

STATE OF MICHIGAN  
COURT OF APPEALS

---

*In re* K. A. MAGEE, Minor.

UNPUBLISHED  
July 16, 2015

No. 324507  
Oakland Circuit Court  
Family Division  
LC No. 13-809197-NA

---

Before: HOEKSTRA, P.J., and JANSEN and METER, JJ.

PER CURIAM.

Respondent father appeals as of right from a circuit court order placing the child in the temporary custody of the court after an adjudication trial. Because the trial court did not clearly err by authorizing the petition against respondent and assuming jurisdiction over the minor child, we affirm.

In June of 2013, the child was removed from her mother's care and adjudicated a temporary court ward due to the mother's substance abuse and domestic violence issues. At that time, respondent was identified as the child's putative father. Later, in June of 2013, a DNA test confirmed that respondent was the child's biological father. Respondent did not, however, establish legal paternity of the child until February 5, 2014. After respondent signed an affidavit of parentage, in connection with the trial court's assumption of jurisdiction over the minor child incident to the child's mother, the trial court ordered respondent to comply with services.

In June 2014, in light of the determination in *In re Sanders*, 495 Mich 394; 852 NW2d 524 (2014) that due process requires that each parent receive an adjudication hearing, petitioner filed a temporary custody petition alleging neglect against respondent. The petition alleged that, at the time the child was removed from her mother's care, respondent was aware of the inappropriate conditions in which the child was living, failed to protect the child, and could not provide suitable housing for her. The petition alleged further that respondent had provided no support for the child since she had been in the court's temporary custody and that respondent was still unable to provide appropriate housing for her. Following a preliminary hearing, the trial court authorized the petition and, following a bench trial, the trial court assumed jurisdiction over the minor child. Respondent now appeals as of right.

On appeal, respondent first argues that the trial court erred when it found probable cause to authorize the petition at the preliminary hearing. According to respondent, he had no legal obligation to care for the child until his paternity was established on February 5, 2014, meaning that he could not have been neglectful under MCL 712A.2(b)(1) by failing to come forward to

provide the child with support and housing. With respect to his actions after he established his paternity, respondent notes that he did provide some diapers for the child and he argues that he offered his grandmother's home as a relative placement. By offering this placement, respondent argues that he fulfilled his obligations to provide a safe home and was therefore not neglectful. Further, respondent claims he was never told why his grandmother's home was rejected and, because petitioner did not inspect his grandmother's home, respondent argues that the trial court clearly erred when it found that petitioner made reasonable efforts to prevent the child's removal from defendant.

When the Department of Human Services seeks placement of a child outside the home under MCL 712A.2(b), the allegations against the parent are set forth in a petition and the court must hold a preliminary hearing to determine whether to authorize the petition. *In re Rood*, 483 Mich 73, 94; 763 NW2d 587 (2009). The trial court may authorize the filing of the petition if there is probable cause to believe that one or more of the allegations is true and that, if proven at trial, the facts alleged in the petition would fall under MCL 712A.2(b). MCR 3.965(B)(12); *In re Hatcher*, 443 Mich 426, 434-435; 505 NW2d 834 (1993). The Michigan Rules of Evidence do not apply, other than those with respect to privileges, during the preliminary hearing. MCR 3.965(B)(12).

This Court reviews for clear error a trial court's factual findings. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). "A finding is 'clearly erroneous' if 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." *Id.* (quotations, citation and alterations omitted).

In this case, respondent's claim that the trial court clearly erred by finding probable cause to authorize the petition is without merit. The challenged petition alleged that respondent could not provide appropriate housing for the child and had not provided financial support for her care. At the time of the preliminary hearing, the minor child could not live with respondent because he did not have adequate housing and was "still working on housing." Although it is true that respondent told the caseworker he was living with his grandmother and he offered his grandmother's apartment as a possible placement for the child, her apartment was deemed inadequate because it was a one-bedroom apartment. With regard to support, there was evidence that respondent "sometimes" provided diapers, but this was at most done on an inconsistent basis and there was no evidence that respondent provided for the child's other financial and material needs. Lack of suitable housing, particularly when coupled with the lack of support provided by respondent, is sufficient to show that respondent could not provide a fit home environment. Further, while respondent emphasizes that he provided diapers for the child on occasion, this minimal provision was insufficient to undermine a finding of neglect. A child needs more than diapers to be properly cared for. There was no evidence respondent had been providing in any significant way for the child's financial and material needs. Thus, the court did not err by finding probable cause to authorize the petition based on these allegations.

In contrast, respondent argues on appeal that the petition included allegations of neglect for which he was not legally responsible because they occurred before he established paternity. Specifically, the petition alleged that respondent was aware of the child's inappropriate home conditions with her mother in June 2013 but failed to protect the child from them. On the facts of this case, we need not decide whether any of respondent's actions and inactions before he

became a “parent” as defined by MCR 3.903(A)(18) fall under MCL 712A.2(b). MCR 3.965(B)(12) requires only that there be reason to believe that “one or more of the allegations” is true. Thus, even if the allegation of respondent’s failure to protect his child before respondent was a “parent” was disregarded, there were other allegations about his inability to provide housing and failure to support the child on which the court properly based its probable cause findings.

