

**STATE OF MICHIGAN
COURT OF APPEALS**

In re A. BARNES, JR., Minor.

UNPUBLISHED
December 10, 2020

No. 352886
Cass Circuit Court
Family Division
LC No. 18-000111-NA

Before: MURRAY, C.J., and K. F. KELLY and STEPHENS, JJ.

PER CURIAM.

Respondent-father appeals as of right the trial court’s orders exercising jurisdiction over the minor child under MCL 712A.2(b)(1) on the basis of respondent’s admissions during a plea hearing. Finding no errors warranting reversal, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

The child was born in July 2018, and the child was named after the mother’s current boyfriend who accepted responsibility as the legal father. However, it was apparent that the child was bi-racial, and the boyfriend could not be the biological father. In September 2018, the mother left the infant with respondent overnight. When she went to pick up the child, respondent refused to return the child, despite having no legal standing at that time. A confrontation occurred, and respondent was stabbed by the mother’s stepfather. A petition was filed against the mother and the legal father, and the child was placed in foster care.

On September 22, 2019, a supplemental petition was filed naming respondent as the child’s parent and alleging that he “neglected or refused” to provide proper or necessary support and the home environment was an unfit place for the child to live. On October 10, 2019, an amended supplemental petition was filed delineating respondent’s criminal history, prior contacts with child protective services, support orders for three other children that were in effect, unemployment and state benefit information, and medical marijuana drug use. This petition alleged that respondent recently received confirmation that he was the child’s biological father through a paternity test and was willing to provide for the child and engage in services if necessary.

On January 8, 2020, respondent pleaded responsible to knowing that he had a child and failing to establish parentage and accept responsibility for the child. Specifically, respondent acknowledged that he

became aware in July 2018, upon seeing the child, that the mother's boyfriend could not be the legal father and that respondent was. Despite this knowledge, a paternity test did not occur until the fall of 2019¹ that confirmed that respondent was the child's biological father. Thus, respondent chose not to conduct a paternity test in 2018, to establish his legal rights, despite his own admission that he knew the child was his. Because of his failure to conduct a paternity test in 2018, another individual signed an affidavit of parentage to become the legal father of the child. It was not until 2019, after receiving information from respondent that he was the biological father, that the petitioner removed the then-legal-father and supplemented respondent as the child's father. The trial court exercised jurisdiction over the child on the basis of MCL 712A.2(b)(1) in light of respondent's admission and his failure to exercise his rights to gain custody of the child.

Respondent participated in a psychological evaluation, and it was recommended that he engage in therapy and be allowed to participate in supervised visits with the child. However, during the visits, respondent advised the child that he was bringing the child home. The child had been placed in foster care at two months old, knew no other home, and was placed with his younger half-sibling. Thus, the child would cry for the first ten minutes of the visits with respondent and would act out after the visits in his foster placement. Nonetheless, respondent sought the "return" of the child to his custody when the trial court continued jurisdiction and the foster care placement. This appeal followed.

II. ANALYSIS

Respondent contends that his plea was only a consent to jurisdiction, there were no allegations in the supplemental petition addressing neglect or refusal to care, and therefore, respondent was presumed to be a "fit parent" entitled to the return of the child. We disagree.

We review "the interpretation and application of statutes and court rules de novo. Whether child protective proceedings complied with a parent's right to due process presents a question of constitutional law, which we also review de novo." *In re Ferranti*, 504 Mich 1, 14; 934 NW2d 610 (2019) (citations omitted). We review "the trial court's decision to exercise 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 of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *Id.* at 296-297.

In *In re Sanders*, 495 Mich 394, 404-406; 852 NW2d 524 (2014), our Supreme Court delineated the initiation of a child protective proceeding, the two phases of the proceeding, and the burden of proof:

In Michigan, child protective proceedings comprise two phases: the adjudicative phase and the dispositional phase. Generally, a court determines whether it can take jurisdiction over the child in the first place during the adjudicative phase. Once the court has jurisdiction, it determines during the dispositional phase what course of action will ensure the child's safety and well-being.

¹ It is unclear if respondent voluntarily pursued this paternity test or if the paternity test occurred at the request of the petitioner.

