STATE OF MICHIGAN

COURT OF APPEALS

In re K. TILLEY, Minor.

UNPUBLISHED
September 17, 2020

No. 353273
Ingham Circuit Court
Family Division
LC No. 19-076873-NA

Before: CAVANAGH, P.J., and BORRELLO and TUKEL, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order of adjudication exercising jurisdiction over the minor child, KT, under MCL 712A.2(b)(1) (parent neglects or refuses to provide proper or necessary support, education, medical, surgical or other care necessary for child's well-being) and MCL 712A.2(b)(2) (unfit home or environment). We affirm.

I. UNDERLYING FACTS

In April 2019 KT was removed from respondent's care after she witnessed an incident of domestic violence between respondent and KT's mother. Then, in December 2019, the Department of Health and Human Services (DHHS) filed a *Sanders*[1] petition naming respondent-father as a respondent.[2] DHHS alleged that although respondent had signed an affidavit of parentage in October 2019, he was not consistently participating in parenting-time visits, was unemployed, and did not have stable, independent housing. DHHS's allegations were substantiated at trial and the trial court entered an order of adjudication and took jurisdiction over KT under MCL 712A.2(b)(1) and (2). This appeal followed.

[1] *In re Sanders*, 495 Mich 394, 413-420; 852 NW2d 254 (2014) (requiring separate adjudications for each parent).

[2] KT's mother is not a party to this appeal.

II. ANALYSIS

"We review 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) (citation omitted). "A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *In re Schadler*, 315 Mich App 406, 408; 890 NW2d 676 (2016) (quotation marks and citation omitted). "We review the interpretation and application of statutes and court rules de novo." *In re Ferranti*, 504 Mich 1, 14; 934 NW2d 610 (2019). When the language of a statute "is unambiguous, no further judicial construction is required or permitted, because the Legislature is presumed to have intended the meaning it plainly expressed." *In re AJR*, 496 Mich 346, 352-353; 852 NW2d 760 (2014).

"In Michigan, child protective proceedings comprise two phases: the adjudicative phase and the dispositional phase." *In re Sanders*, 495 Mich 394, 404; 852 NW2d 524 (2014). In the adjudication phase, the trial court determines whether it "can exercise jurisdiction over the child (and the respondents-parents) under MCL 712A.2(b) so that it can enter dispositional orders, including an order terminating parental rights." *In re Ferranti*, 504 Mich at 15. "[T]he petitioner has the burden of proving by a preponderance of the evidence one or more of the statutory grounds for jurisdiction alleged in the petition." *In re Sanders*, 495 Mich at 405 (citation omitted). When determining whether it has jurisdiction in a case "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) (citation and quotation marks omitted).

MCL 712A.2 provides, in relevant part:

> The court has the following authority and jurisdiction:
>
> * * *
>
> (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. As used in this sub-subdivision, "neglect" means that term as defined in section 2 of the child abuse and neglect prevention act, 1982 PA 250, MCL 722.602.

In this case, respondent challenges only the trial court's exercise of jurisdiction under MCL 712A.2(b)(2). Under MCL 712A.2(b)(2) the focus is on the home or environment in which the minor lived at the time the petition was filed, not the home or environment in which the respondent

lives. *In re Long*, 326 Mich App at 462. KT was not living with respondent when the petition was filed in this case. But when the trial court made its MCL 712A.2(b)(2) findings, it considered only respondent's living arrangements, i.e. his home and environment; it failed to consider the home and environment KT was living in at the time the petition was filed. As such, the trial court erred, because it did not consider the proper home and environment for KT.

A trial court need not find more than one statutory ground for jurisdiction. MCL 712A.2(b); *In re SLH*, 277 Mich App 662, 669; 747 NW2d 547 (2008). Accordingly, reversal is required only if the trial court also erred by finding that it had jurisdiction under MCL 712A.2(b)(1). Respondent failed to address this issue in his brief on appeal and, therefore, we could consider the issue abandoned. See *Cheesman v Williams*, 311 Mich App 147, 161; 874 NW2d 385 (2015) ("An appellant may not merely announce a position then leave it to this Court to discover and rationalize the basis for the appellant's claims; nor may an appellant give an issue only cursory treatment with little or no citation of authority."). Nevertheless, given the interests involved in this case we exercise our discretion to address the merits of whether the trial court had jurisdiction under MCL 712A.2(b)(1).

KT had been removed from respondent's care by a court order prior to the filing of the petition. As such, whether KT was receiving appropriate care in her placement at the time the petition was filed had no effect on whether *respondent* provided her with proper care and custody. See *In re Baham*, ___ Mich ___, ___; ___ NW2d ___ (2020) (Docket No. 349595); slip op at 6 (holding that for the purposes of MCL 712A.2(b)(1) whether a minor is properly cared for in his or her current placement is only relevant if the respondent placed the minor in the caregiver's care). The record established that respondent "refuse[d] to provide proper or necessary support" to KT. Respondent was offered parenting time once a week for two hours. But, of the eight visits that respondent was offered between November and December 2019, respondent cancelled three and was approximately an hour late for another. When respondent did visit KT, he often simply played music and had limited physical interaction with KT. Respondent admits that he was unemployed, and while he asserts that he had independent housing at the time DHHS filed the petition, the evidence at the bench trial suggests otherwise. Thus, at the time the petition was filed, petitioner had missed almost half his visits with KT; was not employed; and his claim that he had housing was not verified by any evidence or witnesses. As such, the record establishes that respondent "refuse[d] to provide proper or necessary support" to KT. Consequently, the trial court properly exercised jurisdiction under MCL 712A.2(b)(1) because respondent failed to provide the necessary support or care for KT's health or morals.

III. CONCLUSION

For the reasons stated, the trial court's order of adjudication is affirmed.

/s/ Mark J. Cavanagh
/s/ Stephen L. Borrello
/s/ Jonathan Tukel