

STATE OF MICHIGAN
COURT OF APPEALS

In re B. M. JONES, Minor.

UNPUBLISHED
October 17, 2019

No. 348012
Ingham Circuit Court
Family Division
LC No. 17-001691-NA

Before: MARKEY, P.J., and BORRELLO and BOONSTRA, JJ.

PER CURIAM.

Respondent-mother appeals as of right an order terminating her parental rights to the minor child under MCL 712A.19b(3)(b)(i) (physical abuse) and (c)(i) (conditions that led to adjudication not rectified).¹ Respondent argues that the trial court should have communicated with the court in Texas and transferred this case to Texas, where a child protective proceeding was in progress regarding respondent’s two other children living in Texas. Respondent further argues that the Michigan Department of Health and Human Services (DHHS) did not meet its obligation to make reasonable efforts at reunification because it relied on services offered in Texas. For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

On December 1, 2017, the trial court entered an order authorizing DHHS to take the minor child into protective custody because respondent, who was living in Texas and whose two other children were under court supervision in Texas, left the minor child in Michigan “with an inappropriate caregiver.” Child Protective Services (CPS) Investigator Jennifer Reichstetter

¹ At the time of the filing of the original petition, the child’s father was incarcerated and unable to provide the child with proper care and custody, financially or otherwise, and he had infrequent contact with the child. The Department of Health and Human Services had not sought termination of the child’s father’s parental rights by the time of respondent’s termination trial because his case progressed on a different timeline. The child’s father is not a party to this appeal.

testified that she placed the minor child with respondent's cousin. DHHS completed an initial petition on December 2, later filed on December 11, 2017, to take the child into custody, requesting removal of the child from the care of both respondent and the child's father, who was incarcerated. The petition described a prior CPS investigation into improper supervision in May 2017, which started when respondent's two-month-old child suffocated to death, in February 2017. The petition further alleged that CPS received a complaint on November 10, 2017, alleging that the minor child's caregiver, respondent's family friend, gave the minor child medication that was not prescribed an attempt to control the minor child's behavioral issues. At a forensic interview on November 21, 2017, the minor child reported that respondent "hit [the minor child] with a hanger, belt, and with her cell phone causing 'raised bumps,' and smothered [the minor child] with a pillow." A pediatrician who examined the minor child also reported emotional and physical abuse, stating that the minor child told him that respondent "frequently punched, pushed, and on several occasions smothered [the minor child] with a pillow." On November 27, 2017, a CPS worker in Texas notified Michigan CPS of an investigation into the threat of physical abuse to respondent's two older children, who were removed from respondent's care because of the risk of harm resulting from respondent's failure to cooperate with the investigation. The state of Texas initially listed the minor child on the petition, but the minor child was removed from the petition because the minor child was living in Michigan with a caregiver who had a power of attorney over the minor child. On November 29, 2017, respondent told Reichstetter that respondent revoked the caregiver's power of attorney because respondent believed the caregiver was " 'brainwashing' [the child] and making up lies about her." DHHS then asked the trial court to place the child in its care. The petition also requested an order regarding an emergency Interstate Compact for the Placement of Children (ICPC).²

At a preliminary hearing held on December 2, 2017, respondent, who appeared at the hearing by telephone, stated that she lived in Texas and confirmed that the minor child was not under the jurisdiction of another court. Respondent testified that she sent the minor child to live with the caregiver in August 2017, in part because the minor child, who had been living with respondent's mother, had caused respondent's mother to fall when he had a tantrum.

After hearing Reichstetter's testimony, the trial court found probable cause to credit the allegations in the petition and authorized the petition. The trial court ordered DHHS to take protective custody of the child and to make reasonable efforts to preserve the family. The trial court additionally asked DHHS to "minimize the potential number of placements for" the child and to work with other agencies, including the state of Texas, to place the child as close to his family members and siblings as possible. The trial court advised respondent to give DHHS the names of relatives in Michigan and in Texas to facilitate a relative placement.

The lawyer-guardian ad litem (LGAL) subsequently moved for a court order to allow placement of the child with the prior caregiver, despite the fact that the caregiver was not a licensed as a foster parent. The trial court granted the request on January 11, 2018.

² The ICPC, MCL 3.711 *et seq.*, serves the purpose of facilitating the interstate placement of children.

