned to respondent's care and custody. Once reunited, respondent and the children moved to Elk Rapids, where respondent became the owner of a small restaurant. The children began working in respondent's restaurant as early as 11 years of age. Neither CS nor KS were paid for their work.

Children's Protective Services (CPS) did not become involved with the family again until 2014, following an incident where CS attended a church activity when he was not permitted to do so. Respondent made CS sleep in the restaurant that night, and later explained, "I left him because I would have hurt him." The next day, one of respondent's employees called the Sheriff's Department and CPS was notified.

In April, 2014, respondent and the children were evaluated by a psychologist. With regard to respondent, the psychologist opined that she wanted a significant degree of control over her relationships, including her relationships with her children. Respondent also demonstrated an elevated level of aggressive or verbally aggressive behavior, and the psychologist concluded that she might have Intermittent Explosive Disorder, meaning that she was prone to losing her

temper. He added that her expectations for the children were too high—potentially unrealistic—and when they failed to meet her standards, she would sometimes resort to verbal and physical aggression. Her test results also indicated that she was self-centered, may not have had a great deal of insight into other people, and could not pick up on how she impacted others, including the children. During the evaluation, respondent admitted to slapping the children, and to swinging a broom at CS during a catering event. However, respondent asserted that she had not spanked her children in several years and she wanted to "be done with yelling and screaming." The psychologist reported that CS and KS appeared to have a relatively positive view of respondent in terms of her ability to provide for them. Both said she was a "good mom." The psychologist "ruled out physical abuse," and apparently, no further action was taken by the DHHS in 2014.

In the summer of 2016, CS had multiple encounters with the Elk Rapids Police Department for running away from home. He stated at trial that he attempted to escape because he was tired of respondent's physical, verbal, and mental abuse. On one of these attempts to run away, he was caught by a police officer. CPS became involved after CS told a juvenile probation officer that respondent forced him to work in her restaurant and perform house work for about 18 hours each day. CS told a CPS worker that respondent abused him. The children were then placed in foster care. The psychologist re-evaluated CS, who began to speak of respondent slapping, punching, striking, cursing, and throwing items at him.

During the jury trial adjudication, KS testified that respondent would lose her temper and throw things, slap the children, kick them, dig her fingernails into their necks, and try to choke them. KS recalled specific instances where respondent would throw spoons, pots and pans at her. CS testified to an incident when respondent pushed him to the ground and stepped on his neck, choking him, after he used respondent's credit card without her permission. He recalled another incident where respondent forced him and his brother to eat an entire cake, to the point that they began vomiting, because she found them eating the cake without her permission. Both children described an incident where respondent threw a pan of chicken at CS, hitting him in the leg and making it hard for him to walk for nearly two days. Moreover, they testified that respondent punched them, made them eat hot peppers, and locked them in the basement of their home. Respondent admitted to hitting KS with her backpack after she caught KS stealing from a fellow student. According to the children, respondent also screamed at them, verbally berated them, and called them names such as "asshole," bitch," and "stupid." Respondent also told the children: "I got you from the State and I can send you back to the State." A friend of the family testified that respondent told him that she punished the children by locking them in the basement and that, on multiple occasions, respondent told him that "she got the children from the system and she would put them back in the system."

The jury found that CS and KS were subject to a substantial risk of harm to their mental well-being, and the trial court assumed jurisdiction over the children. Respondent filed a motion for JNOV or for a new trial. The trial court held that JNOV was not an applicable remedy in juvenile proceedings, and denied respondent a new trial. Respondent now appeals as of right.

I. SUFFICIENCY OF THE EVIDENCE

On appeal, respondent first argues that there was insufficient evidence to support the jury's verdict. Specifically, respondent contends that the evidence does not support a finding that the children were subject to a "substantial" risk of harm to their mental well-being. In making this argument, respondent debates the meaning of the word "substantial," she asserts that the children were not credible, and she argues that the jury engaged in impermissible speculation and conjecture to determine that the children were subject to a substantial risk of harm.

"In Michigan, child protective proceedings comprise two phases: the adjudicative phase and the dispositional phase." *In re Sanders*, 495 Mich 394, 404; 852 NW2d 524 (2014). At issue in this case is the adjudicative phase of the proceedings. "Generally, a court determines whether it can take jurisdiction over the child in the first place during the adjudicative phase." *Id*. As in this case, a respondent may demand a jury trial and contest the merits of the petition. *Id*. at 405. At trial, "the petitioner has the burden of proving by a preponderance of the evidence one or more of the statutory grounds for jurisdiction alleged in the petition." *Id*.; see also MCR 3.972(C)(1). Relevant to this case, the family division of the circuit court has jurisdiction in proceedings concerning a juvenile under 18 years of age found within the county "who is subject to a substantial risk of harm to his or her mental well-being[.]" MCL 712A.2(b)(1).

