

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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*In re* J. R. CAVANAUGH, Minor.

UNPUBLISHED  
July 29, 2021

No. 355883  
Oakland Circuit Court  
Family Division  
LC No. 2020-881475-NA

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Before: GADOLA, P.J., and JANSEN and O’BRIEN, JJ.

PER CURIAM.

Respondent appeals as of right the initial adjudicatory order of the trial court in this child protective proceeding,<sup>1</sup> challenging the trial court’s finding that respondent’s minor child, JRC, is within the jurisdiction of the trial court under MCL 712A.2(b). We affirm.

I. FACTS

In March 2020, JRC, who was then three years old, was removed from respondent’s care and placed in the care of petitioner, Department of Health and Human Services (DHHS). Child Protective Services (CPS) investigated a report regarding potential abuse in the home and discovered that respondent lacked housing, food, and income, and suffered from untreated mental illness. At that time, respondent had been without her own housing for several years. After JRC was born in 2016, respondent and the child moved constantly among the homes of various relatives and friends. For a time, respondent and JRC lived in a shelter until respondent was asked to leave because of her behavior. At other times, respondent and JRC lived in respondent’s car. The CPS investigator reported that respondent’s car was filled with trash almost to the roof of the car and had a moldy odor; photographs submitted confirm that the car was filled with trash with barely enough space for JRC’s car seat. Respondent explained to the CPS worker that she sometimes stored food in the car.

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<sup>1</sup> An initial order of disposition following adjudication in a child protective proceeding is appealable as of right. MCR 3.993(A)(2); see also *In re I M Long*, 326 Mich App 455, 460-461 n 4; 927 NW2d 724 (2018).

At the time CPS investigated, respondent and JRC had been living in the home of a friend, Mitchell Perry, for about two months. Respondent reported that Perry was emotionally abusive to her and on at least one occasion locked her and JRC out of the house for several hours. After Perry told respondent to move out of his home, she and JRC moved to the home of another friend where they were living at the time JRC was removed from respondent's care. The CPS worker who visited the home reported that there was very little food in the house and she advised respondent to buy food. Respondent bought groceries using a food assistance card, but the CPS worker observed that the groceries were not nutritious and were not appropriate for JRC. The CPS worker also observed that JRC was dirty and did not have clean clothes.

Respondent informed the CPS worker that she had been suffering from severe depression for several years, but had not been prescribed medication and was not receiving treatment for her condition. Respondent acknowledged that therapy would be helpful, but also informed the CPS worker that she did not need assistance. At the time of the CPS investigation, respondent was not employed, had not worked for several years, and had no source of income apart from Women, Infants, and Children (WIC) assistance for purchasing food. Respondent asserted that she intended to apply for additional financial assistance, but had not done so yet.

CPS sought and was granted permission to remove the child from respondent's care on the basis of respondent's untreated mental illness, lack of housing, lack of income, and her refusal to participate in services to alleviate those barriers to parenting the child. Petitioner then petitioned the trial court to take jurisdiction of the child and to place the child in the temporary custody of petitioner for care and planning.

The trial court's hearing referee conducted a preliminary hearing, at the conclusion of which the referee reported to the trial court that the petition contained sufficient allegations to invoke the trial court's jurisdiction over the child under MCL 712A.2(b)(2) on the basis that the child's home or environment was unfit for the child. The trial court authorized the petition, placed the child in the custody of DHHS, and ordered petitioner to prepare an initial services plan.

A bench trial was thereafter held on the petition to determine whether JRC was within the trial court's jurisdiction under MCL 712A.2(b)(1) and (2). Respondent testified that she had been diagnosed with major depression ten years previously and continued to suffer from it, that she was not taking medication for her depression, and had not been receiving medical care for the condition prior to JRC being removed from her care. She testified that she was now engaged in therapy for her depression. Respondent testified that she has been without stable housing since 2018 and at times she and the child stayed in shelters. She also testified that she did not have income, had not been employed since before JRC was born, and she could not identify when and for whom she previously had been employed.

The CPS worker testified that when she investigated JRC's care in March 2020, respondent did not have independent housing and was living with a friend. Although the friend's house appeared neat and clean, the room where respondent and JRC were sleeping had several piles of clothes or trash. JRC did not look or smell clean. Respondent reported to the worker that she had just moved from Perry's house and that he had been emotionally abusive. The CPS worker testified that when she offered to arrange for respondent to receive assistance with housing and employment, respondent was loud, angry, and volatile, and stated that she did not need services.

At the conclusion of the bench trial, the referee found that a preponderance of the evidence established that by virtue of neglect, JRC was within the jurisdiction of the trial court under MCL 712A.2b. The trial court thereafter entered its order of disposition, stating that an adjudication was held and the child was found to come within the jurisdiction of the trial court. Respondent now appeals.

