

STATE OF MICHIGAN  
COURT OF APPEALS

---

UNPUBLISHED  
October 14, 2026  
10:41 AM

*In re* Z. HELTON, Minor.

Nos. 379732; 379749  
Lenawee Circuit Court  
Family Division  
LC No. 25-000118-NA

---

Before: GADOLA, C.J., and O'BRIEN and MARIANI, JJ.

PER CURIAM.

These consolidated appeals<sup>1</sup> relate to child protective proceedings concerning ZH. In Docket No. 379732, respondent appeals as of right the order granting removal of ZH. In Docket No. 379749, respondent appeals as of right the order of disposition regarding ZH. The substance of his claims of error in Docket No. 379749, however, concern the trial court's order of adjudication, which exercised jurisdiction over ZH under MCL 712A.2(b)(1) (substantial risk of harm to mental well-being, lack of proper custody or guardianship) and (2) (unfit home). We affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

Respondent, who struggled with alcohol and methamphetamine abuse, was ZH's primary caregiver. The two lived with respondent's stepfather, Richard Wise. During the Children's Protective Services (CPS) investigation, respondent tested positive multiple times for both amphetamine and methamphetamine. Respondent was also involved in two separate domestic violence incidents, the first with respondent's niece and the second with Wise. Respondent was not charged either time, but ZH was present and witnessed both events. During the dispute with Wise, ZH passed some of respondent's belongings, including drug paraphernalia, through a window to respondent, although respondent said ZH did not know the paraphernalia was there.

---

<sup>1</sup> *In re Z. H. Minor*, unpublished order of the Court of Appeals, entered March 23, 2026 (Docket Nos. 379732 and 379749).

After the second incident of domestic violence, a personal protective order prevented respondent from going to Wise's home, but ZH continued to live there. After a preliminary hearing, the trial court authorized the petition seeking jurisdiction. The court also ordered removal of ZH on the basis of probable cause. About a month later, after a bench trial, the court also took jurisdiction over ZH as noted earlier. Although the court took jurisdiction over ZH he continued to live with Wise. Respondent now appeals.

## II. REMOVAL

Respondent argues that the trial court erred by applying a probable-cause standard and by finding that removal was appropriate. We agree that the court applied the incorrect standard but hold that reversal is not required.

### A. ISSUE PRESERVATION

"In general, issues that are raised, addressed, and decided by the trial court are preserved for appeal." *In re TK*, 306 Mich App 698, 703; 859 NW2d 208 (2014). But see *Glasker-Davis v Auvenshine*, 333 Mich App 222, 227; 964 NW2d 809 (2020) (clarifying that issues that were either raised *or* decided are preserved for review). In this case, respondent argued against removal at the preliminary hearing but did not state that the incorrect standard was used. Therefore, respondent's argument that there was insufficient evidence to grant removal is preserved, but his argument about the standard applied is unpreserved.

### B. STANDARD OF REVIEW

The interpretation and application of statutes and court rules are reviewed de novo, *In re Williams*, 333 Mich App 172, 178; 958 NW2d 629 (2020), while "a trial court's factual findings regarding grounds for removal" are reviewed for clear error, *In re White*, \_\_\_ Mich App \_\_\_, \_\_\_; \_\_\_ NW3d \_\_\_ (2026) (Docket No. 378232); slip op at 3. "A finding is only clearly erroneous if an appellate court is left with a definite and firm conviction that a mistake has been made." *In re Benavides*, 334 Mich App 162, 167; 964 NW2d 108 (2020) (quotation marks and citation omitted).

"Generally, whether child protective proceedings complied with a respondent's substantive and procedural due process rights is a question of law that this Court reviews de novo." *TK*, 306 Mich App at 703. But "unpreserved claims of constitutional error" are reviewed for plain error. *In re VanDalen*, 293 Mich App 120, 135; 809 NW2d 412 (2011). See also *Tolas Oil & Gas Exploration Co v Bach Servs & Mfg, LLC*, 347 Mich App 280, 294 & n 3; 14 NW3d 472 (2023) (excluding cases involving termination of parental rights from holding that plain error does not apply to civil cases). Under that analysis, forfeiture is only avoided if an obvious error occurred that "affected substantial rights." *In re Lovitt*, 351 Mich App 237, 243; 34 NW3d 645 (2024) (quotation marks and citation omitted). "Generally, an error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings." *Id.* (quotation marks and citation omitted).