Contrary to respondent's arguments, we conclude that the petitioner presented sufficient evidence to allow the jury to find, by a preponderance of the evidence, that respondent subjected the children to a substantial risk of harm to their mental well-being. The evidence at trial demonstrated that respondent physically assaulted her children on numerous occasions, sometimes causing them injury. She employed cruel punishments such as locking her children in the basement and forcing them to eat hot peppers. Respondent also called the children names and verbally threatened the children by telling them: "I got you from the State and I can send you back to the State." Given this evidence of physical and verbal abuse, a reasonable jury could conclude that respondent subjected her children to a substantial risk of harm to their mental well-being. See MCL 712A.2(b)(1); *In re Ramsey*, 229 Mich App 310, 315; 581 NW2d 291 (1998). See also *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011) (recognizing that emotional harm may arise from a parent's abuse of a sibling). In addition, respondent's psychological evaluation indicated that she was prone to aggression, that she had unrealistically high expectations for her children, that she responded with verbal and physical aggression when her children failed to meet her expectations, and that she failed to appreciate how her conduct affected others. In addition to the evidence of respondent's physical and verbal abuse of her children, respondent's psychological evaluation further supports the conclusion that her children were subjected to a substantial risk of harm to their mental well-being. See generally *In re Middleton*, 198 Mich App 197, 200; 497 NW2d 214 (1993) (considering a parent's mental and intellectual capacity when determining whether the parent placed her child at a substantial risk of harm to the child's mental well-being). Overall, the evidence was sufficient to support the jury's conclusion, by a preponderance of the evidence, that respondent subjected her children to a substantial risk of harm to their mental well-being.

In contrast to this conclusion, respondent debates the meaning of the term "substantial," which she defines to mean "not . . . imaginary," "of ample or considerable amount," and "of real worth, value, or effect;" and respondent contends that the evidence does not support the conclusion that the children's risk of harm was "substantial" as used in MCL 712A.2(b)(1). Respondent's argument involves a question of statutory interpretation, which we review de novo.

In re MU, 264 Mich App 270, 276; 690 NW2d 495 (2004). Because the Legislature had not defined the term "substantial," we may consult a dictionary to determine the term's ordinary meaning. *Id*. at 279. In this regard, in relevant part, the term "substantial" is defined as "not imaginary or illusory : REAL, TRUE," "IMPORTANT, ESSENTIAL," and "considerable in quantity . . . ." *Merriam-Webster's Collegiate Dictionary* (2014). Similarly, in relevant part, *Black's Law Dictionary* (10th ed.) defines "substantial" to mean "[r]eal and not imaginary; having actual, not fictitious, existence" and "[i]mportant, essential, and material; of real worth and importance." Thus, as used in MCL 712A.2(b)(1), the term "substantial" makes plain that the risk of harm to a child's mental well-being must be a real risk and not a risk that is imaginary or illusory. Further, the risk of harm must be important and of considerable worth. As a matter of statutory interpretation, our understanding of "substantial" as gleaned from dictionary definitions largely comports with respondent's basic understanding of the term "substantial." We simply disagree with respondent's contention that children repeatedly subjected to physical and verbal abuse do not face a "substantial" risk of harm to their mental well-being. In other words, we find it absurd to suggest that the pattern of abuse respondent inflicted on her children would not have a real and considerable impact on their mental health or that her behavior would not pose a substantial risk of harm to their mental well-being while in her care and custody.

Aside from respondent's statutory argument, she contends that the jury could not have found a substantial risk of harm because the children were not credible witnesses. This argument is without merit because we defer to a fact-finder's assessment of witness credibility. See *In re Gach*, 315 Mich App 83, 93; 889 NW2d 707 (2016). "Juries, not appellate courts, see and hear witnesses and are in a much better position to decide the weight and credibility to be given to their testimony." *People v Bailey*, 310 Mich App 703, 714; 873 NW2d 855 (2015) (citation omitted). Thus, it was for the jury to determine if the children were credible, and we will not disturb the jury's credibility determination on appeal.

