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STATE OF MICHIGAN
COURT OF APPEALS

In re J. STROTHER, Minor.

UNPUBLISHED
November 26, 2019

No. 349132
Jackson Circuit Court
Family Division
LC Nos. 18-002011-NA

In re B. WHEELER, Minor.

No. 349133
Jackson Circuit Court
Family Division
LC No. 18-001971-NA

Before: TUKEL, P.J., and SAWYER and RIORDAN, JJ.

PER CURIAM.

Respondent appeals by right the trial court's order terminating his parental rights to his children, JS and BW. We find error with the trial court's assumption of jurisdiction, and thus, we reverse the trial court's order terminating respondent's parental rights.

This case began with a complaint to Child Protective Services (CPS) after a domestic violence incident between respondent and his wife. Respondent fled the house with his son, BW, and his wife was concerned about his fleeing because in 2004, respondent had been convicted of second-degree criminal sexual conduct with a person under the age of 13.

The Department of Health and Human Services (DHHS) filed a petition seeking termination of respondent's parental rights at the initial disposition. During the adjudication phase, the court admitted a certified copy of respondent's 2004 conviction, which the court indicated was Jackson County Circuit Court file 03-4193-FC; the court took judicial notice of the file. It is not included in the record. Petitioner then submitted the judgment of sentence for that conviction and petitioner asserted that this provided a basis for adjudication. The trial court then assumed jurisdiction over the children finding that a preponderance of the evidence provided grounds for it to assume jurisdiction "as a result of an unfit home environment by reason of

neglect, cruelty, drunkenness, criminality, or depravity on the part of [respondent].” It stated that it was relying on the exhibit that indicated that respondent had pleaded guilty to second-degree criminal sexual conduct involving a person under 13, MCL 750.520c(1)(a), and that he was sentenced to 66 to 180 months’ incarceration. The trial court also found that respondent was a registered sex offender who had not completed all of the recommended sex offender treatment requirements, and that he was unwilling to comply with the CPS investigation or safety plan. Although there was no evidence presented to support those findings at the adjudication, child protection proceedings are one continuous proceeding, *In re Gillespie*, 197 Mich App 440, 446; 496 NW2d 309 (1992), and this information came out and was not contested by respondent at a prior hearing. Moreover, a court may take judicial notice of a fact, MRE 201(c), “at any stage of the proceeding,” MRE 201(e), where the fact is “either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” MRE 201(b). A judge may also “take judicial notice of the files and records of the court in which he sits.” *Knowlton v Port Huron*, 355 Mich 448, 452; 94 NW2d 824 (1959). This information was established at a prior proceeding.

Respondent argues on appeal that the trial court clearly erred in assuming jurisdiction over the children because there was no evidence of the present unfitness of his home. We agree.¹

We review rulings regarding jurisdiction “for clear error in light of the court’s findings of fact.” *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). “A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made.” *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). We review de novo the interpretation and application of statutes and court rules. *In re Sanders*, 495 Mich 394, 404; 852 NW2d 524 (2014).

MCL 712A.2 governs jurisdiction in child neglect proceedings. That statute states in relevant part:

The court has the following authority and jurisdiction:

* * *

(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

¹ Respondent also raised issues regarding the statutory grounds for termination and the children’s best interests. We decline to address those issues because we find that the trial court clearly erred in assuming jurisdiction.

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.

* * *

(2) Whose 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.

In order for the trial court to assume jurisdiction over a child, it must find by a preponderance of the evidence that the requirements of MCL 712A.2(b) have been met. *In re MU*, 264 Mich App 270, 278; 690 NW2d 495 (2004). Evidence of a respondent's criminal history is relevant to the trial court's finding of jurisdiction. *Id.* at 279-280. However, in addition to a finding of criminality, the trial court must also make a finding that the children's home was unfit at the time the petition was filed. *Id.* at 278-279.

In this case, the trial court assumed jurisdiction under MCL 712A.2(b)(2). The sole evidence presented at the adjudication portion of the bench trial was the certified copy of respondent's 2004 conviction and the judgment of sentence. Thus, it was clear that respondent had a criminal history that was relevant to jurisdiction. However, there was no evidence presented indicating that respondent's home was an unfit place for the children to live in at the time the petition was filed because of respondent's criminality. Respondent was released from prison in 2010—three years before JS was born and seven years before BW was born—and he was released from parole in 2013—the year that JS was born and four years before BW was born. There was no evidence that respondent had any further issues with sexual abuse after his 2004 convictions. The trial court also stated that jurisdiction was proper because respondent had not completed sex offender treatment, and he was not compliant with the CPS investigation. However, although it is clear that respondent's criminal history consisted of serious offenses, neither the fact that respondent's criminal history consisted of serious offenses nor the fact that he had not completed treatment and would not cooperate with CPS established that respondent's home was an unfit place for the children to stay at the time the petition was filed because of respondent's criminal history. The DHHS must establish this before the court can assume jurisdiction. Because the trial court erred in assuming jurisdiction without such a showing, its orders terminating respondent's parental rights to JS and BW are void *ab initio*. *In re Long*, 326 Mich App 455, 465; 927 NW2d 724 (2018), citing *Ryan v Ryan*, 260 Mich App 315, 343; 677 NW2d 899 (2004) (stating that “[b]ecause the trial court never properly assumed jurisdiction, all orders based on the wrongful assumption of jurisdiction are void *ab initio*”).

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jonathan Tukel
/s/ David H. Sawyer
/s/ Michael J. Riordan