In contesting the trial court’s probable cause determination, respondent further argues that he was never told why his grandmother’s home was inappropriate and that, by failing to even investigate the home, petitioner failed to make reasonable efforts to prevent the child’s removal from respondent’s care. This claim is unpersuasive. The record shows that Children’s Protective Services (CPS) had been to the grandmother’s home when they first removed the child from her mother’s care in June 2013 and that the grandmother later described her home to a caseworker. Defendant told CPS that he lived with his grandmother, and CPS thus reasonably rejected the one bedroom apartment described by his grandmother as too small for two adults and a child. Respondent had ample time and opportunity to ascertain the problems with his proposed placement. Moreover, the record shows that, at the preliminary hearing, respondent testified that he was looking for a two-bedroom apartment because he knew his grandmother’s one bedroom was not considered suitable for two adults and one child. On this record, there was no need for petitioner to further assess the grandmother’s home when it had already been found unsuitable and the trial court did not clearly err by finding that reasonable efforts had been made. See MCR 3.965(C)(4).

Respondent further argues that a parent who makes arrangements for a relative to care for his child does not act neglectfully. Respondent is generally correct that “Michigan traditionally permits a parent to achieve proper care and custody through placement with a relative.” *In re Mason*, 486 Mich at 161 n 11. In this case, however, respondent made no such arrangements for the care of his child. Respondent testified that he contacted police and CPS about his child’s care when she resided with her mother. Respondent’s mother went out to the house later that day and brought the child to his grandmother’s home. The following day the caseworker went to his grandmother’s home and removed the child. At most, the record suggests that respondent’s family members initially attempted to care for the child. It is not clear that these family members were in fact able to provide proper care and custody for the child, especially given that his grandmother’s home was ultimately found not suitable. Moreover, as respondent emphasizes, when the child was initially removed, he was not a “parent.” The record shows that the caseworkers had tried to get respondent to establish paternity since June of 2013 in order to work toward family reunification with respondent, but respondent rejected these efforts until February 2014. After finally establishing paternity, when respondent suggested his grandmother’s apartment as a possible placement in 2014, the home was deemed unsuitable due to its size. Thus, respondent did not achieve proper care and custody by placing the child with a relative, and the trial court did not err when it found probable cause to authorize the petition.

Respondent next contends that there was insufficient evidence for the trial court to assert jurisdiction over the child. Specifically, respondent again argues that he had no legal obligation to the child until he perfected his paternity in February of 2014, meaning that the trial court should not have considered his conduct before that time when deciding whether to exercise jurisdiction. In respondent’s view, the only relevant allegations are respondent’s purported

failure to provide housing and support after his paternity was established. Respondent maintains, however, that the prosecutor did not prove these allegations by a preponderance of the evidence because he offered his grandmother's apartment as a possible placement, petitioner failed to adequately investigate his grandmother's home, and respondent provided support to the child in the form of diapers and other items.

To properly exercise jurisdiction, the trial court must find, by a preponderance of the evidence, that a statutory basis for jurisdiction exists. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). MCL 712A.2(b) provides that a court has "[j]urisdiction in proceedings concerning a juvenile under 18 years of age found within the county":

(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 or 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.

This Court reviews a trial court's factual findings underlying its exercise of jurisdiction for clear error. *In re BZ*, 264 Mich App at 295. Clear error exists "if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *Id.* at 296-297.

In this case, the trial court properly exercised jurisdiction after finding as a factual matter that respondent was without suitable housing and had only provided intermittent support for his child. The evidence at the adjudicative hearing, including respondent's own testimony, clearly showed that he did not have suitable, independent housing for himself. Respondent testified that he lived mostly with his girlfriend, but admitted that he gave his grandmother's address to the caseworker because he believed the child could live there. As discussed, however, the evidence indicated that the grandmother's apartment was not suitable. Further, even though respondent was employed, other than bringing diapers and perhaps a few other items, he did not provide financially for his child's care and maintenance.

Respondent concedes that the allegation that he was unable to provide appropriate housing after he established paternity was appropriate for consideration. However, he argues that he offered a relative placement with his grandmother in June 2013 and February 2014. As discussed, respondent's suggested placement was rejected because it was not a suitable living option for the child. Thus, the trial court did not clearly err by finding that respondent was unable to provide suitable housing or a fit home environment for himself and his child. Contrary to respondent's claim, his inability to provide an appropriate home environment, and his failure to provide meaningful financial support for his child's care, did satisfy the petitioner's burden of proof. See MCL 712A.2(b).

Insofar as respondent argues that he was not a parent under MCL 712A.2(b) until February 5, 2014, this assertion does not demonstrate that the trial court's exercise of jurisdiction was improper. It is true that many of the allegations made against respondent occurred before he established paternity. Even if the trial court should not have relied on respondent's conduct before he perfected his paternity, see MCR MCR 3.903(A)(7), (A)(18), any error in this respect was harmless because the trial court's assumption of jurisdiction was nonetheless proper in light of respondent's failure to provide housing and support for his child after establishing paternity. In other words, the trial court's consideration of respondent's conduct before February 2014 did not affect the outcome of the proceedings, and substantial justice does not require reversal of the trial court's exercise of jurisdiction. See MCR 2.613(A); MCR 3.902(A); see also *In re Utrera*, 281 Mich App 1, 14; 761 NW2d 253 (2008). In sum, the trial court did not clearly err in asserting jurisdiction over the child under MCL 712A.2(b).

Affirmed.

/s/ Joel P. Hoekstra  
/s/ Kathleen Jansen  
/s/ Patrick M. Meter