Respondent also asserts that the jury must have engaged in impermissible speculation and conjecture when concluding that there was a substantial risk of harm because there was no psychological evidence regarding "causation" and there were "no objective findings" of Post-Traumatic Stress Disorder (PTSD). Absent such evidence, respondent maintains that the jury could not reasonably infer a substantial risk of harm. Respondent's argument is misplaced. That is, in discussing causation and whether the children suffer from PTSD caused by respondent's conduct, respondent appears to assume that petitioner was required to make a showing of actual mental harm. But, as made plain in the statute, all that is required is a substantial *risk* of harm to the children's mental well-being. As commonly understood, a "risk" is a "*possibility* of loss or injury." *Merriam-Webster's Collegiate Dictionary* (2014) (emphasis added). We see nothing in the statute that required petitioner to demonstrate that the children suffered an actual mental injury caused by respondent's conduct. Instead, the statute requires the petitioner to prove, by a preponderance of the evidence, that the children were subject to a substantial risk of harm to their mental well-being. As discussed, petitioner made this showing by establishing that respondent subjected the children to a pattern of physical and verbal abuse from which the jury could reasonably infer that the children were subject to a substantial risk of harm to their mental well-being. See generally *People v Hardiman*, 466 Mich 417, 427; 646 NW2d 158 (2002)

(recognizing that a fact-finder may make inferences that "are logical and reasonable"). This amounts to more than mere conjecture, and respondent is not entitled to reversal on the basis of this argument.[1] See *id.*

In sum, there was sufficient evidence to support the jury's verdict under MCL 712A.2(b)(1), and the trial court properly assumed jurisdiction over the children.

II. EVIDENTIARY ISSUES

Respondent lastly argues that Pamela Wolz, a licensed clinical social worker, offered testimony that was unfairly prejudicial. Specifically, respondent asserts that she was unfairly prejudiced because (1) Wolz counseled the children during a timeframe that is irrelevant to the allegations in the petition, (2) Wolz mentioned her use of an "evidence based protocol," (3) Wolz testified to the abuse the children reported to her during counseling, and (4) Wolz opined that reunification would harm the children.

The rules of evidence generally apply at an adjudication trial. MCR 3.972(C)(1); *In re Sanders*, 495 Mich at 405. "Evidentiary rulings are reviewed for an abuse of discretion; however, we review de novo preliminary questions of law affecting the admission of evidence, e.g., whether a statute or rule of evidence bars admissibility." *In re Martin*, 316 Mich App 73, 80; 896 NW2d 452 (2016). To preserve an evidentiary claim, the party must offer a timely objection on the record, stating the specific reasons for the objection unless the specific ground is apparent from the context. MRE 103(a)(1). Even if an evidentiary error occurred, reversal is appropriate only if refusal to grant relief appears inconsistent with substantial justice. MCR 2.613(A); *In re Utrera*, 281 Mich App 1, 21; 761 NW2d 253 (2008); *Matter of Brimer*, 191 Mich App 401, 408; 478 NW2d 689 (1991).

First, respondent generally notes that Wolz counseled the children when they were in foster care, after the events in the petition had occurred. Respondent thus contends that Wolz's counseling of the children was irrelevant because it related to "a time span completely unrelated to the events in the petition." "Because the petition communicates to the respondent the specific charges that he or she faces, a court must not entertain evidence of neglectful acts that fall outside the petition's allegations." *In re Dearmon*, 303 Mich App 684, 698; 847 NW2d 514 (2014). However, respondent's argument regarding Wolz's counseling testimony ignores "the important distinction between evidence of an event supporting jurisdiction that was not alleged in a petition and evidence obtained after the petition was filed." *Id.* That is, while Wolz's counseling occurred after the filing of the petition, she did not offer evidence of abuse or neglect

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[1] With regard to the inferences drawn by the jury, respondent also asserts that due process should constrain the scope of permissible inferences in child protective proceedings. While due process protections apply to child protective proceedings, *In re Sanders*, 495 Mich at 409, respondent offers no authority in support of her argument that her due process rights were violated and she fails to explain with any specificity how inferences in child protective proceedings should be constrained. By failing to adequately brief this issue, respondent has abandoned her due process argument. See *In re ASF*, 311 Mich App 420, 440; 876 NW2d 253 (2015).

that was not alleged in the petition. Accordingly, Wolz's testimony was not improper simply because the counseling occurred after the filing of the petition. See *id*.

With regard to Wolz's specific testimony, respondent argues that Wolz improperly interjected prejudicial testimony by mentioning that she was treating the children using "an evidence based protocol, called Trauma Focused Cognitive Behavior Therapy." Respondent objected to this testimony at trial, but failed to state the basis for her objection on the record. See MRE 103(a)(1). On appeal, respondent asserts that the reference to "an evidence based protocol" suggested that Wolz had knowledge of evidence not before the jury. Respondent offers this cursory argument without legal citation or meaningful discussion to support her assertion that reference to an "evidenced based protocol" was improper. See *In re ASF*, 311 Mich App at 440. Nevertheless, we note that, contrary to respondent's argument, it appears that Wolz's testimony was simply meant to describe the nature of Trauma Focused Cognitive Behavior Therapy, not to imply the existence of additional evidence. In any event, the jury was instructed to "only consider the evidence that has been properly admitted in this case" and they were told that "[t]he evidence in this case includes only the sworn testimony of witnesses and exhibits . . . admitted into evidence." Thus, Wolz's reference to an "evidence based protocol" does not entitle respondent to relief. MCR 2.613(A).