### C. ANALYSIS

At a preliminary hearing, “the court must decide whether to authorize the filing of the petition and, if authorized, whether the child should remain in the home, be returned home, or be placed in foster care pending trial.” MCR 3.965(B)(12). Generally, the rules of evidence do not apply. *Id.* Under MCR 3.965(C)(2), the court may order removal 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.

See also MCL 712A.13a(9) (listing the same five requirements). And although the trial court generally need not “articulate extensive findings regarding every conceivable detail,” if “a statute or court rule requires factual findings as to an enumerated list of factors, the trial court must make a record of its findings as to each and every factor sufficient for this Court to conduct a meaningful review.” *Williams*, 333 Mich App at 183. A preponderance of the evidence standard applies to a trial court’s decision whether to remove a child. *In re White*, \_\_\_ Mich App at \_\_\_; slip op at 4.

In this case, we hold that the trial court did not clearly err by ordering ZH’s removal. First, there was substantial evidence by which the trial court could find by a preponderance of the evidence that respondent’s custody of ZH “present[ed] a substantial risk of harm to [ZH’s] life, physical health, or mental well-being,” MCR 3.965(C)(2)(a), and was contrary to ZH’s welfare, MCR 3.965(C)(2)(c). Respondent was involved in two instances of domestic violence while ZH was present, and alcohol was involved in one of them. Although respondent was not charged for these incidents, their occurrence indicates that the home environment was unstable. Moreover, a personal protection order prevented respondent from going to Wise’s home. Such an environment posed a substantial risk of harm to ZH’s mental well-being and was contrary to his welfare. MCR 3.965(C)(2)(a) and (c).

In addition, respondent admitted that his substance use impaired his ability to parent. On one occasion, respondent even asked ZH to pass some of his belongings, including drug paraphernalia, through a window. While respondent testified that ZH did not know the drug paraphernalia was there, the incident showed that such items were in close proximity to ZH, which

was detrimental to his health and well-being. Respondent had contacted substance abuse treatment facilities, however he had not begun any treatment as of the preliminary hearing.

According to the CPS investigator, respondent told her that he did not think he could change. Respondent also associated with alleged substance abusers and permitted ZH to be in close contact with them. This posed a serious risk to ZH's health and well-being and could have contributed to normalizing substance abuse for him. Respondent, on the other hand, called himself a functioning addict, believed he could get and stay sober, and said that he never used substances when ZH was with him. Respondent also testified that he took care of ZH in many practical aspects and ZH did well at school and in soccer. But that testimony did not outweigh the substantial evidence suggesting that respondent's behavior and choices had a strong negative effect on ZH, as the trial court found. MCR 3.965(C)(2)(a) and (c).

Next, the trial court indicated in its order that no solution other than removal was reasonably available, although the court did not elaborate on that point on the record. MCR 3.965(C)(2)(b). See also *In re KMN*, 309 Mich App 274, 287; 870 NW2d 75 (2015) (“[A] court speaks through its written orders and judgments, not through its oral pronouncements.”) (quotation marks and citation omitted). We conclude that this finding was not clearly erroneous. Admittedly, ZH was already placed in a suitable home with Wise, and respondent said he was willing to take drug tests and sign releases showing participation in substance abuse treatment. But we are not firmly and definitely convinced that the court made a mistake. ZH was still subjected to a risk of harm by respondent's conduct even while living with Wise, as discussed earlier. *Benavides*, 334 Mich App at 167. Respondent was the common factor in multiple events of domestic violence in the home and brought ZH in proximity to drug paraphernalia and users. And respondent had not demonstrated that he participated in any substance abuse treatment, despite his assertions that he would.

The court also found that “reasonable efforts were made to prevent or eliminate the need for removal . . . .” MCR 3.965(C)(2)(d). The court cited the CPS investigator's account of these efforts, which included conducting home visits and meetings with respondent, in addition to informing respondent about substance abuse help, housing, employment, and other services. The court's finding was not clearly erroneous in light of the substantial efforts made. *Benavides*, 334 Mich App at 167.

The court found also that the living conditions at Wise's house were adequate because Wise was ZH's relative and ZH had been successfully living there. MCR 3.965(C)(2)(e). Respondent contends that the court's decision was contradictory because much of the alleged unrest occurred in Wise's home. But, respondent was the common element involved in that unrest. The trial court was justified in finding that without respondent, Wise's home was a suitable placement, and we are not firmly or definitely convinced that such a finding was misplaced. *Benavides*, 334 Mich App at 167.

