

STATE OF MICHIGAN
COURT OF APPEALS

In re JONES/MALLOY/WILLIAMS, Minors.

UNPUBLISHED
April 22, 2021

No. 354063
Wayne Circuit Court
Family Division
LC No. 2019-002253-NA

Before: GLEICHER, P.J., and BORRELLO and SWARTZLE, JJ.

PER CURIAM.

Respondent, April Mills, appeals as of right an order of adjudication by which the trial court exercised jurisdiction over her six children under MCL 712A.2(b)(1) and (2). We affirm.

I. BACKGROUND

The Department of Health and Human Services (DHHS) filed a petition for removal and jurisdiction, alleging improper supervision and serious mental-health issues that prevented respondent from providing adequate care and custody for the children. The petition alleged that respondent had a significant history with Children’s Protective Services (CPS), including a substantiated incident of domestic violence in April 2014, and additional contacts with CPS in September 2014, November 2015, April 2016, and December 2018. During a home visit by CPS on August 28, 2019, respondent was “exhibiting erratic, irrational and paranoid behavior” such that the caseworker felt unsafe and contacted the Detroit Police. Respondent was eventually taken to Havenwyck Hospital where she was diagnosed with bipolar disorder, psychosis, hypervocal behavior, and paranoid and delusional tendencies. She was prescribed Trazodone and Trileptal, and released in early September.

On October 2, 2019, petitioner provided respondent with services through Families First and the Northeast Guidance Center, which included mental-health-counseling services, parenting-skill assistance, employment assistance, and housing assistance. Respondent was noncompliant with services and did not take her medication, continually denying that she had any mental-health issues. Notably, she had coerced her children into making false allegations to the police of sexual abuse by their fathers and their maternal grandmother. Further, petitioner learned that four of the children had been residing with their maternal grandmother since August 2019, although respondent had provided no documentation giving her any authority over the children. Also,

respondent failed to visit regularly and did not provide any financial support. Respondent agreed to a safety plan, allowing the children to stay with the maternal grandmother, but on December 2, 2019 she took the children back to her own home.

As of the date of the petition, December 30, 2019, respondent had failed to address her mental-health issues and remained in denial. The petition concluded that it was contrary to the welfare of the children for them to remain in respondent's home because of her untreated mental-health issues that impaired her ability to parent her children.

At the preliminary hearing, after a caseworker testified regarding the allegations in the petition, respondent was permitted to make a statement. Among other things, she asserted that she took the children from her mother's home because the children were sexually abusing each other. She also claimed that a website existed that featured videos of her children being sexually assaulted. There was no evidence to support these claims. The trial court found that respondent had not dealt with her mental-health issues, that her behaviors had been erratic, and that the allegations of sexual abuse were unsubstantiated and had caused trauma to the children. The trial court authorized the petition and removal of the children, releasing two of the children to their respective fathers. Furthermore, the trial court found that petitioner had made reasonable efforts to prevent the removal of the children.

The case proceeded to an adjudication bench trial. Caseworkers testified concerning their contacts with respondent and the services they had provided for her. Also, they reported incidents of erratic behavior and delusional statements, and testified that respondent had not participated in the services that were recommended, refused to take her medication, stated that she did not need it, and continued to deny any mental-health issues. They also presented evidence that respondent intimidated her oldest son, frightening him so much that he carried a pocket knife when he was with her. The maternal grandmother was also afraid of respondent and obtained a personal-protection order.

The caseworkers explained that respondent's allegations of sexual abuse had been investigated, but were not substantiated. In addition, the father of the youngest child testified that respondent had made several allegations that he had sexually abused his infant son, and had at one point alleged that the child was bleeding; the allegations resulted in the police being sent to his home three times in one month and the child having to undergo several invasive physical examinations. He also reported incidents in which respondent had been violent toward him both verbally and physically, and that he had witnessed her intimidate the children.

Respondent read a letter, in lieu of giving traditional testimony, with the understanding that she could be cross-examined. During the reading of that letter, and in response to cross-examination, her claims included assertions that this case was not about the well-being of her children, but was about her not following the rules and not going to treatment, and the result of the "jealous, controlling ways" of the father of her youngest child. She claimed she had received a text indicating that he had been sexually assaulting the child, that he started stalking her, that he started recording her with microscopic cameras everywhere and displayed inappropriate content of her and her children on a fake Facebook page, and that he posted video of himself sexually assaulting their child. She asserted that she was one of the "most viral people in the world right now." She believed that caseworkers were ignoring her allegations and were working in concert

with the father. She thought she had lost her job as a homecare worker because the father had placed cameras inside her patients' rooms.