Next, respondent contends that she was prejudiced by Wolz's testimony because Wolz described the physical abuse the children reported to her during therapy. However, respondent does not explain why this testimony was improper and she again fails to support her position with citation to relevant authority. See *In re ASF*, 311 Mich App at 440. Regardless, we note that respondent objected to this testimony at trial, and the trial court provided a specific instruction to the jury, informing the jury that "this testimony, as it relates to Ms. Wolz, is not offered for the truth of that, but rather a basis upon which Ms. Wolz formulated her opinion as to treatment for the children, but it is not evidence as to what actually occurred. It is simply a basis for her to render an opinion." In other words, the jury was told that this testimony was not substantive evidence. The jury is presumed to follow its instructions, *People v Mesik (On Recon)*, 285 Mich App 535, 542; 775 NW2d 857 (2009), and this instruction prevented the jury from considering Wolz's testimony regarding the children's abuse as substantive evidence. Accordingly, we fail to see how respondent was prejudiced by this testimony. Cf. *People v Gursky*, 486 Mich 596, 622; 786 NW2d 579 (2010) (finding no prejudice when the prosecutor did not use hearsay statements as substantive evidence). Further, Wolz's recounting of the children's abuse was cumulative of the children's trial testimony, which also supports the conclusion that respondent was not prejudiced by this testimony. Cf. *id*. at 623.

Finally, respondent contends that Wolz should not have been able to offer her opinion regarding reunification. Respondent asserts that Wolz's opinion was improper because Wolz had never counseled respondent and thus had no basis on which to offer an opinion as to whether respondent posed a substantial risk of harm to the children. Relevant to respondent's argument, based on her counseling sessions with the children, Wolz opined that she would "not recommend

reunification at this time" because she believed "it will be harmful to them."[2] Respondent now contends that this testimony was improper, but she again fails to provide legal authority in support of her position. See *In re ASF*, 311 Mich App at 440. And, we do not find respondent's poorly developed argument persuasive. Wolz had counseled the children and, based on her sessions with the children, she had a basis on which to offer an opinion regarding the children's mental well-being. See, e.g., *In re TK*, 306 Mich App 698, 702, 710; 859 NW2d 208 (2014); *In re Miller*, 433 Mich 331, 341-342; 445 NW2d 161 (1989). Respondent has not shown that the admission of Wolz's opinion on reunification "at this time" was improper. Further, even assuming some error in Wolz's testimony, reversal is not required because Wolz's brief testimony that reunification would be "harmful to" the children did not affect the outcome in light of the strong evidence that respondent's pattern of verbal and mental abuse placed her children at a substantial risk of harm to their mental well-being.[3] See MCR 2.613(A).

Affirmed.

/s/ Peter D. O'Connell
/s/ Joel P. Hoekstra
/s/ Brock A. Swartzle

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[2] After Wolz opined that she would not recommend reunification "at this time" because it would be "harmful" to the children, petitioner's attorney began to ask whether Wolz would "recommend trying to reunify the family in order . . . ." Respondent's attorney objected. The objection was sustained, and the trial court then instructed the jury that its "sole job" was to determine whether petitioner "has proven the allegations in the Petition by a preponderance of the evidence." The trial court specified that "[d]isposition, or what should occur in trying to help the family or do whatever, is up to [the court], at a later date, if need be." This instruction made plain that the question of reunification was not before the jury, and this instruction greatly limited the use of Wolz's testimony.

[3] On appeal, based on her arguments that the evidence was insufficient and that Wolz's testimony was inadmissible, respondent argues that the trial court abused its discretion by denying her motion for JNOV and denying her request for a new trial. Respondent provides no authority for the proposition that a motion for JNOV under MCR 2.610 applies in a child protective proceeding. See MCR 3.901. While a party may move for rehearing or a new trial in child protective proceedings, such a motion "will not be considered unless it presents a matter not previously presented to the court, or presented, but not previously considered by the court, which, if true, would cause the court to reconsider the case." See MCR 3.992(A). Respondent did not make such a showing in moving for a new trial. Regardless, we have addressed respondent's substantive arguments regarding the sufficiency of the evidence and Wolz's testimony. Because these arguments are without merit, it is plain that the trial court did not abuse its discretion by denying respondent's motion for JNOV or a new trial.