As a final matter, DHHS said the proper standard for deciding removal was probable cause, and the trial court explicitly applied that standard. Nothing in the written order indicated that a different standard was applied. This was plain error because the correct standard is preponderance of the evidence. *White*, \_\_\_ Mich App at \_\_\_; slip op at 4; *Lovitt*, 351 Mich App at 243. Nonetheless, we affirm because the error was not outcome-determinative. *Lovitt*, 351 Mich App

at 243. Namely, for the reasons discussed earlier, the court’s decision was supported by a preponderance of the evidence. Respondent’s conduct in the home and his substance use put ZH at a substantial risk of harm and was contrary to ZH’s welfare; despite respondent’s intentions to better himself, there was no evidence that any reasonable alternatives to removal existed at the time; DHHS made reasonable efforts to prevent removal; and Wise’s home was a suitable placement for ZH.

### III. ADJUDICATION

Respondent argues that the trial court used the incorrect standard—probable cause, rather than a preponderance of the evidence—and exercised jurisdiction on the basis of insufficient evidence. We disagree on both counts.

#### A. ISSUE PRESERVATION

Issues in child protective proceedings are preserved if they were raised or decided below. *Glasker-Davis*, 333 Mich App at 227; *TK*, 306 Mich App at 703. In this case, respondent argued against adjudication at the trial, so respondent’s arguments regarding the sufficiency of the evidence are preserved. However, respondent did not raise any constitutional issues in the trial court or argue that the incorrect standard was applied. Those issues are therefore unpreserved.

#### B. STANDARD OF REVIEW

“Challenges to the court’s decision to exercise jurisdiction are reviewed for clear error in light of the court’s finding of fact.” *In re Kellogg*, 331 Mich App 249, 253; 952 NW2d 544 (2020) (quotation marks and citation omitted). “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.” *Id.* (quotation marks and citation omitted). Furthermore, we must “draw all reasonable inferences and make credibility choices in support of the [fact-finder’s] verdict.” *In re Sluiter*, 351 Mich App 706, 727; 36 NW3d 371 (2024).

“In child protective proceedings, the trial court must first determine whether it may exercise jurisdiction over the child.” *In re PAP*, 247 Mich App 148, 152; 640 NW2d 880 (2001). “If a trial is held regarding adjudication, the respondent is entitled to a determination of the facts by the jury or judge, the rules of evidence apply, and jurisdiction must be established by a preponderance of the evidence.” *In re Mota*, 334 Mich App 300, 312-313; 964 NW2d 881 (2020). Moreover, “[t]o determine whether jurisdiction exists, the trial court must examine the child’s situation at the time the petition was filed . . . .” *In re Leach*, 347 Mich App 26, 32; 14 NW3d 178 (2023) (quotation marks and citation omitted).

“Generally, whether child protective proceedings complied with a respondent’s substantive and procedural due process rights is a question of law that this Court reviews de novo.” *TK*, 306 Mich App at 703. But “unpreserved claims of constitutional error” are reviewed for plain error. *VanDalen*, 293 Mich App at 135. See also *Tolas*, 347 Mich App at 294 & n 3. Under that analysis, forfeiture is only avoided if an obvious error occurred that “affected substantial rights.” *Lovitt*, 351 Mich App at 243 (quotation marks and citation omitted). And “[g]enerally, an error affects

substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings.” *Id.* (quotation marks and citation omitted).

### C. ANALYSIS

First, the trial court in this case applied the correct standard to its adjudicative decision. For although the court said “probable cause” once during the adjudicatory trial, its written order states that its findings were by a preponderance of the evidence. See *KMN*, 309 Mich App at 287 (“[A] court speaks through its written orders and judgments, not through its oral pronouncements.”). Therefore, no constitutional error occurred at the adjudication. *Mota*, 334 Mich App at 313.

Next, the trial court assumed jurisdiction under MCL 712A.2(b)(1) and (2), which provide in relevant part that a court has jurisdiction over a child

(1) . . . who is subject to a substantial risk of harm to his or her mental well-being . . . or who is without proper custody or guardianship. As used in this subdivision:

\* \* \*

(C) “Without proper custody or guardianship” does not mean a parent has placed the juvenile with another person who is legally responsible for the care and maintenance of the juvenile and who is able to and does provide the juvenile with proper care and maintenance.

(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 . . .

