

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of WILLIAMS, Minor.

UNPUBLISHED
June 19, 2014

No. 319600
Washtenaw Circuit Court
Family Division
LC No. 2013-000006-NA

Before: DONOFRIO, P.J., and GLEICHER and M. J. KELLY, JJ.

PER CURIAM.

Respondent, the mother of the involved minor child, appeals as of right a circuit court order terminating her parental rights pursuant to MCL 712A.19b(3)(g) and (j). We affirm.

When respondent gave birth to the child in June 2006, she had been diagnosed with paranoid schizophrenia, for which she underwent many psychiatric hospitalizations. Several months after the child's birth, his maternal grandmother obtained a full legal guardianship over the child because of respondent's difficulty with hallucinations. In April 2012, the maternal grandmother let respondent pick up the child from school, but instead of timely returning the child to the grandmother's home, respondent engaged in a high-speed police chase with the child inside her car. In December 2012, respondent took the child from the maternal grandmother's custody and exposed him to cold and rainy weather conditions for around eight hours. The circuit court subsequently removed the child from the maternal grandmother and placed him in foster care.

Petitioner filed a petition requesting that the circuit court exercise jurisdiction over the child, terminate respondent's parental rights and terminate the maternal grandmother's guardianship. In March 2013, the maternal grandmother agreed to relinquish her guardianship. Shortly thereafter, the child's paternal grandparents became his legal guardians. At an adjudication trial in October 2013, a jury concluded that petitioner had proved at least one statutory ground for jurisdiction in MCL 712A.2b. After a dispositional hearing in October 2013, the circuit court terminated respondent's parental rights.

We initially address respondent's contention that the circuit court lacked jurisdiction to proceed against her pursuant to MCL 712A.2(b)(1) or (5). Our Legislature has invested family divisions of circuit court with jurisdiction over "proceedings concerning a juvenile under 18 years of age found within the county" who endures neglect. MCL 712A.2(b). "To acquire jurisdiction, [a] factfinder must determine by a preponderance of the evidence that the child comes within the statutory requirements of MCL 712A.2." *In re S R*, 229 Mich App 310, 314;

581 NW2d 291 (1998); see also MCR 3.972(C)(1) (providing that “the standard of proof by a preponderance of evidence appl[ies] at the” adjudication trial). We review de novo legal issues inherent in statutory interpretation. *In re S R*, 229 Mich App at 314. We review for clear error “the trial court’s decision to exercise jurisdiction . . . in light of the court’s findings of fact.” *In re B Z*, 264 Mich App 286, 295; 690 NW2d 505 (2004).

With respect to respondent’s argument regarding MCL 712A.2(b)(5), the record reflects that the adjudication did not occur on this basis.¹ Without objection, the circuit court instructed the jury on the grounds for jurisdiction in MCL 712A.2(b)(1) and (2), and the order of adjudication found jurisdiction proper under subsections 2(b)(1) and (2). These provisions authorize a court to exercise jurisdiction over a child in the following relevant circumstances:

(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.

We find lacking in merit respondent’s suggestion that the circuit court erred in exercising jurisdiction over her for conduct that occurred while the child “was placed in a guardianship with his maternal grandmother,” who “was the legally responsible person for the care and custody of” the child. If a family court possesses jurisdiction over a child under MCL 712A.2(b), it can take measures “against any adult.” MCR 3.973(A); *In re L E*, 278 Mich App 1, 17; 747 NW2d 883 (2008). “The court need not separately ascertain whether it has jurisdiction over each parent.” *Id.*

A preponderance of the evidence at the adjudication trial established that while child’s maternal grandmother was the child’s guardian and caregiver, the child was “without proper custody or guardianship.” MCL 712A.2(b)(1). The record also established by a preponderance that the child lived in an unfit “home or environment, by reason of neglect . . . on the part of a parent, guardian, nonparent adult, or other custodian.” MCL 712A.2(b)(2). Specifically, in April 2012, the maternal grandmother allowed respondent to pick up the child from school, but

¹ Because respondent’s mother formerly cared for the child pursuant to a guardianship and petitioner sought termination of that guardianship, petitioner initially cited MCL 712A.2(b)(5) as a basis for jurisdiction. Subsequently, respondent’s mother’s guardianship over the child was terminated before the adjudication trial, and petitioner no longer sought jurisdiction over the minor under subsection 2(b)(5).

