STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
April 14, 2025
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In re FERNALD, Minors.

Nos. 372395 and 372397
Wayne Circuit Court
Family Division
LC No. 2017-000682-NA

Before: GARRETT, P.J., and K. F. KELLY and SWARTZLE, JJ.

PER CURIAM.

In Docket No. 372395, respondent-mother appeals the trial court's order removing the minor children, DAF, JAF, COF, and HIF, from her care. In Docket No. 372397, respondent-father challenges the removal of the children from respondent-mother. We affirm.

Children's Protective Services (CPS) received a complaint in March 2024 alleging that respondent-father had forcibly tried to take respondent-mother's phone to sell for drug money. Respondent-father leaned against respondent-mother's broken legs, spit in her face, and threw an alcoholic drink in her face. HIF witnessed the incident, and some of the alcoholic beverage hit her. Respondent-father pushed HIF, knocking her to the floor. Respondent-father was arrested. At the time, respondent-mother had an active personal-protection order against him. Respondent-mother's legs were allegedly broken because of another incident of domestic violence in which respondent-father hit her with a van. A CPS worker attempted to assess the home, but respondent-mother did not allow it.

In April 2024, CPS received another complaint involving a new report of domestic violence at the end of March 2024, during which respondent-father entered respondent-mother's home without permission, argued with her, and threatened to burn down the house if she called the police. Officers responded and found unsuitable living conditions, including "excessive clutter and trash." Officers described the home as a "hoarder house" and a "fire hazard." Another incident of domestic violence occurred in April 2024, with respondent-father entering the home uninvited and asking respondent-mother to drop the charges against him. When respondent-mother refused,

respondent-father grabbed her face and squeezed her foot through her cast as she sat in a wheelchair.

In May 2024, the Michigan Department of Health and Human Services (DHHS) filed a petition, requesting removal of the children from respondents' care and termination of respondents' parental rights. The petition alleged that it was contrary to the welfare of the children to remain in respondents' care, on the basis of an "unreasonable risk of harm due to domestic violence, unfit housing and physical neglect." The petition detailed the respondents' extensive history of CPS contacts, including a removal in 2017 due to physical neglect and home conditions, and domestic violence.

A preliminary hearing was held, during which respondent-father stated that he no longer lived in the home. A DHHS worker described the domestic violence incidents and home conditions, and explained that HIF had reported to the DHHS that respondent-father pushed her down and assaulted respondent-mother. The DHHS had not been able to complete a home assessment or verify the well-being of the children because respondent-mother was uncooperative. At the hearing, respondent-mother expressed willingness to participate in a home assessment if she was given 48 hours to prepare.

The referee adjourned the probable-cause portion of the hearing so that the DHHS could contact tribes to determine whether the family had Indian heritage. The referee found, however, that it was contrary to the children's welfare to remain in the home, noting respondents' "extensive history of domestic violence" and "unfit" home conditions. The trial court entered an order removing the children from the home. The trial court found that reasonable efforts were made by the DHHS to prevent removal, including completing an investigation, interviewing HIF, holding a Team Decision Making meeting, providing respondents with resource guides, attempting to implement a safety plan, and contacting the police.

Respondents now appeal.

Respondents argue that the trial court erred by finding that it was contrary to the children's welfare for them to remain in respondent-mother's care and custody.[1] We review for clear error a trial court's factual findings. *In re Benavides*, 334 Mich App 162, 167; 964 NW2d 108 (2020). A finding is clearly erroneous if this Court is left with a definite and firm conviction that the trial court made a mistake. *In re Diehl*, 329 Mich App 671, 687; 944 NW2d 180 (2019).

Under MCL 712A.13a(9), a court may order placement of a child in foster care if the court finds that:

[1] The DHHS has not challenged respondent-father's standing to bring claims challenging removal from respondent-mother's care and custody. See, e.g., *In re Terry*, 240 Mich App 14, 21; 610 NW2d 563 (2000). For purposes of this appeal, we assume for the sake of argument that respondent-father has standing to bring these claims.

(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 risk as described in subdivision (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. [MCL 712A.13a(9); see also MCR 3.965(C)(2).]

When a trial court orders that a child be placed "in foster care, it must make explicit findings that it is contrary to the welfare of the child to remain at home, and reasonable efforts to prevent the removal of the child have been made or that reasonable efforts to prevent removal are not required." *In re Benavides*, 334 Mich App at 168 (cleaned up).

The trial court did not err by finding that it was contrary to the children's welfare to remain in the home. This Court is not holding it against respondent-mother that she was a *victim* of domestic violence, nor does it appear that the trial court solely made its contrary-to-the-welfare findings on that basis. See *In re Jackisch/Stamm-Jackisch*, 340 Mich App 326, 334-335; 985 NW2d 912 (2022). It was not improper for the trial court to consider the ongoing nature of the domestic violence, and that respondent-mother had not been effective at preventing the abuse from impacting the children, including HIF being assaulted during a recent incident. See *id.*; *In re Plump*, 294 Mich App 270, 273; 817 NW2d 119 (2011).

Moreover, the trial court properly considered the ongoing issues with the home conditions, including descriptions that the house was "a hoarding situation" and "fire hazard." Although respondents argue that there was no evidence that the same home conditions existed at the time of the preliminary hearing, respondent-mother requested additional time to clean the home before the DHHS completed a home assessment, indicating that the conditions persisted. Respondent-father argues that respondent-mother "initiated a diligent effort to alleviate the unsatisfactory conditions," but the DHHS had not been able to witness that.

Further, respondent-father admits on appeal that respondent-mother "was injured by" respondent-father, resulting in her being in a wheelchair, which contributed to the housing conditions. Although respondents argue that there was no longer a threat of domestic violence because respondent-father no longer lived in the home, there was evidence that respondent-father had already committed domestic violence against respondent-mother by entering the home uninvited. Accordingly, there is a reasonable likelihood that he could return to the home and engage in additional acts of violence against respondent-mother or the children. The March and April 2024 incidents occurred not long before the DHHS filed its petition in May 2024.

Respondent-father also argues that the trial court failed to make "explicit findings" as to whether staying with respondent-mother would be contrary to the children's welfare. The trial court, however, specifically articulated the basis of its findings both at the hearing and in its written order.

Next, respondent-father argues that the trial court's findings were "largely based on hearsay within hearsay." Without the hearsay, according to respondent-father, the only direct evidence at trial about domestic violence was that there had been no recent domestic violence. "Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." *In re Utrera*, 281 Mich App 1, 18; 761 NW2d 253 (2008) (cleaned up). A trial court may make its contrary-to-the-welfare findings "on the basis of hearsay evidence that possesses adequate indicia of trustworthiness." MCR 3.695(C)(3).

In this case, the trial court relied on reliable information. The petition and testimony at the hearing showed an extensive history between respondents and the DHHS. The DHHS completed a thorough investigation, and respondents have not demonstrated why any of the statements relied upon by the trial court were not trustworthy. Therefore, the trial court did not err by relying on this information at the preliminary hearing.

Finally, as part of his overall argument that removal was not warranted, respondent-father briefly notes that there was not evidence of reasonable efforts to prevent the children's removal. "[T]his Court need not address an issue that is given only cursory consideration by a party on appeal." *Eldred v Ziny*, 246 Mich App 142, 150; 631 NW2d 748 (2001). Regardless, the record demonstrates that the DHHS made reasonable efforts before removal, including offering services to respondents, speaking with the children, and attempting to implement a safety plan.

Affirmed.

/s/ Kristina Robinson Garrett
/s/ Kirsten Frank Kelly
/s/ Brock A. Swartzle