

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

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*In re* GOWDER, Minors.

UNPUBLISHED  
August 19, 2021

No. 356652  
Genesee Circuit Court  
Family Division  
LC No. 21-137181-NA

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

PER CURIAM.

The circuit court ordered respondent-mother's two young children taken into care based on evidence of physical abuse of one child and the deplorable and unsafe condition of the home. The record evidence supported the court's decision. We affirm.

I. BACKGROUND

A representative of Hurley Hospital contacted Children's Protective Services (CPS) when two-year-old BG presented to the emergency room. BG had suffered second-degree burns to 15% of his body, injuries his mother could not adequately explain. Respondent waited nearly 24 hours to seek medical help. In the meantime, BG's temperature dropped to hypothermic levels and he went into cardiac arrest. Respondent was arrested at the hospital and voluntarily placed BG and his nearly four-year-old sibling (KG) in the care of her mother.

Officials inspected the home respondent shared with her then boyfriend and the children. Dirty dishes, chicken bones, trash bags filled with maggots, and diapers and underwear covered in feces and urine were strewn about the house. A loaded gun was found under respondent's bed, in easy reach of her small children.

The Department of Health and Human Services (DHHS) filed a petition to take jurisdiction over the children and to terminate respondent's parental rights at the initial disposition. The circuit court authorized the petition, took jurisdiction over the children, and ordered that they remain in care pending the termination decision.

Respondent's parental rights have yet to be terminated. She appeals only the court's removal of her children from her care.

## II. DISCUSSION

MCL 712A.13a(9) provides for the removal of children from their parents' home if "all of the following conditions" are met:

- (a) Custody of the child with the parent presents a substantial risk of harm to the child's life, physical health, or mental well-being.
- (b) No provision of service or other arrangement except removal of the child is reasonably available to adequately safeguard the child from risk as described in subdivision (a).
- (c) Continuing the child's residence in the home is contrary to the child's welfare.
- (d) Consistent with the circumstances, reasonable efforts were made to prevent or eliminate the need for removal of the child.
- (e) Conditions of child custody away from the parent are adequate to safeguard the child's health and welfare.

MCR 3.965(C) includes identical terms.

The court determined that removal was proper after a preliminary hearing required by statute and court rule. At that hearing, the court found probable cause to believe the allegations in the DHHS petition were true. See *In re Ferranti*, 504 Mich 1, 15; 934 NW2d 610 (2019). We review for clear error the trial court's factual findings at that hearing. *In re McCarrick/Lamoreaux*, 307 Mich App 436, 463; 861 NW2d 303 (2014). A finding is clearly erroneous if, after reviewing the entire record, this Court is left with a firm and definite conviction that a mistake was made. *Id.*

The trial court did not clearly err in this case. BG suffered serious, life-threatening injuries that led to criminal child abuse charges being levied against his mother. Returning either child to respondent's custody would place them in obvious substantial risk of harm. At the time of their removal, both children were under the age of four and clearly unable to protect themselves from physical abuse. Moreover, the deplorable condition of the home and respondent's negligent storage of a loaded weapon placed the children's physical health in great danger.

Respondent contends that removal was unnecessary because she voluntarily placed her children with her mother, thereby providing care and custody. However, respondent confuses the legal standards for removal with the legal standards for termination of parental rights. Placement with a relative does not protect a parent against legal removal of her children from her care; rather, relative placement is a factor to consider when evaluating whether termination of parental rights would serve a child's best interests. See *In re Mason*, 486 Mich 142; 782 NW2d 747 (2010). She also misconstrues the trial court's reasons for ordering removal. Contrary to respondent's appellate challenge, the court did not order the children's removal simply because she was incarcerated and could not care for them; the court ordered removal because of suspected physical abuse that led to child abuse charges and the unsafe condition of respondent's home.

Respondent further contends that the trial court erred in finding that no other services or care arrangement outside of removal could protect the children. She insists that placing the children with her mother and granting her mother a power of attorney adequately safeguarded the children such that removal was unwarranted. However, court-ordered removal was the only way to ensure that the children would not be returned to respondent upon her release and that respondent would not be granted parenting time. The DHHS caseworker investigated less drastic measures, but after speaking with relatives, law enforcement, and medical personnel, determined that no services could adequately protect the children if left in respondent's care.

Ultimately, the court's "paramount concern" must be the safety of the children. MCR 3.965(C)(4). BG had just suffered life-threatening injuries while in respondent's care. In light of the extreme facts of the present case, the DHHS's investigation satisfied the requirement for reasonable efforts. And removal was more than justified.

We affirm.

/s/ Cynthia Diane Stephens  
/s/ Stephen L. Borrello  
/s/ Elizabeth L. Gleicher