Following a series of hearings, DHHS brought a petition to terminate respondent's parental rights and a trial on the petition began on February 11, 2019. After hearing the testimony and considering the evidence presented at trial, the trial court terminated respondent's parental rights under MCL 712A.19b(3)(b)(i) and (c)(i). The trial court found clear and convincing evidence to support a statutory basis for termination under MCL 712A.19b(3)(b)(i), based on evidence that the minor child was physically abused by respondent and that there is a reasonable expectation the child will be injured if returned to respondent's care. In reaching this conclusion, the trial court relied, in part, on the minor child's testimony of abuse, the minor child's reports of abuse to others, and the pediatrician's findings to conclude that respondent whipped the minor child with a belt and smothered him with a pillow. The trial court noted respondent's failure to benefit from services provided in Texas, particularly mental health services, demonstrated by testimony of a Texas child care worker and respondent's testimony showing that respondent did not believe she was responsible for the children being removed from her care. The trial court stated that it was not relying on the termination judgment in Texas as a reason to terminate respondent's parental rights in this case. The trial court also found that termination was also appropriate under MCL 712A.19b(3)(c)(i).

The trial court ruled that termination of respondent's parental rights was in the child's best interests, discrediting respondent's testimony that the caregiver bought off the minor child. Rather the trial court found credible the minor child's statements that the minor child felt safe with the caregiver but not with respondent. The trial court also found that the minor child was not bonded with respondent because the minor child was afraid of respondent and had stated that respondent should go to jail for the rest of her life. Additionally, the trial court found that respondent lacked parenting ability and was unable to adequately parent the minor child. Lastly, the trial court noted that the minor child needed permanency after being in foster care since December 2017. This appeal then ensued.

II. ANALYSIS

On appeal, respondent argues that the Michigan trial court erred by continuing to exercise jurisdiction and not transferring the case to Texas. Additionally, respondent argues, the trial court had a duty to communicate with the Texas court once it learned that the state of Texas had commenced a case involving the child in this case. Petitioner argues that the trial court had jurisdiction over the matter because Michigan was where the minor child lived for at least six consecutive months prior to the commencement of these proceedings.

When the facts are not in dispute, this Court reviews de novo the legal question "whether a trial court has jurisdiction under the" Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), MCL 722.1101 *et seq.* *Cheesman v Williams*, 311 Mich App 147, 150; 874 NW2d 385 (2015). Whether a trial court chooses to exercise jurisdiction under the UCCJEA is within the trial court's discretion. *Jamil v Jahan*, 280 Mich App 92, 100; 760 NW2d 266 (2008). This Court reviews matters of statutory construction de novo. *Nash v Salter*, 280 Mich App 104, 108; 760 NW2d 612 (2008).

The UCCJEA governs a trial court's jurisdiction in a child-custody proceeding involving the State of Michigan and an out-of-state party or proceeding. *Cheesman*, 311 Mich App at 151.

As it pertains to the UCCJEA, a child-custody proceeding “includes a proceeding for . . . neglect, abuse, . . . [or] termination of parental rights . . .” MCL 722.1102(d).

The UCCJEA contains four distinct jurisdictional provisions. MCL 722.1201 through MCL 722.1204. MCL 722.1201 provides jurisdiction to make an initial custody determination. MCL 722.1202 provides for continuing jurisdiction once an initial custody determination has been made. MCL 722.1203 provides jurisdiction to modify an existing custody order. MCL 722.1206(1) instructs Michigan courts not to exercise jurisdiction if “a child-custody proceeding has been commenced in a court of another state having jurisdiction substantially in conformity with this act,” unless the other state court terminated or stayed the case because a Michigan court is a more convenient forum. MCL 722.1204 provides for temporary emergency jurisdiction, and MCL 722.1201 through MCL 722.1203 and MCL 722.1206 defer to MCL 722.1204. MCL 722.1204(1) provides for “temporary emergency” jurisdiction as follows:

(1) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

“ ‘Abandoned’ means left without provision for reasonable and necessary care or supervision.” MCL 722.1102(a).

In this case, DHHS filed the initial petition because respondent, who was living in Texas, revoked the power of attorney for the child’s care previously granted to the caregiver with whom the child was living in Michigan. The child’s father was incarcerated and unable to provide the child with proper care or custody. In addition, the minor child reported that he had been physically abused, and a pediatrician confirmed the child’s report. Accordingly, the trial court had temporary emergency jurisdiction under MCL 722.1204(1) because the minor child was present in the State of Michigan and the minor child was abandoned when respondent revoked the power of attorney. Alternatively, the trial court had temporary emergency jurisdiction under MCL 722.1204(1) because the child was present in the state and required emergency protection when he was subjected to abuse.

