STATE OF MICHIGAN

COURT OF APPEALS

In re BAB, Minor.

UNPUBLISHED
May 14, 2020

Nos. 351300; 351482
Otsego Circuit Court
Family Division
LC No. 19-000055-NA

Before: CAVANAGH, P.J., and SAWYER and RIORDAN, JJ.

PER CURIAM.

Respondent-mother appeals as of right the order of adjudication assuming jurisdiction over her minor child, BAB, pursuant to MCL 712A.2(b)(1), and the order of disposition removing BAB from her care and custody. The trial court ordered BAB be removed from respondent's care and custody and be placed in foster care after respondent was incarcerated and the Department of Health and Human Services (DHHS) was unable to find a relative or nonrelative with whom to place BAB. We affirm.

I. FACTS & PROCEDURAL HISTORY

The DHHS filed a petition in Leelanau County to remove BAB from respondent's care and custody because respondent was incarcerated for physically assaulting her boyfriend. Respondent's boyfriend refused to care for the child, and the DHHS was unable to find a relative who could or would care for BAB, so BAB was placed in a foster-care home. Respondent was released from jail after the charges against her related to her physical altercation with her boyfriend were dropped. BAB remained in foster care while respondent moved to Detroit, met a local pastor, and moved in with him and his family. About three months later, respondent was incarcerated again in Leelanau County Jail on charges of malicious destruction of property. A few weeks later, respondent executed a power of attorney to the pastor and the Leelanau trial court received a copy. The next day, the Leelanau trial court dismissed the petition.

Thereafter, the Otsego trial court issued an ex parte order to take BAB into protective custody. On that same day, the pastor contacted the DHHS to get information on BAB's welfare. The pastor had never met BAB, and he had written a letter to the Leelanau trial court, but had no direct contact with it. The pastor also claimed that he sent the DHHS a copy of the power of attorney before the Leelanau County trial court dismissed the petition.

The DHHS then filed a petition in Otsego Circuit Court to remove BAB from the care and custody of respondent. At the preliminary hearing, the trial court authorized the petition. Respondent appeared by polycom because she still was incarcerated. At the end of respondent's bench trial, the trial court assumed jurisdiction because respondent failed to provide BAB proper care and custody. The trial court specifically noted that the pastor was not present to take care of BAB when the petition was initially filed. Additionally, respondent only knew the pastor for about three months, and BAB had never met him.

At the dispositional hearing, the parties discussed respondent's treatment plan. Respondent did not discuss the trial court's assumption of jurisdiction. She simply requested that BAB be returned home to her. Respondent now appeals and challenges only the trial court's determination regarding jurisdiction.

II. ANALYSIS

Respondent argues that the trial court erred by determining that BAB came within the jurisdiction of the trial court pursuant to MCL 712A.2(b)(1). We disagree.

We review for clear error the trial court's decision to exercise jurisdiction. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). "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." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). To acquire jurisdiction, the factfinder must determine by a preponderance of the evidence that the child comes within the statutory requirements of MCL 712A.2. *In re Brock*, 442 Mich 101, 108; 499 NW2d 752 (1993).

Pursuant to MCL 712A.2(b)(1), a trial court has jurisdiction in proceedings concerning over a minor child

> [w]hose 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 ....

The trial court must examine the child's situation at the time the petition was filed. *In re Long*, 326 Mich App 455, 459; 927 NW2d 724 (2018). When a parent is unable to provide proper care for his or her child, the parent may entrust his or her child to another individual. *In re Mason*, 486 Mich 142, 161 n11; 782 NW2d 747 (2010). "What is important is whether the child receives proper care." *Matter of Taurus F*, 415 Mich 512, 543; 330 NW2d 33 (1982). Additionally, such an arrangement evidences the parent's concern for his or her child. *In re Nelson*, 190 Mich App 237, 241; 475 NW2d 448 (1991). Pursuant to MCL 700.5103(1), a parent may execute a power of attorney in regard to the care and custody of his or her child. A power of attorney is revocable at will and only effective for six months. MCL 700.5103(1); *In re Martin*, 237 Mich App 253, 257; 602 NW2d 630 (1999). "When the power of attorney expires, the legal authority to care for

the children terminates," and "the person with custody of the child no longer has legal power, authority, or obligation with regard to the child." *In re Martin*, 237 Mich App at 257.

Respondent argues that she arranged for the care and custody of BAB before she was incarcerated by executing a power of attorney so that the pastor could care for BAB. The trial court noted that respondent had a power of attorney in place, but it found that the power of attorney was insufficient because the pastor was not present when the DHHS filed its petition and because BAB had never met the pastor. Additionally, the trial court properly noted that respondent's execution of a power of attorney in place does not prevent jurisdiction because BAB could be returned to an unfit environment at respondent's whim. MCL 700.5103; *In re Martin*, 237 Mich App at 257.

The trial court had a responsibility to determine by a preponderance of the evidence, taking into consideration the power of attorney, whether respondent provided BAB proper care and custody pursuant to MCL 712A.2(b)(1). See *Brock*, 442 Mich 101 at 108. When the DHHS filed the petition in Otsego County, respondent was incarcerated and unable to care for BAB. See *Long*, 326 Mich App at 459. Respondent executed a power of attorney to the pastor three days before the petition was filed. At that time, respondent only knew the pastor for about three months and BAB had never met the pastor, nor was the pastor related to BAB. See *Webster*, 170 Mich at 106. Additionally, the pastor was not present in Otsego County at the time the DHHS filed the petition, and the DHHS had not had time to evaluate the pastor or the appropriateness of his home. Finally, the power of attorney that respondent granted the pastor was temporary and could have been revoked by respondent at any time, including after the trial court decided whether it had jurisdiction. See *Martin*, 237 Mich App at 257. Under these circumstances, the trial court properly assumed jurisdiction pursuant to MCL 712A.2(b)(1).

Respondent next argues that the trial court erred by assuming jurisdiction because a preponderance of evidence failed to support the conclusion that she abandoned BAB, posed a substantial risk of harm to BAB's mental well-being, or that she kept BAB in an unfit home environment. However, the trial court did not assume jurisdiction on those grounds. Rather, the trial court found that respondent left BAB without proper care and custody because respondent was incarcerated and she did not make proper arrangements for BAB's care and custody. The trial court stated its findings during the bench trial, and the adjudication order reflects those findings. Therefore, respondent's argument is without merit.

Respondent contends that the trial court improperly assumed jurisdiction because the petition was initially filed in Leelanau Circuit Court. Respondent cites MCL 722.954a, without citing any specific subsection. Respondent does not cite the record or provide any legal analysis, and has therefore abandoned this argument on appeal. *VanderWerp v Plainfield Charter Twp*, 278 Mich App 624, 633; 752 NW2d 479 (2008) ("appellants may not merely announce their position and leave it to this Court to discover and rationalize the basis for their claims; nor may they give issues cursory treatment with little or no citation of supporting authority").

III. CONCLUSION

BAB came within trial court's jurisdiction. Therefore, respondent is not entitled to relief on this issue. Accordingly, we affirm.

/s/ Mark J. Cavanagh
/s/ David H. Sawyer
/s/ Michael J. Riordan