

STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of GREGORY WEBBER
and RONALD WEBBER, Minors.

UNPUBLISHED
June 11, 1996

DEPARTMENT OF SOCIAL SERVICES,

Petitioner-Appellee,

v

No. 186600
LC No. 94-317928

DONNA WEBBER,

Respondent-Appellant.

Before: Corrigan, P.J., and MacKenzie and P.J. Clulo*, JJ.

PER CURIAM.

Respondent, Donna Webber, appeals as of right from an order of the Wayne Probate Court making her children, Gregory and Ronald Webber, temporary wards of the court. We affirm.

Respondent first argues that the court erred by refusing to return the children to respondent pending trial. We disagree.

MCR 5.972(A) provides that if a child is removed from the home and is in placement, the trial must begin no later than sixty-three days after the child is placed by the court. However, if the trial is postponed because process cannot be completed or because the court finds that the testimony of a presently unavailable witness is needed, "the court shall release the child to the parent unless the court finds that returning the child to the custody of the parent will likely result in physical harm or serious emotional damage to the child." MCR 5.972(A).

* Circuit judge, sitting on the Court of Appeals by assignment.

This Court reviews the probate court's findings of fact under the clearly erroneous standard. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). A finding of fact is clearly erroneous if, although there is evidence to support it, the reviewing court, on the whole record, is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

In the present case, the trial was adjourned from January 24, 1995, to February 21, 1995, because Dr. Beltran did not appear to testify at the hearing and could not be located. The petition indicated that the attending physician, who examined Ronald at Henry Ford Hospital on July 8, 1994, believed that Ronald's injuries were inconsistent with the explanation given by respondent and that the injuries were most likely caused by an adult. Furthermore, the petition indicated that Ronald had an older head injury, the cause of which was not known. Under these circumstances, the court's finding that returning the children to respondent's custody would put them at risk of harm was not clearly erroneous.

Respondent next argues that the trial court's finding that Ronald sustained two head injuries was clearly erroneous. We disagree.

Dr. Loesch testified that the results of the CAT scan revealed evidence of both an acute, recent head injury, and an older head injury upon which the recent injury was superimposed. Dr. Loesch also testified that the fact that Ronald's head injury was "very boggy," could indicate an older injury. From this testimony, it does not appear that the court's finding that Ronald sustained two head injuries was clearly erroneous.

Affirmed.

/s/ Maura D. Corrigan
/s/ Barbara B. MacKenzie
/s/ Paul J. Clulo