Respondent indicated that she believed CPS was harassing her and that the children would be safe with her, noting that a caseworker had found her home suitable. She admitted, however, that the home was in foreclosure and that she was only paying the taxes on it, not rent. She also claimed that she was earning money doing hair, but could not clarify how much. She represented that she was taking classes at the community college. No documentation of income or attendance at the community college was presented. She believed she had been placed in Havenwyck Hospital because of an argument with a caseworker, not mental illness. She declared that she did not have any mental-health problems and that her doctor at the Northeast Guidance Center had not prescribed any medication for her.

The trial court found that respondent had significant mental-health issues that caused her children to be at risk of harm in her care, and that there was a preponderance of the evidence to support the assumption of jurisdiction under MCL 712A.2b. The trial court noted that respondent had exhibited paranoid and delusional thinking, as demonstrated by her testimony regarding the "microscopic cameras in her home, her work, her car and everywhere else she goes," and her belief that as a result she was "the most watched person [on] the internet in the world."

Respondent now appeals the order of adjudication.

II. ANALYSIS

On appeal, respondent first argues that the trial court clearly erred in finding that statutory grounds to exercise jurisdiction under MCL 712A.2(b) were proven by a preponderance of the evidence. Respondent notes her testimony that she was mentally stable, was receiving mental health treatment, had a suitable home and income, and was enrolled in school to better herself and provide more income and a better life for herself and her children. She argues that there was no evidence that her mental health interfered with her ability to care for her children or that they would be at risk of harm with her. She claims that there were no updated medical records regarding the condition of her mental health during the relevant time period, or any records indicating how her mental health affected her ability to care for her children. She further argues that the trial court should have dismissed the petition because all the conditions that caused the removal of the children had been rectified during the seven months since she was released from Havenwyck Hospital and there was no showing that continued intervention by the trial court was required. She argues that she had a suitable plan for the care and custody of her children without the need for court intervention. She further argues that, even if she cannot substantiate her claims against the youngest child's father, that does not mean that they are "not true in part," and in any event they did not interfere with her ability to care for her children or prove that she would pose a substantial risk of harm to them.

This Court reviews 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 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 Long*, 326 Mich App 455, 460; 927 NW2d 724 (2018). Deference is given to the trial court's special opportunity to judge the weight of the

evidence and the credibility of the witnesses who appear before it. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

“The 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 1, 15; 934 NW2d 610 (2019). “[T]he 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.* This Court reviews the trial court’s factual findings for clear error. *People v Johnson*, 293 Mich App 79, 90; 808 NW2d 815 (2011). Preponderance of the evidence “means such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth.” *People v Cross*, 281 Mich App 737, 740; 760 NW2d 314 (2008).

MCL 712A.2(b) provides:

(2) 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 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. As used in this sub-division:

(A) “Education” means learning based on an organized educational program that is appropriate, given the age, intelligence, ability, and psychological limitations of a juvenile, in the subject areas or reading, spelling mathematics, science, history, civics, writing, and English grammar.

(B) “Neglect” means that term as defined in section 2 of the child abuse and neglect prevention act, 1982 PA 250, MCL 722.602.

(C) “Without proper custody or guardianship” does not mean a parent has placed the juvenile with another person who is legally responsible for the care and maintenance of the juvenile and who is able to and does provide the juvenile with proper care and maintenance.

(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. As used in this sub-division, “neglect” means that term as defined in section 2 of the child abuse and neglect prevention act, 1982 PA 250, MCL 722.602.

Furthermore, MCL 722.602(d) defines the term “neglect” as follows:

(d) “Neglect” means harm to a child’s health or welfare by a person responsible for the child’s health or welfare that occurs through negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care, though financially able to do so, or the failure to seek financial or other reasonable means to provide adequate food, clothing, shelter, or medical care.

The trial court first found by a preponderance of the evidence that there was a “failure to provide, when able to do so, support, education, medical, surgical, or other necessary care for health or morals.” The evidence showed that respondent had left her children with her mother for over three months without arranging for legal responsibility or authority, and during this time she rarely visited and did not provide any financial or emotional support for the children. After petitioner investigated and put a safety plan in place, respondent violated that plan and took the children to her home. The evidence further showed that respondent’s youngest child was being medically neglected in that he had not been receiving his required immunizations. The evidence also showed instability in the children’s schooling as they had been transferred back and forth to different schools. Based on the record in this case, we conclude that there was a preponderance of the evidence that respondent had failed to provide medical and other necessary care for the health or morals of the children.

