STATE OF MICHIGAN

COURT OF APPEALS

	UNPUBLISHED September 1, 2011
In the Matter of S. MCEACHERN, JR., Minor.	No. 300601 Wayne Circuit Court Family Division LC No. 10-492790-NA
In the Matter of BARROS/MCEACHERN/ STURMAN, Minors.	No. 303176 Wayne Circuit Court Family Division LC No. 10-492790-NA

Before: TALBOT, P.J., and HOEKSTRA and GLEICHER, JJ.

PER CURIAM.

In these consolidated appeals, respondent-mother, who is the mother of all four minor children, and the father of one of those children, who is a party to the proceeding but not a respondent, appeal by delayed leave granted an order placing the four children in the court's temporary custody and adopting the referee's recommendations for treatment plans. We affirm.

I. BACKGROUND

Respondent-mother is the custodial parent of all four children. She had 37 Children's Protective Services (CPS) referrals filed against her, four of which had been substantiated. The police had been called to the family's home on 82 occasions in 2008 and 2009. In 2008, CPS had provided in-home services to respondent-mother and she had cooperated, but certain services were terminated because the workers were concerned about their safety in the home based on two of the children's behaviors. The father had moved out of the family home in 2001 after allegations were made that he had sexually abused respondent-mother's daughter.

Petitioner filed a petition seeking to place all four children in the court's temporary custody based on allegations that respondent-mother used marijuana on a daily basis, allowed a dog that had bitten the youngest child to remain in her home, and had not promptly sought medical treatment for her daughter after being advised of her suicidal behavior. The petition also alleged that the father had a substance abuse problem, a history of domestic violence with

respondent-mother, and a complaint that he had sexually abused one of the children had been substantiated. The father was living in Missouri at the time the petition was filed.

Before the adjudication, petitioner informed the court that it had just received new information about the father and intended to file a separate petition seeking termination of the father's parental rights to his son. Petitioner asked that all allegations concerning the father be removed from the petition before the court, and the court agreed to dismiss the allegations against the father without prejudice. No new petition was filed as of the date of this appeal.

At the adjudication, the caseworker and respondent-mother testified. Respondent-mother admitted that she used marijuana on a daily basis but contended that she used it to alleviate pain and had a medical marijuana card allowing for her legal use of the drug. However, she was only able to produce an application for a medical marijuana card. Respondent-mother further admitted using marijuana for the preceding 18 years and conceded that marijuana use was illegal in Michigan during most of this period. She also admitted that she had kept the dog that had bitten her youngest child in a steel cage in her home for a month after the incident. She disputed petitioner's claim that she had waited three weeks to take another child for a medical evaluation after being advised that the child had expressed some suicidal behaviors. She conceded that she had allowed a woman whose children had been removed from her care to live in her home until advised by CPS that she had to remove the woman from her home. While respondent-mother testified that she had made the father leave her home in 2001 after allegations were made that he had sexually molested her daughter, she admitted that she allowed the father to have contact with the girl when he came to visit his son until 2005. Following closing arguments, the court concluded that it had jurisdiction over the children under MCL 712A.2(b)(1) and (2). The court subsequently took the children into its temporary custody and ordered respondent-mother and the father to comply with reunification services.

II. ANALYSIS

On appeal, respondent-mother and the father challenge the court's exercise of temporary jurisdiction over the four minor children. A court's decision to exercise jurisdiction in a child protective proceeding is reviewed for clear error in light of the court's findings of fact. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004).

