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STATE OF MICHIGAN
IN THE SUPREME COURT

IN RE D V LANGE MINOR

Supreme Court Case No. 166509

Court of Appeals Case No. 362365

Wayne County Circuit Court, Juvenile Division Case No. 2021-000658-NA

ATTACHMENTS

APPELLANT-MOTHER'S SUPPLEMENTAL BRIEF

Index

Attachment A: *In re Holbrook*, unpublished per curiam opinion of the Court of Appeals, issued May 19, 2022 (Docket No. 359504)

Attachment B: *In re JM*, unpublished per curiam opinion of the Court of Appeals, issued January 13, 2022 (Docket No. 356510)

Attachment C: *In re Lange*, unpublished per curiam opinion of the Court of Appeals, issued November 2, 2023 (Docket No. 362365)

Attachment D: *In re Lard*, unpublished per curiam opinion of the Court of Appeals, issued August 10, 2023 (Docket Nos. 364489 and 364490)

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STATE OF MICHIGAN

COURT OF APPEALS

In re J J HOLBROOK, Minor.

UNPUBLISHED
May 19, 2022

No. 359504
Oakland Circuit Court
Family Division
LC No. 2020-882579-NA

Before: SWARTZLE, P.J., and CAMERON and PATEL, JJ.

PER CURIAM.

Respondent appeals the trial court order finding statutory grounds for jurisdiction over the minor child, JJH, under MCL 712A.2(b)(1) (parent, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for health or morals or parent presents a substantial risk of harm to the child's mental well-being). We affirm.

I. BACKGROUND

JJH has a complex mental health history that was addressed with various treatment modalities for a number of years. When JJH's emotional outbursts, physical aggression, and self-harming behaviors increased in frequency and intensity, respondent took JJH to a local hospital because she could no longer keep JJH safe. JJH was transferred from the hospital to a mental health facility for inpatient treatment.

While JJH was at the mental health facility, Child Protective Services (CPS) became involved due to allegations of physical abuse and neglect. In preparation for JJH's return home, CPS investigator Christian Saba worked with respondent on establishing a safety plan. Saba and other CPS workers repeatedly asked respondent to complete paperwork for Community Mental Health (CMH) services so that additional mental health resources could be accessed for JJH.[1]

[1] Due to the nature of respondent's insurance, there were barriers in getting him treatment. The CMH paperwork was necessary to put JJH in the CMH network to access services that private insurance could not provide.

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Respondent advocated for JJH's admission to a long-term residential treatment program. But mental health professionals allegedly told DHHS that JJH did not meet the criteria for long-term residential treatment services and all other options, such as in-home treatment, would have to be exhausted first. Saba and respondent discussed intensive in-home mental health services recommended by the mental health professionals. Respondent refused the in-home services, did not fill out the CMH paperwork, and did not provide an alternative plan for JJH's care in lieu of returning home.

After several weeks at the mental health facility, JJH was transferred to a short-term crisis center to prepare for reintegration into the family home. JJH's self-harming behavior and aggression escalated at the short-term crisis center. Due to the lack of adequate resources to address JJH's risks and needs, the short-term crisis center released JJH from its services. JJH threatened suicide if he was returned home with respondent. Respondent refused to pick JJH up from the short-term crisis center because she did not feel safe around JJH and she would not allow him to return to her home due to the risk of harm to himself and others.[2]

In advance of filing its petition for temporary custody of JJH, DHHS enlisted the assistance of the Regional Placement Unit (RPU) to find suitable placement to address JJH's mental health needs. A placement was found at a residential treatment program, but respondent refused to transport JJH there. Saba warned respondent that she would be charged with neglect if she refused to pick JJH up from the short-term crisis center. Respondent stated that she would accept whatever penalties would be imposed because she did not feel safe with JJH.

DHHS filed a temporary custody petition requesting that the trial court take jurisdiction over JJH under MCL 712A.2(b)(1) and/or (2). The petition alleged that JJH was "abandoned" at the short-term crisis center, that respondent had refused multiple services offered, that respondent would not allow JJH to return home, and that respondent stated that she was unable and unwilling to care for JJH. A referee concluded that there were reasonable grounds to remove JJH and entered an interim placement order granting DHHS custody of JJH.[3] On the same day, a DHHS employee transported JJH to the residential treatment center for admission.

Following a bench trial, the trial court determined that there was sufficient evidence to establish a statutory basis to exercise jurisdiction over JJH pursuant to MCL 712A.2(b)(1). This appeal followed.

II. STANDARD OF REVIEW

This Court "review[s] 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).

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[2] It was undisputed that JJH had suicidal tendencies, a history of sexually assaulting a younger sibling in respondent's home, and violence against respondent.

[3] JJH's presumed legal father (by marriage) was excluded as JJH's father through DNA testing. JJH's biological father signed an Affidavit of Parentage, but was unable and unwilling to care for JJH.

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A finding is clearly erroneous when this Court is "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 citations omitted). "To be clearly erroneous, a decision must be more than maybe or probably wrong." *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011). This Court must consider "the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *Id.*

III. ANALYSIS

Respondent argues that the trial court erred in finding statutory grounds to exercise jurisdiction under MCL 712A.2(b)(1). We disagree.

There are two phases to child protection proceedings, the adjudicative phase and the dispositional phase. MCR 3.972; *In re AMAC*, 269 Mich App 533, 536; 711 NW2d 426 (2006). At issue in this case are the circumstances of the adjudicative phase. "The adjudicative phase occurs first and involves a determination whether the trial court may exercise jurisdiction over the child, i.e., whether the child comes within the statutory requirements of MCL 712A.2(b)." *In re AMAC*, 269 Mich App at 536 (citation omitted). The trial court must find that a statutory basis for jurisdiction exists by a preponderance of the evidence. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004).

The trial court found statutory grounds to exercise jurisdiction over JJH under MCL 712A.2(b)(1), which states, in part:

> (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 . . . .

The trial court noted that Saba testified that there were a number of barriers to JJH's mental health treatment, including respondent's private health insurance and the fact that community-based services had to be exhausted before residential treatment could be considered. The trial court referenced Saba's testimony that respondent did not complete the necessary CMH paperwork so that JJH could be placed in the CMH network to access additional mental health resources. In determining that there were statutory grounds to exercise jurisdiction, the trial court reasoned:

> [A]lthough I find that mother's behaviors all along the way have been as much as she possibly could to provide proper care and custody for her child, I am going to find that because that child does come under the Court's jurisdiction pursuant to MCL 712A.2(b)(1), that "the parent or person legally responsible for care and maintenance of the juvenile when able to do so neglected or refused to provide proper medical care." And I only make that finding based on the failure to complete the CMH documentation. That's—that's all I got.

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> [T]he records are replete that this child not only has multiple attempts of suicide, [but he] has threatened to kill himself or to kill his mother if [he] came into her care. But the law doesn't provide for when a parent can't handle the overwhelming circumstances of their child's mental health.

