STATE OF MICHIGAN

COURT OF APPEALS

In re FEDEWA, Minors.

UNPUBLISHED
September 2, 2021

No. 356783
Cass Circuit Court
Family Division
LC Nos. 20-000165-NA;
20-000166-NA;
20-000167-NA

Before: TUKEL, P.J., and K. F. KELLY and GADOLA, JJ.

PER CURIAM.

Respondent-mother appeals as of right the trial court's orders of adjudication establishing its jurisdiction over her three minor children pursuant to MCL 712A.2(b)(1) (failure to provide proper or necessary support) and (2) (home or environment is an unfit place for the minor to live). Respondent-mother argues that the trial court erred when it found that it had jurisdiction over the minor children, and that it was improper for the trial court to admit 17 screenshots of a journal into evidence without admitting the journal's remaining 33 pages. We disagree, and therefore affirm the trial court's orders.

I. UNDERLYING FACTS

The Department of Health and Human Services (DHHS) petitioned the trial court to remove the children from respondent-mother's care, alleging that respondent-father had been sexually and physically abusing one of the minor children, HF, and that respondent-mother knew, or should have known, about the sexual and physical abuse but did not act to protect the children's well-being.

The trial court held a bench trial to determine whether it had jurisdiction over the minor children. The trial court heard testimony from HF's treating physician, petitioner's caseworker who was assigned to HF's case, and respondent-mother. Evidence was submitted regarding respondent-father sexually abusing HF, respondent-mother finding another minor child sexually abusing HF, and respondent-mother finding respondent-father's journal entries regarding his interactions with HF and his desire to commit self-harm.

Ultimately, the trial court found statutory grounds existed to exercise jurisdiction over the minor children because (1) respondent-mother had not provided for the care and maintenance of the children—who were subject to substantial risk of harm to their well-being—and (2) because the home was an unfit place for the minor children to live. This appeal followed.

II. THE ADJUDICATION ORDER

Respondent-mother first argues that the trial court erred by finding that it had jurisdiction over the minor children because it based its finding on the "failure to protect" theory and the evidence was not sufficient to find that respondent-mother failed to protect her children. We disagree.

A. PRESERVATION AND STANDARD OF REVIEW

"In general, issues that are raised, addressed, and decided by the trial court are preserved for appeal." *In re TK*, 306 Mich App 698, 703; 859 NW2d 208 (2014). Respondent-mother argued during trial that the evidence did not establish a statutory basis for the trial court to exercise jurisdiction over the minor children. The trial court disagreed and found statutory grounds to take jurisdiction over the children. Thus, the issue is preserved.

"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) (citation omitted). "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 Schadler*, 315 Mich App 406, 408; 890 NW2d 676 (2016) (quotation marks and citation omitted). "We review the interpretation and application of statutes and court rules de novo." *In re Ferranti*, 504 Mich 1, 14; 934 NW2d 610 (2019). When the language of a statute "is unambiguous, no further judicial construction is required or permitted, because the Legislature is presumed to have intended the meaning it plainly expressed." *In re AJR*, 496 Mich 346, 352-353; 852 NW2d 760 (2014).

B. ANALYSIS

"Child protective proceedings have long been divided into two distinct phases: the adjudicative phase and the dispositional phase." *In re AMAC*, 269 Mich App 533, 536; 711 NW2d 426 (2006). "The adjudicative phase occurs first and involves a determination whether the trial court may exercise jurisdiction over the child, i.e., whether the child comes within the statutory requirements of MCL 712A.2(b)." *Id.* Jurisdiction must be established by a preponderance of the evidence. MCR 3.972(C)(1); *In re BZ*, 264 Mich App at 295. "In order to find that a child comes within the court's jurisdiction, at least one statutory ground for jurisdiction contained in MCL 712A.2(b) must be proven, either at trial or by plea." *In re SLH*, 277 Mich App 662, 669; 747 NW2d 547 (2008). In relevant part, MCL 712A.2(b) provides that a trial court has jurisdiction over a child:

> (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. . . .

* * *

(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 making its determination, the trial court found the following:

I—I believe based upon the evidence submitted that the burden of proof of a preponderance of evidence has in fact been met that the parent responsible for the care and maintenance of a minor—of minors, when able to do so, neglected or failed to provide proper and necessary support of the children for the children's health or morals, and has subjected the child to substantial risk of harm to the child's mental well-being. I think that's clearly been shown.

I also find that the home environment, by a reason of criminality on the part of the father and the mother's failure to take action, is an unfit place for the child to live in. The actual threat of suicide should have been an alarming—based upon what he was putting in the journal, let alone insisting that she sleep in bed and how it affected him; his inability to sleep, to enjoy life because his daughter is not cuddling with him, coupled with the doctor's testimony makes it unreasonable for the mother to even today say that she doesn't have the evidence to make the decision. I'm not sure what evidence she wants; whether she actually sees it phys—see him physically abuse her or that he confesses. But it's clear that that there is some mental health issue with [father] or he clearly is just manipulative, which I'm going to tend to believe is probably the issue here.

However, taking all the evidence as a whole, I can find that the petitioner has met their burden. As a result the Court does take jurisdiction. . . .