During the adjudicative phase, the trial court determines whether it may exercise jurisdiction over the child. *In re Utrera*, 281 Mich App 1, 15-16; 761 NW2d 253 (2008). The petitioner must prove, through legally admissible evidence and by a preponderance of the evidence, that one or more of the allegations in the petition indicate that the child who is the subject of the proceeding comes within the court's jurisdiction. *In re CR*, 250 Mich App 185, 200; 646 NW2d 506 (2002). A trial court acquires jurisdiction over a juvenile under 18 years of age when one or more of the conditions in MCL 712A.2(b) is satisfied. After the trial court determines that the child comes within its jurisdiction, the court, upon holding a dispositional

hearing, determines the measures to be taken and may direct orders "against any adult" that it considers necessary in the interest of the child. *In re CR*, 250 Mich App at 202-203.[1]

Respondent-mother argues that the evidence did not support the trial court's exercise of jurisdiction over the four children. The father argues that because petitioner removed all allegations concerning his behavior from the petition and did not conclude that *he* had failed to provide a fit home environment, the trial court was without authority to assume jurisdiction over his child and to order him to comply with the case service0 plan. He maintains that the trial court, rather than taking jurisdiction of his child, should have placed the child with him.[2]

At the adjudication, the court found that the evidence established, by a preponderance, that respondent-mother used marijuana on a daily basis and had failed to remove the dog that had bitten her youngest child from her home for over a month after the incident. The court relied on this evidence, as well as the 37 CPS referrals, the 82 contacts with police between 2008 and 2009, and respondent-mother allowing the father to have contact with her daughter after the sexual abuse allegations were made, to conclude that the home environment was unfit for the children and justify the exercise of its jurisdiction over the children. The evidence at trial supported the court's findings. Therefore, we reject respondent-mother's argument that the evidence failed to support the trial court's exercise of jurisdiction over the four children.

We also reject the father's argument that the trial court erred in exercising jurisdiction over his child because there was no finding that the father had failed to provide a fit home environment. The father does not challenge the trial court's finding that the conduct of respondent-mother, a person responsible for his son's care and who provided the child a home, placed his child within the court's jurisdiction, as defined by MCL 712.A(2). The father fails to cite any authority for the proposition that the trial court was barred from taking jurisdiction over his child when the home environment of the father, with whom the child did not reside, had not been evaluated. Because the court properly acquired jurisdiction over the father's child based on the conduct of respondent-mother, the father's challenge to the trial court's exercise of jurisdiction must fail. In addition, because the trial court's exercise of jurisdiction was proper, the court had the authority to order the father, as a party, to comply with the case service plan. *In re CR*, 250 Mich App at 203.

Respondent-mother also argues on appeal that her counsel at the adjudication provided ineffective assistance of counsel by failing to seek testimony from the doctor that treated her and the youngest child, the psychiatric staff that evaluated her daughter, the CPS supervisor who had produced a positive report following a 2005 investigation, and the doctor who signed her medical marijuana application. She also alleges her counsel should have sought to admit a 2008 letter

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[1] In *In re CR*, the Court quoted MCR 5.973(A) and MCR 5.973(A)(5)(b). Those sections are now found at MCR 3.973(A) and MCR 3.973(F)(2).

[2] We note that the father does not challenge the placement arrangements made for his child in the dispositional phase of the case.

that contradicted the caseworker's testimony at the adjudication and the court order granting respondent-father the right to visit his son. However, consideration of this proposed evidence does not show that, by failing to introduce the evidence, counsel's performance fell below an objective standard of reasonableness or that there was a reasonable probability that, but for counsel's failure to seek admission of this testimony and documentary evidence, the result of the proceeding would have been different. *In re CR*, 250 Mich App at 197-198. Additional testimony would not have countered evidence of respondent-mother's 18-year history of using marijuana, her use of prescription medication and marijuana at the same time, her delay in seeking psychiatric care for her daughter, and her failure to remove the dog that had bitten the youngest child from her home. The 2005 investigation report would not include evidence of her conduct since, including numerous CPS referrals and 82 police calls to her home. In addition, respondent-mother does not contend that the order granting the father parenting time with his son required her to allow the father to have contact with her daughter. The caseworker conceded respondent-mother's transportation issues at trial, and therefore it is unclear how the 2008 letter would have helped her. Thus, respondent-mother's claim of ineffective assistance of counsel must fail.

Affirmed.

/s/ Joel P. Hoekstra