A similar conundrum existed in *In re Hockett*, ___ Mich App ___, ___; ___ NW2d ___ (2021) (Docket No. 353132). In that case, the minor child was hospitalized after his mental health problems escalated to threats of harm to another child and threats of suicide. *Id*. at ___; slip op at 1-2. The respondent declined to pick the child up from the hospital when he was released because she believed that he needed further help for his mental problems and she was homeless. *Id.* The trial court found statutory grounds for jurisdiction under MCL 712A.2(b)(1), concluding that the respondent "failed to provide proper and necessary support and care for [the minor child], who was subject to a substantial risk of harm to his mental health and wellbeing." *Id*. at ___; slip op at 3. This Court affirmed, reasoning:

> The trial court and this Court acknowledge the extremely difficult position in which the respondent found herself. She had no home. She had a child whose mental health issues were significant. She wanted the kind of care for [the minor child] that he only began to get when the state assumed jurisdiction. While she is not a mental health care professional, respondent sensed, and later mental health care professionals agreed, that [the minor child] needed more than respondent could give. It is unfortunate that our statute uses the word "unfit" to describe situations such as this. We note that "the underlying purpose of the statutory scheme is to protect children from an unfit homelife." Unfitness connotes active wrong doing which we do not see in this case. The statute however implies some understanding of the existence of parents who do not have the resources to provide for their children in the phrase "when able to do so". This mother was unable to manage the complex mental health needs of her child. The trial court correctly determined that respondent declined to retrieve her child upon discharge. The court also correctly noted that respondent had the physical capacity to retrieve her minor child and did not do so . . . . However, "culpability is not a prerequisite for probate court intervention under § 2(b)(2)." Respondent's admitted inability, not her *unwillingness* to care for [the minor child's] special needs with the level of assistance she was receiving, along with her homelessness rendered [the minor child's] home a place of danger for the seriously ill child and thus, statutorily unfit. [*Id.* at ___; slip op at 3 (emphasis in original, citations omitted).]

Respondent here was similarly unable to manage the complex mental health needs of JJH. The evidence revealed that JJH was unable to return to respondent's home, there was no other relative who could care for him, and the short-term crisis facility was unable to address his mental health needs. Respondent had the physical capacity to complete the CMH paperwork to obtain the resources for JJH's mental health treatment, but she did not do so. As a result, JJH did not have the necessary resources for his mental health care, his mental well-being was subjected to a substantial risk of harm, and he was without proper custody or guardianship. The evidence established that the only way JJH was going to get the mental health treatment he needed was for the trial court to force the issue and exercise jurisdiction over JJH. While we acknowledge the

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difficult nature of the situation, we are not left with a definite and firm conviction that the trial court was mistaken in finding statutory grounds for jurisdiction under MCL 712A.2(b)(1). Culpability is not a factor here. As our Supreme Court has recognized, "[t]he purpose of the juvenile code . . . is to protect children from an unfit home, not to punish bad parents." *In re Jacobs*, 433 Mich 24, 41; 444 NW2d 789 (1989). "[T]he Legislature did not intend for children to suffer long term damage merely because the neglect by the parents was not culpable." *In re Campbell*, 170 Mich App 243, 255; 428 NW2d 347 (1988) (citations omitted).

Respondent also argues that the trial court erred when it determined that there were grounds to exercise jurisdiction over JJH because he was in residential, inpatient care and, therefore, he was not without proper care or custody. "When considering whether to exercise jurisdiction under MCL 712A.2(b), the trial court must examine the child's situation at the time the petition was filed." *In re Hockett*, ___ Mich App at ___; slip op at 3. At the time that the petition was filed, JJH was at the short-term crisis center. It is undisputed that the short-term crisis center was not capable of addressing JJH's mental health needs and had released JJH from its care. JJH was not transported to the residential treatment facility until after the petition was filed and the trial court assumed jurisdiction over JJH. Thus, the threat to JJH's well-being had not ceased at the time that the petition was filed and there is no clear error on this basis.

IV. CONCLUSION

For the reasons stated in this opinion, we affirm the trial court's order concluding that there was sufficient evidence to establish a statutory basis to exercise jurisdiction over JJH pursuant to MCL 712A.2(b)(1).

/s/ Brock A. Swartzle
/s/ Thomas C. Cameron
/s/ Sima G. Patel

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STATE OF MICHIGAN

COURT OF APPEALS

In re JM, Minor.

UNPUBLISHED
January 13, 2022

No. 356510
Oakland Circuit Court
Family Division
LC No. 2018-859673-NA

Before: BOONSTRA, P.J., and GLEICHER and LETICA, JJ.

PER CURIAM.

Respondent appeals as of right the order of adjudication entered by the family division of the circuit court exercising jurisdiction over her child, JM. We affirm.

I. FACTS

Respondent is the mother of three children, AM, JM, and MM. Respondent had an extensive CPS history, beginning in 2012, that included substantiated physical abuse of AM and failure to protect JM and MM from sexual abuse perpetrated by AM. In November 2017, AM was clinically evaluated and found to be an "extreme risk to others," but respondent refused to cooperate with the recommended inpatient treatment.

In January 2018, petitioner filed a neglect petition to remove the children from respondent's home when it was discovered that respondent had failed to protect JM and MM from AM's sexual abuse. AM was placed in a facility and provided with needed mental-health services. JM and MM were placed in nonrelative foster care. The court exercised jurisdiction over the children and respondent after she pleaded no-contest to all of the petition allegations.[1] Respondent was ordered to comply with, and benefit from, a parent-agency treatment plan that included individual and family counseling, which respondent successfully completed. Petitioner closed its

[1] Respondent's assertion on appeal that she had not come under a previous adjudication is a misstatement of the lower-court record. See *In re Sanders*, 495 Mich 395, 405; 852 NW2d 524 (2014) ("When the petition contains allegations of abuse or neglect against a parent, and those allegations are proved by a plea or at the trial, the adjudicated parent is unfit.").

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case as it related to JM, MM, and respondent. The trial court terminated jurisdiction over respondent with regard to JM and MM on August 26, 2019, but retained jurisdiction over JM and MM with regard to a pending petition regarding their father. Respondent remained a respondent in the proceedings regarding AM. Thus, after August 26, 2019, respondent was not required to participate in any services regarding JM, although petitioner was able to continue to offer services to JM because he was under the court's jurisdiction concerning a petition to terminate his father's parental rights.

Petitioner returned its attention to JM in early August 2019 when respondent reported that JM was "having behaviors," meaning lying, stealing, and suicidal ideation, after AM's sexual abuse. On November 1, 2019, respondent's partner observed JM atop MM, moving up and down, on a camera system that had been installed in the home because of AM's earlier sexual abuse. When respondent's partner, now spouse, yelled at JM, he jumped off MM and pulled his pants up. In a subsequent forensic interview, MM revealed that JM had penetrated her while respondent's spouse was in the room distracted by her phone and respondent was at work. Contrary to respondent's position on appeal that this was the only time JM had assaulted MM, MM later reported that there were at least two, and possibly three, assaults during a forensic interview. Petitioner implemented a safety plan to keep the children from being alone, and recommended outpatient mental-health treatment for JM so that he could safely remain in the home.

On December 26, 2019, a delinquency case was initiated against JM, charging him with second-degree criminal sexual conduct. JM was removed from the home on January 8, 2020, and was placed in a detention facility pending a delinquency hearing. On February 27, 2020, the trial court terminated the father's parental rights and released JM and MM from its jurisdiction.

On March 10, 2020, a referee recommended dismissing the delinquency proceeding because ten-year-old JM was found to be incompetent to stand trial. The same day, petitioner filed a petition to take JM into protective custody because respondent had refused to take him home for fear that he would sexually assault MM. The petition was authorized and the court concluded after an adjudication trial that there were sufficient statutory grounds to assume jurisdiction over JM.

On appeal, respondent argues that JM did not come within the provisions of MCL 712A.2(b)(1) and (2) because respondent did not willfully abandon JM and had continued to provide him with proper care. Respondent further asserts that she was not neglectful because she feared for her children's safety and had taken adequate steps to protect them. We disagree.