## II. DISCUSSION

Respondent contends that the trial court erred by exercising jurisdiction over JRC, and argues that a preponderance of the evidence did not demonstrate a statutory basis for the trial court to assume jurisdiction over JRC under MCL 712A.2(b)(1) or (2). We disagree.

“The purpose of a child protective proceeding is the protection of the child.” *In re Brock*, 442 Mich 101, 107; 499 NW2d 752 (1993). In Michigan, child protective proceedings are comprised of an adjudicative phase, followed by a dispositional phase. *In re Sanders*, 495 Mich 394, 404; 852 NW2d 524 (2014). In the adjudicative phase, the petitioner requests that the trial court take jurisdiction of the child, and the trial court determines whether it can exercise jurisdiction over the child. *Id.* If the trial court determines that it has jurisdiction over the child, it determines during the dispositional phase the course of action that will ensure the safety and well-being of the child. *Id.* Although child protective proceedings are for the protection of the child, the adjudicative phase “is of critical importance because the procedures used in adjudicative hearings protect the parents from the risk of erroneous deprivation of their parental rights.” *Id.* at 406.

To properly exercise jurisdiction over a child, the trial court must find that a statutory basis for jurisdiction has been established by a preponderance of the evidence. *In re I M Long*, 326 Mich App 455, 460; 927 NW2d 724 (2018). This Court reviews a trial court’s decision to exercise jurisdiction for clear error. *Id.* A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a firm and definite conviction that a mistake was made. *Id.* We give deference to the trial court’s special opportunity to assess the credibility of the witnesses who appear before it. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

MCL 712A.2(b) provides, in relevant part, that the trial court has:

(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, . . . or who is without proper custody or guardianship. As used in this sub-subdivision:

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

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(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 subdivision, “neglect” means that term as defined in section 2 of the child abuse and neglect prevention act, 1982 PA 250, MCL 722.602. [MCL 712A.2(b)(1) and (2).]

MCL 722.602 defines neglect as follows:

“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. [MCL 722.602(d).]

Our Supreme Court has explained that MCL 722.602 defines neglect to require a showing of harm in order for a court to assume jurisdiction over a juvenile. *In re Smith*, \_\_\_ Mich \_\_\_; 956 NW2d 226 (2021). Testimony that merely speculates that harm may result in the future does not satisfy this requirement, *id.*, but lack of a stable residence may support a finding of harm.<sup>2</sup> *Id.* at \_\_\_ n 1; 956 NW2d at 226 n 1. Because MCL 712A.2(b)(2) uses the same definition of “neglect,” the same harm requirement applies for finding jurisdiction under that provision when neglect is the cause of the alleged unfit environment. We also observe that MCL 712A.2 “speaks in the present tense, and, therefore, the trial court must examine the child’s situation at the time the petition was filed.” *In re MU*, 264 Mich App 270, 279; 690 NW2d 495 (2004).

In this case, a preponderance of the evidence supports a finding that jurisdiction was established under both MCL 712A.2(b)(1) and (2) by virtue of neglect. The evidence demonstrated that for the first three years of JRC’s life, respondent provided only unstable and conflict-ridden housing, had no source of income and was not taking steps toward securing income, provided inadequate food for JRC and herself, and that respondent transported JRC, and sometimes lived with JRC, in a malodorous car with debris piled to the car’s roof. We conclude that respondent’s unstable housing, precarious food security, and failure to seek out a stable source of income for over three years harmed JRC and meets the definition of “neglect” under MCL 722.602(d), supporting jurisdictional findings under both MCL 712A.2(b)(2), because it resulted in an “unfit” home or environment, and MCL 712A.2(b)(1), because respondent neglected to “provide proper or necessary support.”

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<sup>2</sup> Our Supreme Court implied that a lack of stable housing is indicative of harm which may be considered in assessing whether there is jurisdiction on the basis of neglect. *In re Smith*, \_\_\_ Mich \_\_\_; 956 NW2d at 226 n 1, noting that *In re Nash*, 165 Mich App 450; 419 NW2d 1 (1987), “did not involve chronic absences [from school] without a showing of harm” because in that case “in addition to the children’s absences from school, the respondent had no stable residence and one of the children was born with symptoms of a drug overdose.”

In addition, we observe that the evidence demonstrated that respondent's failure to address her own mental illness subjected JRC to a substantial risk of harm to JRC's mental well-being. The evidence also demonstrated that respondent's volatile behavior contributed to her failure to maintain stable housing, food supply, and income, and thus deprived JRC of proper custody or guardianship. The evidence thus supports a finding of jurisdiction under MCL 712A.2(b)(1) apart from a finding of neglect. The trial court therefore did not clearly err by finding that it had jurisdiction over JRC under MCL 712A.2(b).

Affirmed.

/s/ Michael F. Gadola  
/s/ Kathleen Jansen  
/s/ Colleen A. O'Brien