

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
September 13, 2012

In the Matter of MCCULLUM/ABDUR, Minors.

No. 308404
Wayne Circuit Court
Family Division
LC No. 05-448441-NA

Before: FORT HOOD, P.J., and METER and MURRAY, JJ.

PER CURIAM.

Respondent, Z. Wright, the legal father of seven of the minor children, appeals by right the trial court's order assuming jurisdiction over his children. A jury determined that petitioner established one or more of the statutory grounds for removal, MCL 712A.2(b)(1) (parent neglects or refuses to provide proper support for the minor children), and MCL 712A.2(b)(2) (parent's home is an unfit place for the minor children to live). We affirm.

Respondent alleges that there was insufficient competent evidence of abuse and neglect for the trial court to assume jurisdiction and remove the minor children from his custody. We disagree.

When a petition alleges abuse and neglect, the valid exercise of jurisdiction is established when the trial court finds probable cause to support the allegations contained in the petition. *Ryan v Ryan*, 260 Mich App 315, 342; 677 NW2d 899 (2004). This determination allows for preliminary, limited placement orders concerning the children pending the adjudicative trial. *Id.* For the trial court to exercise its full jurisdictional authority, an adjudication of at least one of the statutory grounds in MCL 712A.2(b) must be proven by trial or plea. *Id.* "The fact-finder must determine by a preponderance of the evidence that the statutory requirements of MCL 712A.2 are met." *Id.* At the adjudicative phase, the respondent may demand that a jury determine the facts at this phase. *Id.*; see also *In re SLH, AJH, and VAH*, 277 Mich App 662, 669; 747 NW2d 547 (2008). Although the rules of evidence apply to the adjudicative phase, "hearsay statements of children pertaining to acts of child abuse are admissible at the trial if the criteria for reliability set out in MCR 3.972(C)(2) . . . are satisfied." *In re Archer*, 277 Mich App 71, 80; 744 NW2d 1 (2007). On appeal, the trier of fact's determination to exercise jurisdiction is reviewed for clear error in light of the factual findings. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004).

On appeal, respondent alleges that evidence of abuse or neglect was not established by a preponderance of the evidence because there was no competent evidence of abuse where there were no marks or bruises suggesting harm to the children. He further argues that evidence of

abuse was not presented by credible witnesses and the evidence established that the children were provided with all of their necessities. We disagree. A review of the testimony revealed that respondent and the children's mother left them in their van while they shopped at a Meijer store. Two of the oldest children went into the store to use the bathroom, and the youngest children were observed hanging out of the van. This action apparently caused store patrons to call police who were waiting for the parents when they returned to the vehicle. Respondent was arrested for an outstanding warrant.

The next day, the children's mother told them that she was leaving to pay her phone bill. She left all eight¹ of her children in the care of a neighbor at the hotel, a seventeen year old girl who had only known the family for a short time. In actuality, the mother went to bail respondent out of jail. When the children saw their mother return with respondent, they became visibly upset. The oldest child threatened to commit suicide. These reactions prompted the neighbor to call police, and an investigation was initiated by petitioner.

Although respondent contends that no abuse occurred and all necessities were provided, the two oldest children testified that they did not finish the school year, lived in various hotels, and attempted to live in an abandoned home with no functioning bathroom. The children were not provided clean clothing and were teased at school as a result. They also testified that they were whipped by respondent for excessive use of ketchup or for questioning the type of syrup. The children testified that respondent also physically abused their mother and had inappropriate relations in front of the children. Respondent and the children's mother testified that they merely spanked their children. However, police and investigating workers testified that the pair admitted to whipping the children with a belt as part of their "family tradition."

Contrary to respondent's contention, there is no requirement that the investigating agency witness the remnants of physical abuse, such as broken limbs, bruises, or scars, in order to obtain jurisdiction over the children. Rather, the minor children testified to acts of physical abuse that, at various times, left bumps or bruises on the children. In a termination proceeding, we give deference to the trier of fact's special opportunity to assess the credibility of the witnesses. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). It is apparent from the jury's ruling that it rejected the testimony by respondent and found the testimony by the children and the government workers to be credible. Accordingly, respondent's challenge to the exercise of jurisdiction is without merit.

Affirmed.

/s/ Karen M. Fort Hood

/s/ Patrick M. Meter

/s/ Christopher M. Murray

¹ Eight children are the subject of the family court's jurisdiction, but respondent is not the biological father of the oldest child.