II. STANDARDS OF REVIEW

We review for clear error whether a preponderance of the evidence supported a trial court's decision to exercise jurisdiction. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). See also MCR 3.972(C)(1) ("Except as otherwise provided in these rules, the rules of evidence for a civil proceeding and the standard of proof by a preponderance of evidence apply at the trial . . . ."). "Proof by a preponderance of the evidence means that the evidence that a statutory ground alleged in the petition is true outweighs the evidence that that statutory ground is not true." M Civ JI 97.37.

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When deciding a challenge to a court's assumption of jurisdiction over a minor child, this Court must determine whether any error in the matter "was of such magnitude that, but for it, there was an insufficient basis for the . . . court to assume jurisdiction." *In re Toler*, 193 Mich App 474, 476; 484 NW2d 672 (1992). The interpretation and application of statutes and court rules is reviewed de novo, meaning independently and without deference to the trial court. *In re Ferranti*, 504 Mich 1, 14; 934 NW2d 610 (2019).

III. ANALYSIS

The trial court did not clearly err in finding by a preponderance of the evidence that there was a statutory ground to exercise jurisdiction over JM.

"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). "Generally, a court determines whether it can take jurisdiction over the child in the first place during the adjudicative phase." *Id.* "The question at adjudication is whether the trial court 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. For the trial court to acquire jurisdiction over a minor child, the petitioner must establish by a preponderance of the evidence a statutory basis for jurisdiction under MCL 712A.2. *In re Brock*, 442 Mich 101, 108-109; 499 NW2d 752 (1993). In pertinent part MCL 712A.2 states:

> (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 . . . .[2]

MCL 712A.2 "speaks in the present tense, and, therefore, the trial court must examine the child's situation at the time the petition was filed." *In re MU*, 264 Mich App 270, 279; 690 NW2d 495 (2004).

[2] MCL 712A.2 has been amended, effective October 1, 2021. 2019 PA 113.

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The evidence supported the trial court's decision to assume jurisdiction over JM, pursuant to MCL 712A.2(b)(1), because JM was without proper custody or guardianship.

Respondent was legally responsible for JM at the time petitioner filed a neglect petition on March 10, 2020. On that day, JM was found to be incompetent to stand trial and the delinquency case was dismissed, resulting in his discharge from the detention facility. A caseworker testified that JM was not under a guardianship, and the court had previously dismissed JM from its jurisdiction on February 27, 2020. Respondent—not petitioner or the trial court—was responsible for JM's custody and care.

The record supports the trial court's conclusion that, on March 10, 2020, respondent refused to take JM home and was otherwise unwilling to provide him with custody or care "at that time." On appeal, respondent argues in general terms that she refuted the caseworker's testimony that she was unwilling to take JM home in November 2019. However, she does not specifically challenge the abundant evidence that, from late November 2019 until the October 2020 adjudication, she had repeatedly stated that JM could not return home, including on March 3 and 10, 2020. At the adjudication trial, respondent remained steadfast in her unwillingness to take him back into her home, stating that she did not believe that she could keep MM safe from him. Respondent had informed caseworkers that there were no relatives to care for him and that she had no plans for his placement or mental-health treatment. Petitioner had also explored, without success, the possibility of placing JM with relatives or others outside of respondent's home.

Further, on March 10, 2020, petitioner filed a petition to take JM into temporary custody in order to give him a place to stay and provide him with proper care, after which petitioner arranged to have JM admitted to Havenwyck Hospital, which had a very rigorous sexual reactive program. Respondent's assertion, however, that she had provided proper care for JM on March 10, 2020, by voluntarily admitting him to Havenwyck is not supported by the record. JM's guardian ad litem reported that respondent "expressed some serious concerns about [JM] going to Havenwyck" as "[respondent] and her partner had heard very negative things about Havenwyck." Although respondent gave written consent for JM's medical treatment at Havenwyck, a caseworker explained that when a child is in petitioner's protective custody, parental consent or a court order is required for medical treatment. The caseworker further stated that all planning, placement, and payment for inpatient treatment at Havenwyck was through petitioner, not respondent.

The evidence also supported the trial court's decision to assume jurisdiction over JM pursuant to MCL 712A.2(b)(1) because respondent subjected JM to a substantial risk of harm to his mental wellbeing. It is undisputed that JM required intensive treatment to overcome his trauma from AM's sexual abuse. The evidence showed that respondent was unable or unwilling to promptly provide him with necessary mental-health treatment. Petitioner offered services that

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included enrolling JM in a Serious Emotionally Disturbed (SED) waiver program. Before November 1, 2019, respondent did not enroll JM in that program ostensibly because of scheduling issues.

Moreover, the record supports the trial court's finding that respondent did not immediately report the sexual abuse. Instead, she waited five days before telling a therapist about the incidents.[3]

In addition to developing safety measures to ensure that JM would not be alone with MM, petitioner again proposed that JM be placed in a SED waiver program which would allow him to remain at home and receive intensive treatment. Respondent would also be eligible for respite services. Two caseworkers testified that respondent did not promptly participate in treatment for JM because she reportedly was overwhelmed in dealing with AM's escalating aberrant sexual behavior while in an inpatient facility, and because respondent preferred to have JM removed from her home. Respondent only had Medicaid to pay for JM's treatment if the court decided not to take jurisdiction over him.

The record evidence demonstrated that respondent was unwilling or unable to take the steps required to ensure that JM received necessary treatment after AM's sexual abuse. Respondent was either "overwhelmed" or "too busy," and admitted that she turned down an additional service as "too much." Respondent also opted not to allow JM to come home to see if the SED waiver program would work for him because she was "scared" and "unwilling to risk it" based on her experience with AM, even though AM had not been through that program. Accordingly, the court did not err in determining that JM was subject to a substantial risk of harm to his mental well-being if he remained in respondent's home. MCL 712A.2(b)(1).

Given these proofs, including the prevalence of sibling-on-sibling sexual abuse and respondent's repeated failure to keep her children safe from it, the trial court also did not clearly err in concluding that the home, by reason of neglect or criminality, was an unfit place for JM to live. MCL 712A.2(b)(2). Because child protective proceedings are deemed single continuous actions, *In re LaFlure*, 48 Mich App 377, 391; 21 NW2d 482 (1973), the trial court properly took judicial notice of, and considered, evidence of respondent's CPS history, which began in 2012 and included the 2018 neglect proceeding. Respondent's primary reason for refusing to take JM back into her care was that she was unable to adequately supervise him to prevent him from again sexually assaulting MM.

Respondent's argument that JM did not come within the provisions of MCL 712A.2(b)(1) and (2) because she did everything that was required of her to protect her children, including not leaving JM alone with MM, is unpersuasive. Petitioner acknowledged that, after November 1, 2019, respondent did not leave JM unsupervised with MM and there was no evidence of further abuse. We note, however, that JM was not in the home after January 8, 2020, due to respondent's request that he be removed and the delinquency matter. The record also showed that respondent conceded that she was overwhelmed, unable to adequately supervise JM, had no plan to address

[3] Respondent's spouse explained that they delayed reporting the matter because "it was a lot to process."

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his mental-health needs, and understood that as a consequence a petition would be filed to take jurisdiction over him.

The record reflects that the court properly exercised its jurisdiction so that JM could receive treatment. Five months after the petition was filed, respondent indicated that JM's treatment at Havenwyck needed to continue. As petitioner explained, in order for JM to remain at Havenwyck, the court needed to take jurisdiction over him, otherwise JM would have been sent home. At the adjudication proceeding in October 2020, respondent still did not believe that JM was ready to return home. Although respondent stated at the end of the hearing that she was willing to take JM home, she had earlier testified that she had no plan for him, was unable to care for him, and was concerned that she would not be able to adequately supervise him to stop him from sexually assaulting MM again. To keep JM away from MM when they were not at school or being watched by respondent's partner, respondent brought one or both children with her to the beauty-supply store where she worked from 9:00 a.m. to 8:00 p.m. five to six days a week. Although this may have been a temporary solution to the problem of supervising the children, it offered no long-term solution to addressing JM's sexual trauma. When asked what she would do if JM had been returned to her home on March 10, respondent replied:

> (Indiscernible) my kids 24/7 like a crazy woman, and not being able to deal with the situations on top of [AM]'s situations. I, I don't really know what my plan is for [JM]. I just hope and pray that he gets the help he needs, and can really control his situation that he deals with.