The court's authority to conduct those proceedings is found at MCL 712A.2(b), which encompasses child protective proceedings generally. The first subsection of that statute provides the court with jurisdiction over a child in cases of parental abuse or neglect. MCL 712A.2(b)(1) (providing for jurisdiction over a juvenile whose parent neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals). To initiate a child protective proceeding, the state must file in the family division of the circuit court a petition containing facts that constitute an offense against the child under the juvenile code (i.e., MCL 712A.2(b)). MCL 712A.13a(2); MCR 3.961. If the court authorizes the petition, the court may release the child to a parent, MCR 3.965(B)(12)(a), or, if the court finds that returning the child to the home would be contrary to the child's welfare, order that the child be temporarily placed in foster care, MCR 3.965(B)(12)(b) and (C). The respondent parent can either admit the allegations in the petition or plead no contest to them. MCR 3.971. Alternatively, the respondent may demand a trial (i.e., an adjudication) and contest the merits of the petition. MCR 3.972. If a trial is held, the respondent is entitled to a jury, MCR 3.911(A), the rules of evidence generally apply, MCR 3.972(C), and 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, MCR 3.972(E). When the petition contains allegations of abuse or neglect against a parent, MCL 712A.2(b)(1), and those allegations are proved by a plea or at the trial, the adjudicated parent is unfit. While the adjudicative phase is only the first step in child protective proceedings, it is of critical importance because [t]he procedures used in adjudicative hearings protect the parents from the risk of erroneous deprivation of their parental rights. [Quotation marks and citations omitted; alteration in original.]

Importantly, "[t]he question at adjudication is whether the trial court can exercise jurisdiction over the child (and the respondents-parents) under MCL 712A.2(b) so that it can enter dispositional orders, including an order terminating parental rights." *In re Ferranti*, 504 Mich at 15. "The adjudication divests the parent of [his] constitutional right to parent [his] child and gives the state that authority instead." *Id.* at 16.

In this case, the child was initially removed from mother's care on September 26, 2018. At that time, respondent had no legal right to the child because he had not signed an affidavit of parentage or taken a paternity test to establish that the child was his. Although the child had an overnight visit with respondent two days before the child's removal, respondent was never granted legal or physical custody of the child. In September 2019, respondent became formally involved in the case when petitioner filed the petition specifically alleging that he "neglected or refused to provide proper or necessary support, education, medical, surgical, or other care necessary for the child(ren)'s health or morals, or he/she has subjected the children(ren) to a substantial risk of harm to his or her mental well-being, or he/she has abandoned the child(ren) without proper care or guardianship."

Notably, during respondent's plea, respondent admitted that he knew the child was his since July 2018. He further admitted that he took no action to establish his paternity over the child until the fall of

2019 when he took a paternity test. Until the petition was filed,² there was no indication that respondent pursued the custody of his child, and the child was placed in foster care despite respondent's knowledge of parentage. Pursuant to MCR 3.971(D)(2), the trial court was authorized to question respondent about the allegations in the petition to further establish the statutory ground to exercise jurisdiction enumerated under MCL 712A.2(b)(1). On the basis of the allegations contained in the petition, along with respondent's admissions during his plea, there was a preponderance of the evidence to establish that respondent refused to provide proper care and maintenance to the child when able to do so. See MCL 712A.2(b)(1). We also conclude that respondent's delay in establishing paternity could constitute abandonment under MCL 712A.2(b)(1) (noting a child "abandoned by his or her parents" is a ground for the trial court to exercise jurisdiction). Because the standard at adjudication is a preponderance of the evidence, the trial court did not err by exercising jurisdiction under MCL 712A.2(b)(1). In other words, respondent's admissions "to the allegations in the petition" were sufficient to allow the trial court to exercise jurisdiction. See *In re Ferranti*, 504 Mich at 15; *In re Sanders*, 495 Mich at 405.

Although respondent alleged that he was involved in the case since 2018 and his efforts to obtain custody were thwarted by the trial court, respondent failed to provide record evidence that he attempted to provide care for the child. During the second hearing following his plea, respondent alleged that he repeatedly came to court hearings, but they were adjourned. He further asserted that the trial court apologized for the delays and promised that his child would be returned to him shortly. The trial judge did not confirm respondent's representations, but indicated that she normally would not make such statements and would need to consult the record.

However, a review of the lower court record does not reflect orders of adjournment. Furthermore, although there were 12 hearings pertaining to this child, respondent only produced two of those transcripts. Therefore, he failed to substantiate his attendance at those other hearings and any alleged request for custody of the child. More importantly, the delay in respondent's involvement caused the child substantial distress. After supervised visitation commenced, the child became upset when respondent stated that he was taking the child home. Because of respondent's inaction between the child's removal in September 2018, and the initiation of visits in January 2020, respondent was essentially a stranger to the child. Accordingly, the guardian ad litem and respondent's psychological evaluation did not recommend placement of child with respondent, but only supervised visitation.

In light of the above facts and circumstances, respondent's contention that the supplemental petition did not contain allegations of neglect, a basis for the child's continued placement in foster care, and grounds for a valid plea to jurisdiction is simply without merit.

Affirmed.

/s/ Christopher M. Murray
/s/ Kirsten Frank Kelly
/s/ Cynthia Diane Stephens

² There is evidence that, after the petition was filed, respondent filed a complaint for custody against the mother. This complaint was filed on January 23, 2020, and assigned to a different judge.