

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* O. W. KRAMER-WOLF, Minor.

UNPUBLISHED  
September 10, 2015

No. 326154  
Washtenaw Circuit Court  
Family Division  
LC No. 14-000015-NA

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Before: BORRELLO, P.J., and HOEKSTRA and O'CONNELL, JJ.

PER CURIAM.

Respondent-father, T. Kramer, appeals as of right the trial court's order assuming jurisdiction over his son under MCL 712A.2(b)(1) and (2). The trial court terminated Kramer's parental rights at the initial dispositional hearing under MCL 712A.19b(3)(j) (reasonable likelihood of harm) and (n)(ii) (parent convicted of crime involving force). We affirm.

I. FACTUAL BACKGROUND

In February 2014, the child's mother petitioned the court to assume jurisdiction and terminate respondent's parental rights because of pervasive, brutal domestic violence. At the adjudication hearing, petitioner testified that Kramer's conduct included punching and kicking her in the stomach and blowing marijuana smoke in her face while she was pregnant, pretending to drop the child, threatening to bury her and the child together in a pine box, throwing things at and around the child, and cutting the child. The petitioner testified that Kramer's conduct also included striking her, in some cases to the point of unconsciousness, and sexually assaulting her. The petitioner's aunt testified that she witnessed Kramer strike the petitioner in the stomach while pregnant. The petitioner's mother testified that Kramer had repeatedly called and left threatening voicemails.

In contrast, Kramer testified that the petitioner was mentally unstable and a poor parent. He was concerned about the child's wellbeing, but he never called the police. Kramer also contended that because he was incarcerated, he was not caring for the child, and the trial court could not assume jurisdiction.

The trial court found that it had jurisdiction over the child under MCL 715A.2(b) because the child was "subject to substantial risk of harm to his mental wellbeing and by reason of cruelty and depravity[.]" The trial court acknowledged that Kramer's incarceration was not a basis for termination, but it found that the assaultive conduct involving the child existed in the home before Kramer's imprisonment.

## II. STANDARD OF REVIEW

This Court reviews “the trial court’s decision to exercise jurisdiction for clear error in light of the court’s findings of fact.” *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). See MCR 2.613(C). “A finding of fact is clearly erroneous 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. We review de novo issues of statutory interpretation. *In re VanDalen*, 293 Mich App 120, 131-132; 809 NW2d 412 (2011).

## III. ANALYSIS

Kramer contends that the trial court erred by assuming jurisdiction over the child because he was not living with the child and it could not base its exercise of jurisdictional decision on his past conduct. We disagree.

The trial court must find that a statutory basis to exercise jurisdiction exists by a preponderance of the evidence. *In re SR*, 229 Mich App 310, 314; 581 NW2d 291 (1998); *BZ*, 264 Mich App at 295. MCL 712A.2(b)(1) and (2) provide in pertinent part that the trial court has jurisdiction over a child “who is subject to a substantial risk of harm to his or her mental well-being” or “[w]hose home of environment, by reason of . . . cruelty . . . or depravity on the part of a parent . . . is an unfit place for the juvenile to live in.” The doctrine of anticipatory neglect applies to the trial court’s assumption of jurisdiction. *BZ*, 264 Mich App at 293.

The trial court’s assumption of jurisdiction may not be based on a parent’s incarceration alone. *In re Curry*, 113 Mich App 821, 830; 318 NW2d 567 (1982). However, a respondent’s criminal acts against a child may support jurisdiction if they are related to the parent’s ability to take care of the child. *SR*, 229 Mich App at 316. Further, the trial court may assume jurisdiction even if the parent is incarcerated instead of residing in the child’s home. *Id.* at 317. Any other interpretation “would lead to the incongruous result that a petition filed the day before a respondent parent’s conviction would result in the probate court’s finding of jurisdiction, whereas the same petition filed the day after the parent’s conviction would not.” *Id.*

In this case, the child was not residing with Kramer because Kramer was incarcerated for assaulting the child’s mother. However, Kramer’s assaultive conduct also involved the child. Witnesses testified that Kramer punched the petitioner in the stomach while she was pregnant, and the petitioner testified that Kramer threatened to drop the child, threw things at or threatened to throw things at the child, and pretended to drop the child to cause her distress.

Further, the fact that Kramer is presently incarcerated will not protect the child from cruelty, depravity, or harm to his mental well-being when Kramer is released. Contrary to Kramer’s assertion, under the doctrine of anticipatory neglect, the trial court was entitled to consider Kramer’s past conduct to determine the likelihood of future harm to the child. Kramer would have full legal rights to the child after his release absent the trial court’s assumption of jurisdiction. It was thus likely that Kramer would be involved in the child’s home and environment and that the child would be harmed as a result. We conclude that the trial court did not err by assuming jurisdiction over the child under these circumstances.

We affirm.

/s/ Stephen L. Borrello

/s/ Joel P. Hoekstra

/s/ Peter D. O'Connell