respondent instead led the police on a high-speed chase with the child in the car. Although the maternal grandmother agreed to abide by a child safety plan, she later failed to notice respondent and the child leave a church service together, and around eight hours later the police discovered respondent and the child outdoors in cold, wet December weather. Notwithstanding that the child lived in a guardianship with a relative, “the care being provided [wa]s neglectful.” *In re Systma*, 197 Mich App 453, 455; 495 NW2d 804 (1992). Consequently, the circuit court properly entered an order adjudicating the child on the basis of the jury’s verdict and proceeded to the dispositional phase against respondent. MCR 3.973(A).

Respondent additionally challenges the circuit court’s determination that the statutory grounds in MCL 712A.19b(3)(g) and (j) justified the termination of her parental rights.² The petitioner bears the burden of proving a statutory ground for termination by clear and convincing evidence. MCL 712A.19b(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). Once the petitioner has proven a statutory ground for termination by clear and convincing evidence, the circuit court must order termination if “termination of parental rights is in the child’s best interests.” MCL 712A.19b(5). This Court reviews for clear error a circuit court’s decision to terminate parental rights. MCR 3.977(K). The clear error standard controls this Court’s review of “both the court’s decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court’s decision regarding the child’s best interest.” *In re Trejo*, 462 Mich at 356-357. A decision qualifies as clearly erroneous when, “although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.” *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). Clear error signifies a decision that strikes the Court as more than just maybe or probably wrong. *In re Trejo*, 462 Mich at 356.

In MCL 712A.19b(3)(g), the Legislature authorized termination of parental rights when a “parent, without regard to intent, fails to provide proper care and custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.” The record contained clear and convincing evidence proving this ground for termination. Because of respondent’s diagnosis as a paranoid schizophrenic, she underwent many psychiatric hospitalizations during the child’s life. When the child was around four months of age, respondent fled with the child after experiencing auditory hallucinations that demons inhabited the home. The guardianship with the child’s maternal grandmother arose because of respondent’s mental instability. During the period of guardianship with the maternal grandmother, respondent led the police on a high-speed chase with her child inside the car because she experienced hallucinations. Respondent also took the child without permission from the maternal grandmother’s presence and exposed the child to cold temperatures and rain for a prolonged period. And in the months before the dispositional

² Respondent does not specifically challenge on appeal the circuit court’s conclusion that the evidence proved the ground for termination in MCL 712A.19b(3)(j). *In re S D*, 236 Mich App 240, ;247-248 599 NW2d 772 (1999) (affirming a termination of the respondent’s parental rights, in part on the basis that the respondent disputed the propriety of only one of three statutory grounds on which the circuit court had relied).

hearing, respondent again underwent psychiatric hospitalizations, including for having assaulted a repair person.

The circuit court properly found that respondent repeatedly had endangered the child. And in light of respondent's repeated difficulties with her severe mental disorder, the court also properly found that no reasonable expectation existed that respondent might have the capacity to care for the child within a reasonable time. The identical evidence likewise supported the circuit court's ruling that clear and convincing evidence established the statutory ground in MCL 712A.19b(3)(j), which authorizes termination when "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent."

Respondent does not address the evidence of her inability to care for the child due to her mental disorder. She cites only MCL 712A.19a(6)(a) in support of the proposition that "[a] child's placement with relatives weighs against termination," and argues that "proper care and custody was provided through a guardianship." However, the record does not substantiate that respondent played a role in pursuing either the child's initial guardianship with his maternal grandmother or the guardianship that existed at the time of the dispositional hearing with his paternal grandparents. A child's placement with relatives constitutes a factor that the court should "consider in determining whether termination was in the children's best interests." *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010); see also *In re Olive/Metts*, 297 Mich App 35, 43; 823 NW2d 144 (2012). In this case, the circuit court plainly took into account in its best interests analysis the child's placement with his paternal grandparents. Respondent does not otherwise challenge the court's ruling concerning the child's best interests. Therefore, we reject respondent's contention that the court erred in disregarding the existence of a guardianship with relatives.

We affirm.

/s/ Pat M. Donofrio
/s/ Elizabeth L. Gleicher
/s/ Michael J. Kelly