Respondent added that if JM were sent home and received in-home services, she was "really scared" about what would happen at night after the in-home workers left.

The underlying basis for respondent's objection to the court's acquiring jurisdiction over JM appears to be her belief that it was unnecessary because she loves her children and had done everything she could to keep them safe. But "[t]he purpose of a child protective proceeding is the protection of the child." *In re Brock*, 442 Mich at 107 (1993). And this case is akin to *In re Hockett*, ___ Mich App ___; ___ NW2d ___ (2021) (Docket No. 353132, issued October 21, 2021). In that case, the mother, who was homeless, refused to retrieve her child because she was unable to manage the child's complex mental-health needs. In affirming the trial court's exercise of jurisdiction, this Court concluded that, although it was disconcerting that respondent was now labeled "unfit," "culpability is not a prerequisite for probate court intervention under § 2(b)(2)." *Id.* at ___ (quotation marks and citation omitted); slip op at 2.

In this case, respondent chose not to return JM to her home so that he might receive the more intensive treatment that she believed he needed and to protect MM from further sexual abuse. As in *Hockett*, respondent's admitted inability, not her unwillingness, to manage and care for JM's

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special mental-healthcare needs rendered her home statutorily unfit. Child protective proceedings are appropriate when, as in this case, a child needs safety and care that a parent, despite unquestionable love and best efforts, is unable to provide.[4]

Affirmed.

/s/ Mark T. Boonstra
/s/ Elizabeth L. Gleicher
/s/ Anica Letica

[4] Respondent also argues that she did not abandon JM. The trial court's order, however, does not include abandonment as a basis for exercising jurisdiction and we decline to address this argument.

If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

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STATE OF MICHIGAN

COURT OF APPEALS

In re D V LANGE, Minor.

UNPUBLISHED
November 2, 2023

No. 362365
Wayne Circuit Court
Family Division
LC No. 2021-000658-NA

Before: REDFORD, P.J., and O'BRIEN and FEENEY, JJ.

PER CURIAM.

In this child protective proceeding, petitioner, the Department of Health and Human Services ("DHHS"), appeals by right the circuit court's order dismissing for lack of jurisdiction the petition to take temporary custody of the minor child, DVL. Because a preponderance of the evidence supports a finding of jurisdiction under MCL 712A.2(b)(1) and (2), we reverse and remand for further proceedings.

I. FACTUAL AND PROCEDURAL BACKGROUND

In 2013, through a single parent adoption, respondent adopted five-year-old DVL. Because he had been exposed to trauma and abuse while in the care of his family of origin, DVL treated with both a therapist and a psychiatrist. DVL suffers from post traumatic stress disorder, reactive attachment disorder, oppositional defiance disorder and attention deficit hyperactivity disorder. Over the years, DVL's behaviors escalated and his mental health deteriorated. DVL has a history of attempting to set fires in the family home and attempting to injure family pets. Due to DVL's destructive and sexualized behavior, respondent installed door alarms on his bedroom door and never left him alone with his two siblings. Between the ages of 10 and 13, DVL was hospitalized six or seven times to receive psychiatric care at Hubbard Oaks and Havenwyck for threatening to kill his parents and siblings. The hospitalizations were typically two weeks in duration and were followed by outpatient treatment. As respondent testified at trial, DVL returned home after each hospitalization:

> Yes [out-patient treatment was provided] and each time he was provided with day treatment programs to follow-up with the in-patient treatment and he would complete that and things would be ok for a while and then it would go right back where it was.

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DVL also has a history of sexually inappropriate behaviors at home and while in placement. In November 2020, respondent enrolled then 13-year-old DVL into a year-long out-of-state residential treatment program.[1] Six months in, the program terminated DVL for sexually inappropriate behavior with other residents. DVL returned to respondent's home in April 2021.

After his return to Michigan, DVL's behaviors worsened. In early June 2021, when he attempted to start a fire in the home and threatened suicide, respondent took DVL to St. John Hospital. Respondent sought the hospital admission because she knew DVL first needed to be medically cleared before he could enter into an inpatient treatment program. On June 10, 2021, Children's Protective Services ("CPS") received a referral after respondent informed hospital staff that because of safety concerns, she was unwilling to manage or care for DVL's mental health needs. Thereafter, CPS and the hospital emergency room social worker unsuccessfully searched for a suitable pediatric inpatient psychiatric program for DVL. While at the hospital in the holding area and in the hospital's general population waiting to be transferred, DVL was not receiving treatment; he was only being held until a suitable pediatric psychiatric facility could be found. According to respondent, who was the only witness to testify at the adjudication, the pediatric psychiatric hospitals would not take DVL due to the severity of his issues and "they couldn't guarantee the safety of the other patients."

On July 8, 2021, DVL was not cleared for discharge home. Amazingly, on July 9, 2021, DVL's medical providers at St. John Hospital cleared him for discharge with the recommendation that DVL receive intensive outpatient mental health services. Upon learning of the impending discharge, respondent refused to pick up DVL from the hospital and indicated that she would not allow him to return to her home because it was unsafe for all of them; respondent testified that "to hear that there was no help was . . . heartbreaking." During a July 2021 team decision meeting, CPS offered respondent assistance in securing outpatient mental health services for DVL but she refused based upon DVL's numerous prior short-term inpatient stays, subsequent outpatient treatment. and ongoing mental health issues that made him a significant threat to himself and others

On July 16, 2021, DHHS filed a petition alleging that respondent's abandonment of DVL allowed the court to assume jurisdiction over DVL, as well as his two siblings.[2] At the preliminary hearing, a referee entered an interim placement order that permitted DHHS to place DVL in a residential home. The two-day adjudication trial commenced in May 2022, and concluded in June 2022. At the conclusion of the trial, the court found that a statutory ground to exercise jurisdiction over DVL did not exist. Consequently, it dismissed the petition. This appeal followed.

II. STANDARD OF REVIEW

We review a trial court's jurisdiction decision for clear error in light of the court's findings of fact. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). A finding is clearly erroneous

[1] Respondent testified that the year-long residential program DVL attended in 2020 cost $2000 per month and the parents covered the cost as it was not covered by insurance.

[2] At the preliminary hearing, respondent's other two children were dismissed from the petition and, throughout the lower court proceedings, they remained in the care of their other legal parent.

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if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re Long,* 326 Mich App 455, 460; 927 NW2d 724(2018) (citation omitted). To the extent that the jurisdictional issue presents a question of statutory interpretation, we review that issue de novo. *In re LaFrance,* 306 Mich App 713, 723; 858 NW2d 143 (2014).

III. ANALYSIS

DHHS argues on appeal that the trial court clearly erred when it refused to exercise jurisdiction over DVL under MCL 712A.2(b)(1). We agree, and further find that the trial court also erred when it failed to assume jurisdiction over the minor child under MCL 712A.2(b)(2).