The trial court next found a “substantial risk of harm to mental well-being.” The testimony of caseworkers and the youngest child’s father, and respondent herself, showed that respondent exhibited irrational behaviors and made false allegations of sexual abuse regarding and in front of her children. She then compelled the children to make false allegations of sexual abuse, and her allegations required the children to undergo invasive sexual-abuse examinations. None of the allegations were substantiated. The evidence also showed that the children had been shuffled back and forth between the maternal grandmother’s home and respondent’s home, and had been placed in different schools in the middle of a school term. Further, respondent’s mental health placed them at risk. There was evidence that she intimidated them and that she experienced mental-health outbreaks in front of them. She frightened her eldest son to the extent that he carried a knife when he was with her, and her mother was so afraid of respondent that she obtained a personal-protection order. Additionally, respondent’s hospitalization, diagnoses, failure to take medications, hyperverbal behaviors, and her paranoid and delusional behaviors were indicative of a substantial risk of harm to the children’s mental well-being. Most concerning was respondent’s denial of any mental-health problems and her refusal to comply with services, treatment and medication, as well as the numerous false allegations involving her children. Her own testimony revealed her delusion that the youngest child’s father had placed cameras throughout her home and car and wherever she went in the community, and had created a Facebook page showing depraved sexual acts that included her and her children. These actions provided a preponderance of the evidence that respondent created a substantial risk of harm to [the] mental well-being” of the children.

Regarding “an unfit home environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian,” we note that even though the caseworker found respondent’s current residence “suitable,” the home was under foreclosure and therefore could not be assured of permanency. The evidence further indicated that, even if the home was suitable as a residence, the home environment was unfit for

the children. The trial court relied on the records from Havenwyck Hospital, the diagnoses of bipolar disorder and psychosis, and the testimony of the witnesses, including respondent. The trial court found that respondent's testimony exhibited paranoid and delusional thinking, as demonstrated by her belief regarding the microscopic cameras and that, because of those cameras, she had lost her job. Respondent's refusal to acknowledge her mental-health problems and to comply with services made it impossible for her to improve her situation. The trial court was able to judge respondent's credibility and the weight of the evidence. *Miller*, 433 Mich at 337. The preponderance of the evidence showed that respondent's home was an unfit environment for the children. The trial court did not clearly err in finding statutory grounds to exercise jurisdiction under MCL 712A.2(b) by a preponderance of the evidence.

Respondent next argues that the trial court erred in finding that her mental-health issues created a risk of harm to the children justifying removal in the first instance.¹ We conclude that the trial court did not clearly err. The trial court based its finding on the medical records and testimony showing acute mental illness. Respondent's claim that the evidence was not sufficient because there was no updated diagnosis is without merit. First, respondent did not request an updated diagnosis and second, contrary to respondent's argument, the evidence showed that she had not rectified any of the conditions that led to the filing of the petition. She was not compliant with services offered by petitioner. She needed counseling, but did not participate. She was offered services on October 2, 2019, including mental-health services, parenting-skills assistance, employment assistance, and housing assistance. None of the services were completed. The hearing was held four months after the filing of the petition and nothing had changed. CPS had been involved with respondent since August 2019, and had offered her numerous services to address her mental-health issues. Despite all the services and help offered to her, she refused to cooperate or even admit that she had mental-health problems. The trial court did not clearly err in finding that respondent's mental health created a risk of harm to the children to the extent that it had to remove the children from respondent's care and custody.

Lastly, respondent argues that the trial court clearly erred in finding that petitioner made reasonable efforts to prevent the removal of the children. MCL 712A.18f(1)(a) and (b) require that when a petitioner recommends removal of children from the custody of a parent, "the agency shall report in writing to the court what efforts were made to prevent the child's removal from his or her home or the efforts made to rectify the conditions that caused the child's removal from his or her home." The report must include the services that were provided or, if no services were provided, the reasons why not. Petitioner described in the petition the services that were provided

¹ Petitioner argues that respondent waived the removal issue by failing to take a direct appeal from the order allowing removal within 21 days. While *In re Ferranti*, 504 Mich 1, 15; 934 NW2d 610 (2019), addressed collateral attacks on adjudication orders, it held that they could be challenged on an appeal from an order terminating parental rights, noting that "a child protective proceeding is a single continuous proceeding that begins with a petition, proceeds to an adjudication, and—unless the family has been reunified—ends with a determination of whether a respondent's parental rights will be terminated." *Id.* at 23 (cleaned up). For purposes of this case, we assume, without deciding, that the same logic applies to a removal order. Therefore, we will analyze the removal issue raised by respondent.

to respondent to prevent the filing of the petition for removal of the children. Petitioner offered respondent numerous services prior to the filing of the petition. After her release from Havenwyck Hospital, petitioner offered preventative services through the Families First Program and Northeast Guidance Center, but respondent was non-compliant. After learning that respondent had left her mother with the children for over three months without legal authorizations, and that she had failed to visit regularly or provide support, a safety plan was created that respondent violated. In addition, there was evidence that CPS had been involved with and had offered services to respondent since 2014. All these services were offered to respondent before the filing of the petition. Respondent refused to comply with services and continued to deny any mental-health issues. The trial court did not clearly err in finding that petitioner made reasonable efforts to prevent the removal of the children.

Affirmed.

/s/ Elizabeth L. Gleicher

/s/ Stephen L. Borrello

/s/ Brock A. Swartzle