

STATE OF MICHIGAN
COURT OF APPEALS

In re RODRIGUEZ, Minors.

UNPUBLISHED
December 17, 2020

No. 354299
Saginaw Circuit Court
Family Division
LC No. 20-036109-NA

Before: SWARTZLE, P.J., and BECKERING and GLEICHER, JJ.

PER CURIAM.

Respondent-mother filed an interlocutory appeal in these child protective proceedings to challenge the removal of her two young children from her care instead of retaining the children in her home while providing family services. Given respondent’s failure to protect her infant daughter from the baby’s father, the court did not err in finding grounds for removal. We affirm.

I. BACKGROUND

Respondent has two children with Ezekiel Rodriguez: ER (born March 29, 2019) and GR (born April 24, 2020). On November 24, 2019, Child Protective Services (CPS) investigated a report that Rodriguez had physically abused then seven-month-old ER. The claim was substantiated and Rodriguez was charged criminally. Rodriguez pleaded to third-degree child abuse, was sentenced to probation, and an order entered prohibiting Rodriguez contact with ER.

Respondent continued to live with Rodriguez’s mother and relied on her for support and childcare assistance. On June 20, 2020, however, Rodriguez’s mother was out of town and respondent wanted to take 15-month-old ER to the beach. She asked Rodriguez to watch two-month-old GR while she was gone. The next day, respondent noticed bruising on GR’s leg. She sent a photo of the bruises to Rodriguez’s mother, but did not seek medical attention for the infant. When Rodriguez’s mother returned, she observed that GR’s other leg was hard and swollen. After confronting her son, Rodriguez apologized and stated that he did not intend to grab the baby “so hard.”

Rodriguez’s mother took GR to the hospital where x-rays confirmed that her leg was broken in two places, and uncovered healing fractures in her arms. A doctor reported to Child Protective Services (CPS) that the injuries were consistent with nonaccidental trauma. The

Department of Health and Human Services (DHHS) filed a petition to remove the children from respondent's care. A referee signed an ex parte order for removal, finding that reasonable services were not required to prevent removal because of the aggravated circumstances of physical abuse.

II. ANALYSIS

Respondent challenges the lower court's determination that removal was warranted in this case. We review a trial court's factual findings in a child protection proceeding for clear error. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). A finding is clearly erroneous when this Court is "left with a definite and firm conviction that a mistake has been made." *In re Miller*, 433 Mich 331, 335; 445 NW2d 161 (1989).

MCR 3.965(C)(1) provides that if a child is not released to a parent or guardian at the preliminary hearing, "the court shall receive evidence, unless waived, to establish that the criteria for placement [in foster care] set forth in subrule 3.965(C)(2) are present." Respondent waived the receipt of evidence, permitting the referee to rely on the allegations in the petition to determine if the criteria for placement existed. MCR 3.965(C)(2) sets forth those criteria as follows:

The court may order placement of the child into foster care if the court finds all of the following:

(a) Custody of the child with the parent presents a substantial risk of harm to the child's life, physical health, or mental well-being.

(b) No provision of service or other arrangement except removal of the child is reasonably available to adequately safeguard the child from the risk as described in subrule (a).

(c) Continuing the child's residence in the home is contrary to the child's welfare.

(d) Consistent with the circumstances, reasonable efforts were made to prevent or eliminate the need for removal of the child.

(e) Conditions of child custody away from the parent are adequate to safeguard the child's health and welfare.

The court rule is identical to the requirements set forth by the Legislature in MCL 712A.13a(9).

The court did not clearly err in this case. Respondent knew that Rodriguez had physically abused ER when he was only seven months old, that he had been convicted of child abuse, and that a court had entered a no contact order against him in relation to ER. Despite this knowledge, respondent asked Rodriguez to watch two-month-old GR. Respondent observed GR's injuries after her stay with Rodriguez and did not seek medical treatment for the baby. Rodriguez broke GR's leg in two places during his short visit. Moreover, the baby had older, unexplained fractures in her arms that could have occurred while under respondent's care.

This evidence more than adequately established that ER and GR faced “a substantial risk” of physical harm if retained in their mother’s custody during the child protective proceedings. MCR 3.965(C)(2)(a); MCL 712A.13a(9)(a). As a court-entered no-contact order did not prevent respondent from placing her child in danger, there was no reason for a court to find that services or some “other arrangement except removal” could “adequately safeguard” ER and GR. MCR 3.965(C)(2)(b); MCL 712A.13a(9)(b). Continuing the children’s residence in respondent’s home was “contrary to [their] welfare” as respondent had voluntarily allowed a known child abuser to care for GR. MCR 3.965(C)(2)(c); MCL 712A.13a(9)(c).

Further, the court correctly determined that “reasonable efforts” were not required to “prevent or eliminate the need for removal of the” children based on respondent’s decision to place her daughter in the care of a convicted child abuser. MCR 3.965(C)(2)(d); MCL 712A.13a(9)(d). Specifically, a trial court is not required to make reasonable efforts to prevent a child’s removal if the court determines that “the parent has subjected the child to aggravated circumstances as listed in . . . the Child Protection Law, MCL 722.638(1) and (2).” MCR 3.965(C)(4). Such aggravated circumstances exist where a child or the child’s sibling is subject to “battering or other severe physical abuse . . . by a parent or adult in the household.” MCL 722.638(1)(a)(iii). Both ER and GR had been battered and physically abused by their putative father, eliminating the need for reasonable efforts to avoid removal in this case. Finally, by placing the children into licensed foster care, the court ensured that the children were placed in conditions “adequate to safeguard” the children’s “health and welfare.” MCR 3.965(C)(2)(e); MCL 712A.13a(9)(e).

Respondent further argues that the trial court erred by removing ER from her care because he did not suffer injuries from the most recent incident involving GR. However, Rodriguez’s actions had injured both children and respondent’s poor decisions could place both her children in danger in the future. The court correctly determined that immediate action was required to protect both children, not just GR.

We affirm.

/s/ Brock A. Swartzle
/s/ Jane M. Beckering
/s/ Elizabeth L. Gleicher