The purpose of child protective proceedings is the protection of the child. *In re Brock,* 442 Mich 101, 107; 499 NW2d 752 (1993). "Child protective proceedings are generally divided into two phases: the adjudicative and the dispositional." *Id*. at 108. The adjudicative phase determines whether the trial court may exercise jurisdiction over the child. *Id*. To establish jurisdiction, the petitioner must prove by a preponderance of the evidence that a statutory ground exists under MCL 712A.2(b). *In re SLH*, 277 Mich App 662, 669; 747 NW2d 547 (2008). A "preponderance of the evidence" means evidence of a proposition that when weighed against the evidence opposed to the proposition "has more convincing force and the greater probability of truth." *People v Cross,* 281 Mich App 737, 740; 760 NW2d 314 (2008).

In this case, DHHS requested that the court assume jurisdiction over DVL under MCL 712A.2(b)(1) and (2), which provide that a court has jurisdiction over a child in the following circumstances:

> (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. As used in this sub-subdivision:
>
> (A) "Education" means learning based on an organized educational program that is appropriate, given the age, intelligence, ability, and psychological limitations of a juvenile, in the subject areas of reading, spelling, mathematics, science, history, civics, writing, and English grammar.
>
> (B) "Neglect" means that term as defined in section 2 of the child abuse and neglect prevention act, 1982 PA 250, MCL 722.602.
>
> (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

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> 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.

We find that the trial court erred when it declined to exercise jurisdiction over DVL under both MCL 712A.2(b)(1) and (2). A preponderance of the evidence established that respondent refused to provide proper or necessary mental health care to her son and that her admitted inability to care for DVL's significant mental health needs, despite repeated efforts to obtain effective treatment for him, rendered her home statutorily unfit.

This Court's recent opinion in *In re Hockett,* 339 Mich App 250; 981 NW2d 534 (2021), guides our resolution of the jurisdictional issue in this case. The facts in *In re Hockett* are substantially similar to those in the present case. In *In re Hockett*, minor child NRH had a history of mental illness that included brief yet frequent hospitalizations, suicidal ideation, and threats of harm to others in the home. *Id.* at 252-253. The respondent-mother similarly refused to take her mentally ill child home from the hospital until he received the help she believed he needed. *Id*. Notably, as in the present case, the Department of Health and Human Services relied on the hospital's determination that NRH should be discharged. *Id.* at 253. The trial court found that NRH came within the court's jurisdiction under MCL 712A.2(b)(1). *In re Hockett,* 339 Mich App at 255. Specifically, the trial court ruled that the respondent failed to provide her child proper care and custody when she refused to pick up NRH from the hospital. *Id.* This Court affirmed the order of the lower court, but determined that jurisdiction was proper under MCL 712A.2(b)(2), not MCL 712A.2(b)(1). *In re Hockett,* 339 Mich App at 256. This Court's analysis of the provisions of MCL 712A.2(b) is instructive:

> It is unfortunate that our statute uses the word "unfit" to describe situations such as this. We note that "the underlying purpose of the statutory scheme is to protect children from an unfit homelife." *In re Sterling*, 162 Mich App 328, 339; 412 NW2d 284 (1987). Unfitness connotes active wrongdoing, which we do not see in this case. The statute, however, implies some understanding of the existence of parents who do not have the resources to provide for their children in the phrase "when able to do so." *This mother was unable to manage the complex mental health needs of her child. The referee correctly determined that respondent declined to retrieve her child upon discharge. The referee also correctly noted that respondent had the physical capacity to retrieve her minor child and did not do so.* Our concern is that this mother, who took desperate action to get care for her child, is now labeled "unfit" and listed on a registry for persons who acted to harm children when she, in fact, was seeking to protect her child. *The scant and costly resources available for mental healthcare for children likely places other parents in the same situation as this respondent. We can only look to our policymakers for a resolution to this conundrum. However, "culpability is not a prerequisite" for court intervention under MCL 712A.2(b)(2). In re Jacobs*, 433 Mich 24, 41; 444 NW2d 789 (1989). Respondent's admitted inability, not her unwillingness, to care for NRH's special needs with the level of assistance she was receiving, along with

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> her homelessness[3], rendered NRH's environment a place of danger for the seriously ill child and, thus, statutorily unfit. In this case, we are not left with a definite and firm conviction that the trial court was mistaken in finding statutory grounds to exercise jurisdiction over NRH. [*In re Hockett,* 339 Mich App at 255-256; emphasis added.]

Applying the rationale employed by this Court in *In re Hockett*, we conclude that the trial court erred when it declined to exercise jurisdiction over DVL under MCL 712A.2(b)(2). In this case, despite her efforts, respondent admitted that she could not care for DVL's special and significant mental health needs. She testified that DVL and her other two children would be at risk of harm if DVL were in the home. Testimony established that respondent refused DHHS's assistance in obtaining outpatient treatment, including in-home services. It is clear from the record that respondent had attempted years of outpatient therapy while DVL was living with her yet his behaviors continued to escalate. Even her attempts to have him placed in a year-long residential program that was intended to provide intensive mental health treatment ended prematurely because the residential program could not tolerate DVL's behavior. Yet the hospital and DHHS determined that DVL was safe to go home where he had threatened to harm his family, the home, his pets and himself.[4] A preponderance of the evidence supported a finding that respondent's actions rendered the home environment a place of danger for DVL, as well as respondent's other two children and, thus, statutorily unfit. See, *In re Hockett,* 339 Mich App at 256. Considering the record, we are left with a definite and firm conviction that the trial court erred when it failed to exercise jurisdiction over DVL under MCL 712A.2(b)(2).

Although the Court in *In re Hockett* found jurisdiction under MCL 712A.2(b)(2), it was reluctant to do so under MCL 712A.2(b)(1). A preponderance of the evidence in this case supports the assumption of jurisdiction under MCL 712A.2(b)(1), as well. *In re Hockett* did not involve a parent that *refused to cooperate in obtaining mental health services* for her child. The respondent mother in *Hockett*, like DVL's respondent mother, actually sought mental health services for her child. *In re Hockett*, 339 Mich App at 255-256. It is this salient fact that makes the Court's opinion in *In re Hockett* applicable to the present matter. Here, evidence presented at adjudication established that respondent refused to secure outpatient treatment for DVL—not because she refused to cooperate in obtaining mental health services for her son but because she had sought those services for years, DVL's behavior was escalating, and it was still unsafe for him to return home. During a July 13, 2021 team decision meeting, CPS offered respondent assistance in

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[3] Unlike the mother in *Hockett*, respondent had housing for DVL but testified that her home was not safe for DVL, her other children, or herself when DVL resided there.

[4] How in the course of one day DVL could go from being nondischargeable to dischargeable from the hospital without receiving treatment casts doubt on whether the hospital chose to wash its hands of this troubled youth rather than keep him in a holding pattern while DHHS tried but failed to find a suitable placement for him. This circumstance likely occurs throughout the state of Michigan as beds in pediatric residential treatment facilities are few and far between.

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securing outpatient mental health services for DVL after his discharge into her care.[5] DHHS also looked into a Community Mental Health referral that would have allowed DVL and respondent to receive services in the home.[6] Respondent, however, declined the offered services because her son required psychiatric care and "it wasn't safe for him to be in my care."

The trial court recognized the quandary that respondent faced:

> That DVL has a very severe detachment disorder. It causes him to act out in very dangerous ways and that the mother has made numerous efforts to try to have DVL's condition addressed. . . . It doesn't matter what other circumstances she has to deal with, including the fact that she has two other children who would be at risk if she brought DVL home who is, as far as I can tell, that would be like bringing a ticking time bomb into your home. . . . It's her job to pick him up at the hospital even if it means that her other children are going to be abused because she's a single parent, and she has three children in one home. I don't know how anybody is supposed to manage that situation. That is beyond my comprehension. No one has explained that to me.

