

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED  
October 11, 2012

In the Matter of GARRISON, Minors.

No. 309855  
Wayne Circuit Court  
Family Division  
LC No. 10-496389-NA

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Before: MURRAY, P.J., and CAVANAGH and STEPHENS, JJ.

PER CURIAM.

Respondent T. Garrison appeals as of right from a circuit court order placing the minor child with her father, respondent Landers, and terminating its jurisdiction over the child. We vacate the trial court's order and remand for further proceedings.

The court acquired jurisdiction over the child and her siblings in August 2011 because respondent abandoned them in a hotel room and because respondent Landers was an absentee father. The trial court directed the parents to participate in reunification services and the children were placed with a relative. A permanency planning hearing was scheduled for March 20, 2012. At that time, the Department of Human Services (DHS) recommended that the children remain in their current placement under DHS supervision. The hearing was adjourned to March 29, 2012. In the interim, respondent picked up the children for an unsupervised visitation on March 22, 2012, and did not bring them back. The relative caregiver did not have the gas money to pick the children up from respondent's house and was unable to contact respondent because her telephone had been disconnected. The DHS was informed of the matter on March 27, 2012, and a worker went to respondent's house to retrieve the children. The DHS scheduled a permanency planning conference for the following day "to discuss a change of placement" and recommended that the child's siblings remain in their current placement but that the child be placed with Landers while reunification efforts continued. At the adjourned permanency planning hearing, the trial court *sua sponte* decided to terminate the temporary wardship because "there were no allegations against the father" and thus it had "no other choice but to return" the child to his care. The court thus entered an order releasing the child to Landers and terminating its jurisdiction over the child.

On appeal, respondent contends that the trial court erred in awarding Landers custody of the child without following the procedures outlined in the Child Custody Act, MCL 722.21 *et seq.*, for effectuating a change of custody, and that this error, coupled with the trial court's failure to address other issues such as visitation and child support, violated her due process rights.

Neither of these issues were raised below and, therefore, the issues are unpreserved. *People v Metamora Water Serv, Inc*, 276 Mich App 376, 382; 741 NW2d 61 (2007). Accordingly, “review is limited to determining whether a plain error occurred that affected substantial rights.” *In re Egbert R Smith Trust*, 274 Mich App 283, 285; 731 NW2d 810 (2007).

Respondent does not assert, and there is no indication in the record, that a prior custody order was in effect. Thus, the requirements for modifying or amending such an order, see MCL 722.27(1)(c), were not applicable. Further, the trial court did not purport to grant Landers custody; it simply released the child to his care. Contrary to what respondent asserts, the court was not required to release the child only to the parent who had physical custody immediately before or at the time the petition was filed. Rather, the court was authorized to return the child “to his or her *parent*.” MCL 712A.19a(5). While it might be preferable to return the child to the home from which she is removed, placement with the non-custodial parent is authorized. See *In re Rood*, 483 Mich 73, 101; 763 NW2d 587 (2009); see, also, *Childrens Foster Care Manual*, § 721, p 2; § 722-7, p 3. Because the trial court did not decide any custody issues but only the child’s placement, the issues of custody, support, and visitation were either to be resolved by the parties or in an appropriate custody action. Further, the record shows that respondent had notice of the permanency planning hearing and of the proposed change of placement, and an opportunity to be heard on the issue. Therefore, respondent has not shown a violation of her procedural due process rights. See *Reed v Reed*, 265 Mich App 131, 159; 693 NW2d 825 (2005).

We nevertheless conclude that remand for further proceedings is necessary. The trial court’s determination that “there were no allegations against the father” and thus that it had “no other choice but to return” the child to his care is both factually and legally flawed. The petition for temporary custody identified Landers as a respondent and alleged that he had no relationship with the child. Landers entered a plea at the pretrial hearing and the order of adjudication indicates that the court acquired jurisdiction in part because Landers lacked a home and a source of income. Therefore, the trial court clearly had a choice whether to return the child to her parent and the relevant inquiry under MCL 712A.19a(5) was whether returning the child to Landers would or would not “cause a substantial risk of harm to the child’s life, physical health, or mental well-being.” MCL 712A.19a(5). In making that determination, the court is to consider whether the parent substantially complied with the case service plan as well as “any condition or circumstance of the child that may be evidence that a return to the parent would cause a substantial risk of harm to the child’s life, physical health, or mental well-being. *Id.*

The trial court did not address these issues before deciding that it was compelled to return the child to Landers and terminate its jurisdiction over the child. There was evidence suggesting that such action could cause a substantial risk of harm to the child. The foster-care worker testified that Landers had suitable housing, but he had not completed parenting classes and the worker did not know whether he was participating in or benefiting from the classes. Further, the record showed that Landers’ attendance at family visits had been sporadic throughout the proceedings, even though he had been granted unsupervised visitation in October 2011. In addition, Landers had a wife and three other children in his home and there was no evidence regarding the child’s relationship with those persons. We therefore vacate the trial court’s order and remand for a proper determination of whether return of the child to Landers was warranted under MCL 712A.19a(5).

The trial court's order is vacated and the case is remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Christopher M. Murray

/s/ Mark J. Cavanagh

/s/ Cynthia Diane Stephens