Respondent does not dispute that the trial court had “temporary emergency” jurisdiction at the start of the case under Section 204, instead seemingly asserting that the Michigan trial court had a duty to communicate with the Texas court once it learned that the state of Texas had commenced a case involving the child, citing MCL 722.1204(4). However, respondent’s argument fails under a plain reading of the statute. The Texas court must have had jurisdiction under MCL 722.1201 through MCL 722.1203, MCL 722.1204(4), to trigger the Michigan court’s obligation to communicate with the Texas court. The only jurisdictional basis respondent asserts—without citation to the record and or legal support—is the statement that the child’s home state was Texas, which is the basis for jurisdiction under MCL 722.1201(1)(a), stating:

(1) Except as otherwise provided in section 204, a court of this state has jurisdiction to make an initial child-custody determination only in the following situations:

(a) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within 6 months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state.

Pertinent to this appeal, a child's "home state" is "the state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months immediately before the commencement of a child-custody proceeding." MCL 722.1102(g).

(m) "Person acting as a parent" means a person, other than a parent, who meets both of the following criteria:

(i) Has physical custody of the child or has had physical custody for a period of 6 consecutive months, including a temporary absence, within 1 year immediately before the commencement of a child-custody proceeding.

(ii) Has been awarded legal custody by a court or claims a right to legal custody under the law of this state.

(n) "Physical custody" means the physical care and supervision of a child. [MCL 722.1102(g), (m), and (n).]

The focus of the definition of home state "concerns a child's actual presence, not his or her intent to remain" in a particular place, and without regard to the legal concepts of residency or domicile. *Ramamoorthi v Ramamoorthi*, 323 Mich App 324, 339; 918 NW2d 191 (2018).

According to respondent's testimony, the minor child had been living with the caregiver in Michigan under a power of attorney from August 2017 until Michigan DHHS took protective custody of the minor child on December 1, 2017. The caseworker testified that the minor child lived in Texas for four days before respondent sent the minor child to Michigan to live with the caregiver. The caregiver did not meet the definition of a "person acting as a parent" because the minor child lived with her for fewer than six months, but the minor child's living with the caregiver in Michigan for the four months preceding the initiation of the Michigan case show that the minor child was not living with a parent or a person acting as a parent in Texas for six consecutive months before the filing of the petition in Texas on November 27, 2017. Therefore, respondent has not shown that Texas was the minor child's home state.

In addition, the state of Texas dismissed the minor child from the petition when it learned that the minor child lived in Michigan before the initial petition was filed in the Michigan case. Therefore, there was no pending case in Texas for the trial court to inquire into under MCL 722.1204(4). Respondent asserted no other basis to show that the Texas court had commenced a case that would trigger the Michigan court's duty to communicate with the Texas court under MCL 722.1204(4). Therefore, respondent has not shown that the Michigan court abused its discretion by exercising jurisdiction in this case, particularly when the minor child's father lived in Michigan and was also a respondent in the Michigan proceeding.

Respondent additionally argues that the Michigan court should have transferred the child's case to Texas to reunite the minor child with minor child's siblings, alleging that the Michigan caseworker forgot about the request made at the beginning of the case to send the minor child to Texas under the Interstate Compact for the Placement of Children (ICPC), MCL 3.711 *et seq.* While respondent is correct that reasonable efforts should be made to place the siblings in the same placement or allow them to see each other, as stated in MCL 712A.13a(14), respondent has not shown how this statutory provision applies across state lines. In addition, respondent does not address the caseworker's testimony that further disrupting the minor child's environment would be detrimental to his mental health in light of the minor child's post-traumatic stress syndrome (PTSD) diagnosis.

The record also contradicts respondent's assertion that the caseworker forgot about the ICPC request. The caseworker stated that she no longer favored transferring the minor child to Texas out of a concern for the minor child's safety. The caseworker also noted that respondent was under criminal investigation, which later resulted in criminal charges for child abuse. In further support of the her decision not to transfer the minor child, the caseworker noted that the minor child had a strong bond with his current placement in Michigan, which the minor child's therapist later testified was beneficial for giving the minor child a sense of security and allowing the minor child to heal from the past trauma of physical abuse. Further, the ICPC is intended to facilitate cooperation among states for the purpose of placing children in the most suitable environment, MCL 3.711, Art I(a), but it does not *require* one state to send a child to another state. Accordingly, has not shown that the trial court abused its discretion by exercising jurisdiction through the entry of the order terminating respondent's parental rights to the child.