The trial court admitted it had never seen a case like this and the judge did not "see how I can find that she's been neglectful or abusive in terms of her actions to date and this is a very prickly problem." The court opined that a dependency petition could possibly be filed but it did not find respondent to be abusive or neglectful and denied to authorize the petition. Notably, the trial court as well as the Assistant Attorney General, the lawyer guardian ad litem and respondent's attorney all recognized that if the petition were not authorized, DVL needed to be picked up from his placement at the time (Hanley House); if respondent did not pick DVL up, DHHS would need to file another petition and the process would begin again. Respondent acknowledged that this was a "no-win situation" and she was facing a "Sophie's choice" because she loved DVL but they "exhausted everything the state has to offer, everything, and nothing has made a difference."

Based on this record, we are left with a definite and firm conviction that the trial court was mistaken in finding no statutory grounds to exercise jurisdiction over DVL. A preponderance of the evidence supports a finding that, despite recommendations made by an examining adult (not pediatric) psychiatrist, respondent, although able to do so, refused to pick him up from the hospital and failed to secure intensive outpatient treatment for her son. This was sufficient testimony to establish by a preponderance of the evidence that respondent refused to provide proper or

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[5] Indeed, DHHS discussed with respondent the option of using an adoption subsidy to obtain a residential treatment program for DVL. How DHHS or respondent would pay for such a program was irrelevant as the record is devoid of evidence that there were open residential programs in Michigan but no funds to place DVL in a qualified residential treatment program. This also ignores the fact that respondent had already invested in an out-of-state residential treatment program and that program terminated DVL due to his unacceptable behavior.

[6] Again, there is no evidence in the record to establish that community mental health programs coming to the home weekly were sufficient to address DVL's extensive mental health challenges.

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necessary care for DVL, who was subject to a substantial risk of harm to his mental well-being. MCL 712A.2(b)(1). *In re Hockett,* described respondent as well as NRH's parent when it found:

> This mother was unable to manage the complex mental health needs of her child. The [court] correctly determined that respondent declined to retrieve her child upon discharge. The [court] also correctly noted that respondent had the physical capacity to retrieve her minor child and did not do so. . . she, in fact, was seeking to protect her child. *In re Hockett*, 339 Mich App at 255.

Accordingly, we are left with a definite and firm conviction that a mistake has been made, and find that the trial court clearly erred when it failed to assume jurisdiction of DVL under MCL 712A.2(b)(1). *In re Long*, 326 Mich App 455, 460; 927 NW2d 724 (2018).[7]

Because the circuit court should have exercised jurisdiction over the minor child, we reverse the trial court's July 19, 2022 order finding no jurisdiction and dismissing the petition. We remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Colleen A. O'Brien
/s/ Kathleen A. Feeney

[7] We agree with the court in *In re Hockett*, 339 Mich App at 256, that "[w]e can only look to our policymakers for a resolution to this conundrum," i.e., providing services for the growing number of youth struggling with significant mental health issues in light of the "scant and costly resources available;" unless the Legislature addresses this crisis, more parent will be placed in the same unfortunate situation as the respondent here and in *Hockett*.

If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

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STATE OF MICHIGAN

COURT OF APPEALS

In re D V LANGE, Minor.

UNPUBLISHED
November 2, 2023

No. 362365
Wayne Circuit Court
Family Division
LC No. 2021-000658-NA

Before: REDFORD, P.J., and O'BRIEN and FEENEY, JJ.

REDFORD, P.J. (*dissenting*).

In this child protective proceeding, I respectfully dissent because I am satisfied the trial court's decisions in this matter were not clearly erroneous. I would affirm.

The majority accurately summarizes the factual and procedural background in this case and correctly sets forth the standard of review.

In this appeal, DHHS argues that the trial court erred when it refused to exercise jurisdiction over DVL under MCL 712A.2(b)(1). I disagree, and conclude that the trial court did not commit reversible error when it declined to assume jurisdiction over the minor child under MCL 712A.2(b)(2).

In memorializing its decision to deny the petition sought, the trial court stated:

> So look, I think that the facts are pretty clear. That (DVL) has a very severe detachment disorder. It causes him to act out in very dangerous ways and that the mother has made numerous efforts to try to have (DVL)'s condition addressed. The mother has two other children and, and I'm being told that, look, if the hospital says he's ready to be discharged then as long as she doesn't come and pick him up regardless. It doesn't matter what other circumstances she has to deal with, including the fact that she has two other children who would be at risk if she brought (DVL) home who is, as far as I can tell, that would be like bringing a ticking time bomb into your home. Nobody here has told me what the mother—what, what she was supposed to do except to say she was supposed to go pick him up at the hospital. The rest of it, it's her problem despite the fact that she's made numerous attempts to try to find help for him and been unsuccessful. It's her job to pick him up at the hospital even if it means that her other children are going to be abused because she's a

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> single parent, and she has three children in one home. I don't know how anybody is supposed to manage that situation. That is beyond my comprehension. No one has explained that to me. I agree that you've made out a record that she failed to pick him up when they, when the hospital, "Said he's ready for discharge", but I, you know, I guess, you know, this is a case that can be appealed. I've never had a case like this. I can't find that the mother—I just don't see how I can find that she's been neglectful or abusive in terms of her actions to date and this is a very prickly problem. It's sad but and maybe, you know, maybe the law needs to be changed or perhaps a dependency petition can be filed because whatever I decide here, (DVL) still needs help. Nobody is going to dispute that. (DVL) needs help. Mother is trying to get him help. Mother is trying to keep her other children safe. I'm being told that she doesn't really have choice. She just has to choose to bring him home or be deemed neglectful on the part of the law and I, I—just that, you know, if I can't figure out what I would do as a parent in a situation like this then how am I supposed to say, well, she's neglectful and she's abusive because she didn't do what I—what I wouldn't know what to do besides what she was doing so, you know, for those reasons I'm going to deny the petition.

As the majority states, the purpose of child protective proceedings is the protection of the child. *In re Brock,* 442 Mich 101, 107; 499 NW2d 752 (1993). "Child protective proceedings are generally divided into two phases: the adjudicative and the dispositional." *Id*. at 108. The adjudicative phase determines whether the trial court may exercise jurisdiction over the child. *Id*. To establish jurisdiction, the petitioner must prove by a preponderance of the evidence that a statutory ground exists under MCL 712A.2(b). *In re SLH*, 277 Mich App 662, 669; 747 NW2d 547 (2008). A "preponderance of the evidence" means evidence of a proposition that when weighed against the evidence opposed to the proposition "has more convincing force and the greater probability of truth." *People v Cross,* 281 Mich App 737, 740; 760 NW2d 314 (2008).

In this matter, DHHS requested that the court assume jurisdiction over DVL under MCL 712A.2(b)(1) and (2), which provide that a court has jurisdiction over a child in the following circumstances:

> (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. As used in this sub-subdivision:
>
> (A) "Education" means learning based on an organized educational program that is appropriate, given the age, intelligence, ability, and psychological limitations of a juvenile, in the subject areas of reading, spelling, mathematics, science, history, civics, writing, and English grammar.
>
> (B) "Neglect" means that term as defined in section 2 of the child abuse and neglect prevention act, 1982 PA 250, MCL 722.602.

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> (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. 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.

There is no indication that DVL's mother did anything other than undertake exhaustive, comprehensive, and costly measures to try to care for DVL. Her refusal to allow DVL to be placed in her home with two other minor children who would be endangered was not an act of neglect, cruelty, drunkenness, criminality, or depravity. Nor was there evidence that she was able, despite her repeated and substantial efforts, to provide DVL with the proper or necessary support in her home.

