

STATE OF MICHIGAN
COURT OF APPEALS

In re Murphy, Minor.

UNPUBLISHED

April 23, 2020

No. 350211

St. Clair Circuit Court

Family Division

LC No. 19-000094-NA

Before: GADOLA, P.J., and STEPHENS and SHAPIRO, JJ.

PER CURIAM.

Respondent appeals as of right from the order of disposition regarding his minor child, TM. He challenges the order of adjudication, following a jury trial, exercising jurisdiction over TM. We affirm.

This case arises out of allegations that respondent was aware that TM was being sexually abused by her half-brother, Jacob, and failed to protect her from the abuse. Jacob is six years older than TM. TM testified that Jacob first sexually assaulted her when she was five or six years old. She said that Jacob put his hand underneath her clothes and touched her legs and vagina. TM testified that Jacob would enter her bedroom while she was playing with dolls, and “he would make the dolls do inappropriate things and then do them to me.” TM testified that on one occasion Jacob got underneath the covers of a bed with her and began to touch her sexually. TM’s mother testified that she observed the children in the bed, “ripped the covers back,” and saw that Jacob “had his hand in his pants.” TM’s mother told respondent about this incident and Jacob was not allowed to spend the night at respondent’s home for two years. TM testified that Jacob began inappropriately touching her again in 2018 when she was 15. TM testified that she told respondent that Jacob had touched her inappropriately and that she did not want Jacob to come back to the house. TM said that respondent told her that he would “handle it and not worry,” yet in November 2018 respondent allowed Jacob to move into the home temporarily. TM testified that during this time Jacob approached her in the kitchen and started rubbing her arms and touching her legs. When TM tried to leave the kitchen, Jacob grabbed her arm and tried to kiss her, but TM “smacked him” and ran into her bedroom and locked the door.

Respondent argues that the trial court clearly erred by exercising jurisdiction under MCL 712A.19(b)(1) and (2). We disagree.¹

In child protective proceedings, jurisdiction is established if the petitioner establishes one of the grounds for jurisdiction in MCL 712A.2 by a preponderance of the evidence. *In re Long*, 326 Mich App 455, 459; 927 NW2d 724 (2018). A jury found, by a preponderance of the evidence, that statutory grounds existed for the trial court to exercise jurisdiction under MCL 712A.2(b)(1) and (2), which state:

(b) Jurisdiction 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 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.

In arguing that he was unaware of sexual contact between Jacob and TM, respondent relies heavily on the fact that a 2016 child protective services (CPS) investigation regarding the incidents of sexual abuse that occurred when TM was five years old was dismissed. As part of that investigation, TM participated in a forensic interview in which she stated that she made up the allegations that Jacob sexually assaulted her when she was five years old. At trial, TM testified that she lied in the interview, i.e., that the allegations were true. She explained that she did so because on the way to the interview respondent told her that “[f]amily doesn’t throw family underneath the bus,” and “not to worry and that everything would be okay and that [Jacob] wouldn’t get punished if [she] lied and that he’d be there watching.” TM testified that she lied because she felt she would have been excluded from the family if she told the truth. Given this testimony, the dismissal of the CPS investigation did not definitively establish that respondent was not aware of the abuse.

Respondent argues that TM provided inconsistent testimony on several matters. For instance, TM authored a journal entry around the time of the forensic interview stating, “My mom

¹ “This Court reviews for clear error the trial court’s factual findings and ultimate determinations on the statutory grounds for termination.” *In re White*, 303 Mich App 701, 709; 846 NW2d 61 (2014). “A finding is clearly erroneous if, after reviewing the entire record, we are definitely and firmly convinced that the trial court made a mistake.” *In re McCarrick/Lamoreaux*, 307 Mich App 436, 463; 861 NW2d 303 (2014).

cried, I had to lie mainly because she asked me.” Respondent argues that the journal entry proves that it was TM’s mother, not him, who encouraged TM to lie. Respondent also points to inconsistencies on more ancillary matters such as how long Jacob stayed at respondent’s home in November 2018. However, we generally defer to a jury’s credibility determinations given their unique opportunity to observe the witnesses. *Zeeland Farms Servs v JBL Enterprise, Inc.*, 219 Mich App 190, 195; 555 NW2d 733 (1996). Further, “a jury is free to believe or disbelieve, in whole or in part, any of the evidence presented.” *People v Perry*, 460 Mich. 55, 63; 594 N.W.2d 477 (1999). The jury may have indeed found that TM was not credible on some matters, while believing her testimony that she disclosed to respondent what Jacob was doing to her. Further, respondent overlooks that the jury was presented with evidence that did not reflect favorably on his credibility.² In sum, there was sufficient evidence presented for the jury to find that respondent was aware of incidents of sexual abuse between Jacob and TM.³

Respondent argues that even if he was aware about the allegations of abuse, there is no evidence that he failed to protect TM. Respondent asserts that after the incident occurred when TM was five years old, he installed a lock on TM’s door and established a house rule that boys were not allowed in TM’s bedroom. Although TM did have a lock on her bedroom door, she testified that respondent told her she was not allowed to lock it. Further, the house rule that boys were not allowed in TM’s bedroom was insufficient to protect TM, because on two occasions, while visiting respondent, Jacob entered TM’s bedroom and began touching TM’s legs and inner thighs. Further, TM testified Jacob would wait until respondent fell asleep and go into TM’s bedroom. More important, TM testified that respondent was aware what Jacob was doing, yet respondent continued to allow Jacob unsupervised access to TM. Given that evidence, the trial court did not clearly err in taking jurisdiction over TM.

Affirmed.

/s/ Michael F. Gadola
/s/ Cynthia Diane Stephens
/s/ Douglas B. Shapiro

² For instance, when TM again disclosed the allegations in 2018, respondent threatened the CPS worker that if she interviewed TM he would “sue the shit out of her.”

³ Respondent notes that “MCL 712A.2 speaks in the present tense, and, therefore, the trial court must examine the child’s situation at the time the petition was filed,” *In re Long*, 326 Mich App at 459 (quotation marks and citations omitted), and argues that he was not aware of any allegations of abuse other than those dismissed by CPS. This overlooks TM’s testimony that she made disclosures to respondent and that he told her to lie in the forensic interview.