Next, respondent challenges the statutory bases for termination by arguing that Michigan DHHS did nothing to provide respondent with services.

Respondent did not preserve this issue because she failed to challenge the adoption of the case service plan or the Michigan caseworker's statement that Michigan DHHS intended to rely on the services provided by the Texas caseworkers in the parallel proceeding involving respondent's children living in Texas. Therefore, we review this issue for "plain error affecting substantial rights. Generally, an error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings." *In re Utrera*, 281 Mich App 1, 8-9; 761 NW2d 253 (2008) (citation omitted).

"To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground under MCL 712A.19b(3) has been established." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). The trial court found statutory grounds for termination only under MCL 712A.19b(3)(b)(i) and (c)(i), which provide:

(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.

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

“Reasonable efforts to reunify the child and family must be made in all cases except” for certain circumstances that do not apply to this case. MCL 712A.19a(2). The failure to comply with and benefit from services offered supports a finding that statutory grounds for termination exist under MCL 712A.19b(3)(c)(i). *In re Frey*, 297 Mich App at 244, 247-248.

Respondent has not shown that the services offered in Texas were insufficient or that DHHS in Michigan had an obligation to provide services to respondent in Michigan when she was not living in Michigan. The Michigan caseworker stated the agency's intention to rely on services provided in the parallel proceeding in Texas. The case in Texas began, in part, because of allegations of physical abuse of the minor child in this case. Further, respondent did not object to the provision of services in Texas. Respondent had already begun completing services in Texas when the Michigan trial court adopted the case service plan in February 2018. She had parenting time with the minor child, attended parenting classes, and had undergone a psychiatric evaluation.

The supplemental termination petition filed in this case identified respondent's barriers as emotional stability, parenting skills, and substance abuse. Similarly, the Texas caseworker identified respondent's barriers to reunification as parenting skills, substance abuse, and mental health, and respondent was recommended to complete parenting classes, attend psychiatric and psychological evaluations, complete a substance abuse assessment, attend individual therapy, cease criminal behavior, and maintain stable housing and employment. By the time of the termination trial, according to the caseworker in Texas, respondent had completed parenting classes in Texas. Respondent had parenting time through June 2018, but the trial court suspended it because of the criminal child abuse charges related to the minor child in this case. Respondent had attended a substance abuse assessment and completed random drug screens in Texas, but she continued to test positive for cocaine and marijuana through August 2018. Respondent participated in psychiatric and psychological evaluations, but she refused to take medication as recommended, and she told the therapist that she did not understand why she was there. The caseworker in Texas concluded that respondent had not benefited from services because respondent was unwilling to discuss with the caseworker why the children were removed from her care or accept responsibility for the reasons for removal. The Texas caseworker also testified that she was in regular contact with the caseworker in Michigan.

Respondent has not identified what services she was not provided or how services provided in Texas differed meaningfully from services that would have been offered if she were living in Michigan. The Texas caseworker and the Michigan caseworker both testified that

respondent's barriers to reunification related to housing, employment, parenting skills, substance abuse, and mental health. Respondent does not argue, nor did she establish, that the services offered in Texas were inadequate to address the barriers to reunification identified in the Michigan case.

Further, respondent moved to Texas and sent the minor child back to Michigan, which created the difficulties arising from this interstate arrangement. Respondent had the opportunity to participate in parenting time with the minor child in person in Michigan with the only caveat that the caseworker required one week's notice to arrange for a visit. Therefore, respondent was offered parenting time when she traveled to Michigan. Respondent has made no claim that she would have traveled to Michigan from Texas for the purpose of participating in other services. Respondent has not shown that services in Texas were inadequate, nor has she cited any legal authority to support the proposition that services rendered in another state could not be considered for the purpose of a child protective proceeding in Michigan. Accordingly, respondent is not entitled to relief on this issue.

Affirmed.

/s/ Jane E. Markey
/s/ Stephen L. Borrello
/s/ Mark T. Boonstra