As a result, I conclude that the trial court did not err when it declined to exercise jurisdiction over DVL under both MCL 712A.2(b)(1) and (2). Petitioner failed to establish that a preponderance of the evidence demonstrated that respondent refused to provide proper or necessary mental health care to her son and that her admitted inability to care for DVL's mental health needs rendered her home statutorily unfit. I would affirm.

/s/ James Robert Redford

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STATE OF MICHIGAN

COURT OF APPEALS

In re LARD, Minors.

UNPUBLISHED
August 10, 2023

Nos. 364489; 364490
St. Joseph Circuit Court
Family Division
LC No. 2021-000176-NA

Before: YATES, P.J., and BORRELLO and PATEL, JJ.

PER CURIAM.

In these consolidated appeals,[1] respondents appeal of right the termination of their parental rights to two of their children under MCL 712A.19b(3)(c)(*i*) (conditions leading to the adjudication continue to exist), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood of harm). On review, we vacate the termination of respondents' parental rights and remand for further proceedings.

I. FACTUAL BACKGROUND

Respondents have three children, one of whom is an adult, and two others—KL and JL—who are the subjects of the current appeal. At the time this case began, respondents were married, but only because they had not obtained a divorce. They are no longer a couple, although for much of the case respondent-mother allowed respondent-father to live in her home. Respondent-mother has a new partner, RL. While this case was pending, respondent-mother and RL had a child, who was born in March 2022. That child is in the care of RL and respondent-mother, whose parental rights to that child are not at issue on appeal.

Proceedings in this case began in March 2021, when the Department of Health and Human Services (DHHS) filed a petition against both respondents. Respondent-father tendered a plea of admission to allegations in the petition pertaining to him—namely, that he was homeless and that

[1] Respondent-father appeals in Docket No. 364489, and respondent-mother appeals in Docket No. 364490. This Court consolidated the appeals. *In re Lard Minors*, unpublished order of the Court of Appeals, entered January 19, 2023 (Docket Nos. 364489 and 364490).

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he used methamphetamine, which he admitted was contrary to the welfare of his children. As to respondent-mother, the petition alleged that she used methamphetamine, that neither respondent was ensuring that the children attended school, and that there were concerns of domestic violence (committed by RL against respondent-mother) in respondent-mother's home. Respondent-mother denied the allegations and requested an adjudication trial. Following a bench trial, the trial court adjudicated respondent-mother unfit, concluding that she used methamphetamine, that she failed to provide for the children's education, and that there were concerns of domestic violence in her home.

During the dispositional phase of proceedings, the trial court denied respondents parenting time—even supervised parenting time—until they submitted three consecutive clean drug screens. In the summer of 2021, respondents both provided three consecutive clean drug screens, and they both began receiving supervised parenting time. Indeed, to their credit, respondents both managed to stop using methamphetamine during this case. RL, who also used methamphetamine when the case began, likewise managed to stop. Although they conquered methamphetamine, respondents and RL continued to test positive for THC. Respondent-father and RL admitted marijuana use, while respondent-mother, whose THC levels were lower, maintained that she was positive merely from being in the presence of RL when he smoked. Regarding their other goals, respondent-father did not obtain independent housing, but for much of the case, respondent-mother permitted him to live in her home—a trailer she shared with RL and others, including RL's nephew. Although there were periods of unemployment during the case, respondent-father obtained employment. RL also found employment, and he was providing financial support for respondent-mother while she stayed home with the new baby. Further, no other incidents of domestic violence were reported between respondent-mother and RL, although they both were convicted of retail fraud, see MCL 750.356d, in June 2022. After a period of supervised visitation with the children, the case progressed to the point that the children spent overnight, unsupervised visits with respondents.

Respondents made significant progress on the conditions that led to adjudication, but new and changed circumstances arose during the case. Although legally admissible evidence was never provided to establish these facts, one of the children, KL, allegedly claimed on two occasions that she was sexually assaulted by individuals in respondent-mother's home during her overnight visits there—specifically, RL's nephew and a friend of the nephew. KL purportedly recanted her claims against the nephew, which she originally made in March 2022. More recently, at the end of August 2022, KL purportedly made the second allegation that the nephew's friend sexually assaulted her. Respondents' parenting time with KL and JL was suspended in September 2022 based upon KL's allegations. As the case progressed, respondent-mother's home—which early in the case had been routinely described as adequate—was deemed inadequate and unclean. JL purportedly stated that he had a cockroach in his cereal. In October 2022, respondent-mother and RL—and the others in the home, including respondent-father—were all evicted from their trailer for nonpayment of rent. Respondent-mother and RL then moved into a hotel, where they lived with their newborn child. Respondent-father slept either at a hotel or in his car.

On September 9, 2022, the DHHS filed a supplemental petition to terminate respondents' parental rights to KL and JL pursuant to MCL 712A.19b(3)(c)(*i*), (c)(*ii*), (g), and (j). After a one-day hearing on November 30, 2022, the trial court terminated respondents' parental rights under

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MCL 712A.19b(3)(c)(*i*), (g), and (j).[2] The trial court also concluded that termination was in the children's best interests, so the trial court entered an order terminating respondents' parental rights to KL and JL. Respondents now appeal.

II. LEGAL ANALYSIS

On appeal, respondents challenge, on several grounds, the trial court's decision to terminate their parental rights. Respondent-father insists he should be allowed to withdraw his plea because the trial court failed to advise him of his appellate rights as required by MCR 3.971(B)(6). He also argues that the trial court failed to hold an initial dispositional hearing and that he was not properly informed of case services. Respondent-mother faults the trial court for admitting hearsay evidence to prove new or different circumstances as a basis for termination. Also, she contends that the trial court erred when it relied on marijuana use as a basis for termination without any evidence that it put the children at risk of harm. Additionally, respondent-mother challenges the trial court's order conditioning parenting time on three consecutive clean drug screens. We will address each of the arguments from the parents in turn.

A. ADVICE OF RIGHTS IN CONNECTION WITH RESPONDENT-FATHER'S PLEA

We will first address respondent-father's assertion that the trial court did not advise him of his appellate rights after the adjudication proceedings as required by MCR 3.971(B)(6). According to respondent-father, he should be permitted to withdraw his plea because the factual basis for that plea was defective insofar as his admitted methamphetamine use and homelessness did not affect the children, who were living with respondent-mother at the time of his plea. We disagree.

An objection to the plea-taking process may be preserved by moving to withdraw a plea in the trial court or by "otherwise" objecting to the advice of rights that was provided. *In re Pederson*, 331 Mich App 445, 462; 951 NW2d 704 (2020). Because respondent-father did not object to the advice of rights provided or seek to withdraw his plea in the trial court, this issue was not preserved. *Id*. "[A]djudication errors raised after the trial court has terminated parental rights are reviewed for plain error." *In re Ferranti*, 504 Mich 1, 29; 934 NW2d 610 (2019).

"Due process and our court rules require a trial court to advise respondents-parents of the rights that they will waive by their plea and the consequences that may flow from it." *Id*. at 30. Specifically, in child-protective proceedings, the advice that must be provided to a parent entering a plea is set forth in MCR 3.971(B), which states:

> (B) Advice of Rights and Possible Disposition. Before accepting a plea of admission or plea of no contest, the court must advise the respondent on the record or in a writing that is made a part of the file:

[2] The trial court ostensibly rejected petitioner's reliance upon MCL 712A.19b(3)(c)(*ii*). But as we will discuss, the trial court in fact relied upon other conditions, aside from those leading to the adjudication, when terminating respondents' parental rights.