“Michigan traditionally permits a parent to achieve proper care and custody through placement with a relative.” *In re Mason*, 486 Mich 142, 161 n 11; 782 NW2d 747 (2010). See also *In re Dixon (On Reconsideration)*, 347 Mich App 337, 356; 14 NW3d 497 (2023) (“[I]f a parent places a child in the care of a relative whose home is not unfit, then the ‘without proper custody or guardianship’ language is not satisfied.”) (quotation marks and citation omitted). But “[i]f a parent places a child in the care of a relative whose home *is* unfit, the parent has not provided proper care and custody.” *Id.* at 356-357.

Regarding MCL 712A.2(b)(2), evidence of violence in the home while the child is present may indicate an unfit home. See *Sluiter*, 351 Mich App at 733 (“[A] home where domestic violence repeatedly occurs is not a fit environment in which to raise a child.”); *In re Miller*, 182 Mich App 70, 80; 451 NW2d 576 (1990) (“Evidence of violence between parents in front of the children is certainly relevant to showing . . . that the home is an unfit place for the children by reason of criminality or depravity.”). And a conviction is not required to find “criminality” under MCL 712A.2(b)(2). *In re MU*, 264 Mich App 270, 279; 690 NW2d 495 (2004).

In this case, the court’s decision to exercise jurisdiction was not clearly erroneous. ZH received proper custody or guardianship under MCL 712A.2(b)(1) because he was placed with

Wise, whose home was suitable. *Mason*, 486 Mich at 161 n 11; *Dixon*, 347 Mich App at 356. Nevertheless, there was sufficient evidence to determine that ZH was at a substantial risk of harm to his mental well-being because of respondent's conduct.

ZH was present during multiple incidents of domestic violence involving respondent. Although respondent argues that he was not the aggressor and was not charged for those events, he was the common element in both situations. Ultimately, even though respondent said violence was unusual in the home, the court could have rationally disbelieved him and inferred from the other evidence that respondent was a destabilizing factor in the family, negatively impacting ZH's mental well-being. *Sluiter*, 351 Mich App at 727; MCL 712A.2(b)(1).

Furthermore, respondent had recent alcohol and substance abuse issues and admitted that these impaired his ability to parent. According to the CPS investigator respondent stated that he did not think substance abuse treatment would work. Respondent contends on appeal that substance abuse alone cannot justify exercising jurisdiction. But there was not merely evidence of substance abuse to support the trial court's decision. Rather, in addition to the domestic violence issues, respondent saw no problems with having ZH pass him drug paraphernalia through a window. Respondent testified that he never used substances around ZH, but that did not eliminate a finding that there was a substantial risk of harm to ZH, considering all the evidence. *Kellogg*, 331 Mich App at 253. Neither did ZH's placement with a relative preclude the court from exercising jurisdiction. See *In re Leach*, 347 Mich App 26, 33; 14 NW3d 178 (2023) (stating that placement with the other parent while the respondent was incarcerated "[did] not eliminate the possibility of mental or emotional harm to a child . . ."). In conclusion, the court did not clearly err by finding that ZH was at a substantial risk of harm to his mental well-being and exercising jurisdiction under MCL 712A.2(b)(1). *Kellogg*, 331 Mich App at 253.

Additionally, there was enough evidence to support a finding that jurisdiction was proper under MCL 712A.2(b)(2). Although ZH was living at Wise's house, which was suitable, the statute authorizes jurisdiction over a child "[w]hose home or environment" is unfit because of the parent's conduct. MCL 712A.2(b)(2) (emphasis added). The evidence that ZH witnessed violence in the home involving respondent was enough to make the home environment unfit when respondent was there. *Sluiter*, 351 Mich App at 733; *Miller*, 182 Mich App at 80. The lack of a criminal conviction of respondent did not preclude such a finding. *MU*, 264 Mich App at 279.

There was ample evidence by which the trial court could find that jurisdiction was proper under MCL 712A.2(b)(1) and (2). In conclusion, we hold that the trial court properly exercised jurisdiction over ZH.

#### IV. CONCLUSION

The trial court erred by applying a probable-cause standard to its removal decision, but reversal is not required because the error was not outcome-determinative. Moreover, the trial court applied the correct adjudicatory standard and did not clearly err by assuming jurisdiction over ZH under MCL 712A.2(b).

Affirmed.

/s/ Michael F. Gadola  
/s/ Colleen A. O'Brien  
/s/ Philip P. Mariani