During the trial, evidence was presented that respondent-mother had known about the sexual abuse that HF suffered from one of respondent-mother's other minor children, as well as respondent-father, and she still questioned whether HF's disclosures were worthy of belief. In fact, after respondent-mother discovered her other minor child sexually assaulting HF, it was reported that respondent-mother allowed HF and that minor child to continue sleeping in the same room with each other. Additionally, after respondent-mother discovered respondent-father's journal entries discussing HF's reluctance to fall asleep next to him, she did not question the "deal" that HF and respondent-father made whereby HF would continue to sleep in the same bed as respondent-father on certain nights. Respondent-Mother also did not speak with HF regarding her use of respondent-mother's sex toy, habitual masturbation, searches for pornography online, and the fact that HF was reading books about rape. Additionally, respondent-mother did not consider her other minor child sexually assaulting HF a problem because, in respondent-mother's opinion, the children were simply "curious."

The trial court considered that respondent-mother did not enroll the children into counseling after discovering her other minor child sexually abusing HF and that respondent-mother did not question the sleeping arrangements involving HF and respondent-father despite knowing about respondent-father's journal entries. After considering these issues, the trial court found that there was overwhelming evidence that respondent-mother should have known that something improper was occurring. This informed the trial court's decision that respondent-mother failed to provide for the care and maintenance of the minor children because there was a substantial risk of harm to the children's well-being, of which respondent-mother should have been aware. See MCL 712A.2(b)(1). Additionally, the trial court found, by a preponderance of the evidence, that respondent-father was engaged in criminal acts and presented an unfit home for the children to live in, and it was unreasonable for respondent-mother to not rectify those conditions. See MCL 712A.2(b)(2).

Given the overwhelming evidence in this case, we are not left with a definite and firm conviction that the trial court made a mistake when it found that statutory grounds existed to exercise jurisdiction over the minor children.

III. EVIDENTIARY RULINGS

Next, respondent-mother argues that the trial court erred by admitting 17 screenshots of respondent-father's journal entries, when respondent-father's journal had 50 total entries, because those 17 screenshots were not authentic. We disagree.

A. PRESERVATION AND STANDARD OF REVIEW

"A party opposing the admission of evidence must timely object at trial and specify the same ground for objection that it asserts on appeal." *In re Weiss*, 224 Mich App 37, 39; 568 NW2d 336 (1997). Respondent-mother objected to the screenshots' authenticity at trial. As such, that argument is preserved. Respondent-mother, however, failed to argue at trial that the 17 admitted screenshots should have been admitted only if the remaining 33 screenshots were also admitted. As such, that argument is unpreserved.

"This Court reviews the trial court's decision to admit or exclude evidence for an abuse of discretion." *In re Archer*, 277 Mich App 71, 77; 744 NW2d 1 (2007). "When an evidentiary question involves a question of law, such as the interpretation of a statute or court rule, our review is de novo." *In re Utrera*, 281 Mich App 1, 15; 761 NW2d 253 (2008). "An abuse of discretion occurs when the trial court chooses an outcome that falls outside the range of principled outcomes." *In re Jones*, 286 Mich App 126, 130; 777 NW2d 728 (2009) (quotation marks and citations omitted).

Unpreserved issues are reviewed for plain error. *In re VanDalen*, 293 Mich App 120, 135; 809 NW2d 412 (2011). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) the error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *Id.* (quotation marks omitted), citing *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). "Generally, an error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings." *In re Utrera*, 281 Mich App at 8-9. The appellant bears the burden of persuasion with respect to prejudice. See *Carines*, 460 Mich at

763 ("It is the defendant rather than the Government who bears the burden of persuasion with respect to prejudice.") (quotation marks and citation omitted).

B. ANALYSIS

Respondent-mother's argument that the screenshots admitted into evidence were not authentic amounts to mere assertion. She fails to support that assertion with any legal citations or factual information. As such, the issue is abandoned. See *Cheesman v Williams*, 311 Mich App 147, 161; 874 NW2d 385 (2015) ("An appellant may not merely announce a position then leave it to this Court to discover and rationalize the basis for the appellant's claims; nor may an appellant give an issue only cursory treatment with little or no citation of authority.").

Respondent-mother does, however, develop her argument that the trial court drew false conclusions from the screenshots because only 17 of the 50 total screenshots were admitted into evidence. Respondent-mother argues that the screenshots were duplicates of respondent-father's journal and argues that all 50 of the screenshots should have been admitted under MRE 1003 because admitting only 17 of the screenshots was "unfair."[1] Respondent-mother's argument is misplaced in multiple ways. First, respondent-mother has waived this argument on appeal because she had the opportunity at trial to offer into evidence the remaining 33 screenshots, but she failed to do so. As such, she cannot now complain that the trial court erred by not considering the evidence. See, e.g., *Braverman v Granger*, 303 Mich App 587, 608; 844 NW2d 485 (2014) (quotation marks, brackets, and citation omitted) ("A party is not allowed to assign as error on appeal something which his or her own counsel deemed proper at trial since to do so would permit the party to harbor error as an appellate parachute."). Second, the screenshots depicted digital information that respondent-mother concedes accurately depicts respondent-father's journal and, therefore, the screenshots were originals, not duplicates. See MRE 1001(3) (emphasis added) ("An 'original' of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An 'original' of a photograph includes the negative or any print therefrom. *If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an 'original.'* ") Thus, the trial court did not err by admitting the screenshots of respondent-father's journal.

IV. CONCLUSION

For the reasons stated in this opinion, we affirm the trial court's orders of adjudication taking jurisdiction over the children.

/s/ Jonathan Tukel
/s/ Kirsten Frank Kelly
/s/ Michael F. Gadola

[1] MRE 1003 provides that "A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original."