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* * *

> (6) that appellate review is available to challenge any errors in the adjudicatory process, which may be challenged in an appeal from the court's initial order of disposition;
>
> (7) that an indigent respondent is entitled to appointment of an attorney to represent the respondent on any appeal as of right and to preparation of transcripts; and
>
> (8) the respondent may be barred from challenging the assumption of jurisdiction in an appeal from an order terminating parental rights if they do not timely file an appeal of the initial dispositional order under MCR 7.204 or a delayed appeal under MCR 3.993(C).

If the trial court fails to advise a parent of these appellate rights, the court rules provide a remedy for the parent on appeal following termination of the parent's rights. Specifically, MCR 3.971(C) states: "The respondent may challenge the assumption of jurisdiction in an appeal from the order terminating respondent's parental rights if the court fails to properly advise the respondent of their right to appeal pursuant to subrule (B)(6)-(8)."

Here, the transcript of respondent-father's plea establishes that the trial court did not inform respondent-father of appellate rights on the record before entry of his plea. But respondent-father is not entitled to relief on appeal. At most, under MCR 3.971(C), if he was not properly advised of his appellate rights, he would be able to "challenge the assumption of jurisdiction" in his current appeal following termination. In this respect, respondent-father does briefly assert that there was not an adequate factual basis for his plea, but his jurisdictional argument lacks merit. "In order to find that a child comes within the court's jurisdiction, at least one statutory ground for jurisdiction contained in MCL 712A.2(b) must be proven, either at trial or by plea." *In re SLH*, 277 Mich App 662, 669; 747 NW2d 547 (2008). Jurisdiction must be demonstrated by a preponderance of the evidence. *In re Hockett*, 339 Mich App 250, 254; 981 NW2d 534 (2021).

In this case, the trial court adjudicated respondent-father under MCL 712A.2(b)(2). The trial court's assumption of jurisdiction under that provision was supported by a preponderance of the evidence because respondent-father's admissions at the plea hearing established that he was unable to provide adequate housing for his children, and by his own admission, he was engaged in using methamphetamine, which was negatively affecting his children's welfare. In other words, this was not an instance of drug use or illegal activity without proof of any connection to abuse or neglect. See *In re LaFrance Minors*, 306 Mich App 713, 731; 858 NW2d 143 (2014). Moreover, although it would be improper to exercise jurisdiction when a child lives separately from the parent in a home that is not "unfit," see *In re Long*, 326 Mich App 455, 462; 927 NW2d 724 (2018), that was not the situation when this case started. At the time that the trial court assumed jurisdiction, the children were going back and forth between their parents; they were not placed exclusively in respondent-mother's care. Beyond that, respondent-mother's home was likewise unfit as a result of domestic violence and methamphetamine use in her home. Therefore, the trial court did not err by exercising jurisdiction under MCL 712A.2(b)(2).

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B. DISPOSITIONAL HEARING AND ADOPTION OF CASE-SERVICE PLAN

Respondent-father argues that the trial court erred by failing to hold an initial dispositional hearing as required by MCR 3.973(C). Respondent-father also contends that he was not informed of the schedule of services and that no one reviewed the case-service plan with him. Respondent-father therefore insists that reasonable efforts towards reunification were not made. Respondent-father failed to raise these issues in the trial court, meaning that these issues are unpreserved. See *In re Atchley*, 341 Mich App 332, 336; 990 NW2d 685 (2022). Our review, therefore, is for plain error affecting substantial rights. *In re Sanborn*, 337 Mich App 252, 258; 976 NW2d 44 (2021). Respondent-father has not shown plain error.

When the children are in placement, a dispositional hearing must be held within 28 days of the trial court's assumption of jurisdiction unless "good cause" for a delay exists. MCR 3.973(C). A dispositional hearing may be conducted "immediately following" the adjudicatory proceedings. *In re Thompson*, 318 Mich App 375, 379; 897 NW2d 758 (2016) (quotation marks and citation omitted). Nevertheless, adjudication and disposition are distinct proceedings—each with its own procedural requirements—and the two cannot "be converged such that there was no distinction." *Id*. (quotation marks and citation omitted).

Here, the plea transcript reveals that the trial court in fact conducted the initial dispositional hearing immediately after respondent-father's plea. See *id*. Promptly after accepting respondent-father's plea, the trial court told him that "we're going to enter some orders about what you need to do to get started on the case." The trial court then asked the caseworker for recommendations for services for respondent-father, and then the trial court ordered respondent-father to engage in a variety of services and comply with a case-service plan. After that hearing, in addition to entering an order of adjudication, the trial court entered a written order of disposition memorializing those service requirements for respondent-father and setting the initial review hearing for June 10, 2021. Thus, contrary to respondent-father's assertion, the trial court held an initial dispositional hearing, which took place immediately after respondent-father entered his plea. See *id*.

With respect to whether respondent-father received a case-service plan or reviewed it with anybody, we note that under the probate code, absent certain aggravated circumstances not at issue here, the DHHS also "has an affirmative duty to make reasonable efforts to reunify a family before seeking termination of parental rights." *In re Hicks/Brown*, 500 Mich 79, 85; 893 NW2d 637 (2017). See also MCL 712A.19a(2). As part of its reasonable efforts, the DHHS must "create a service plan outlining the steps that both it and the parent will take to rectify the issues that led to court involvement and to achieve reunification." *In re Hicks/Brown*, 500 Mich at 85-86. See also MCL 712A.18f(3)(b) and (c). The case-service plan must list a schedule of services to be provided to the parent, the child, and—if the child is placed in foster care—the foster parent, to facilitate the child's return home or to facilitate the child's permanent placement. MCL 712A.18f(3)(d).

Here, to the extent that respondent-father contends he was not provided with an explanation of services, the initial case-service plan, dated April 9, 2021, does not appear to have been signed by respondent-father, which is concerning. See *In re Mason*, 486 Mich 142, 156-157; 782 NW2d 747 (2010) (discussing procedures in the Michigan Foster Care Manual regarding the need for a parent's participation in development of the case-service plan and noting the conspicuous absence of the respondent's signature from the case-service plan). Similarly, there are also updated case-

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service plans that lack respondent-father's signature. Beginning with the preliminary hearing in March 2021, however, the services required of respondent-father were consistently identified on the record at each of the numerous hearings. Respondent-father was to participate in random drug screens, refrain from the use of alcohol and drugs (including marijuana), obtain and maintain suitable housing and employment, participate in psychological and substance-abuse assessments, follow any recommendations made in those assessments, and participate in the children's services as recommended. Additionally, although respondent-father's signature does not appear on all the case-services plans, he signed the plan dated July 9, 2021, acknowledging that he participated in development of the plan and that he had received a copy to review. Moreover, he participated in services during the course of this case, indicating that he understood which services were expected of him. In sum, despite unsigned case-service plans in the record, respondent-father was informed of his obligations under the case-service plans and he participated in some of the services required by those plans. Therefore, on this record, respondent-father has not shown plain error. See *In re Sanborn*, 337 Mich App at 258.

C. ADMISSION OF HEARSAY STATEMENTS

Respondent-mother faults the trial court for admitting hearsay statements to establish new or different circumstances as a basis for the termination of respondents' parental rights. According to respondent-mother, DHHS special investigator Alisha Flotte was permitted to testify about KL's statements that she was a victim of a sexual assault. Because the statements were admitted through the testimony of Flotte, respondent-mother was not able to test the credibility of the statements via cross-examination. Respondent-mother also argues that the testimony of foster-care worker Emily Bartzen included statements from KL about KL's distrust of respondent-mother and her belief that respondent-mother would revert to drinking, smoking marijuana, and hanging out with the wrong people. We agree that the trial court erred by admitting hearsay at the termination hearing.

Respondent-mother failed to preserve her evidentiary issue in the trial court, so our review of this issue is, therefore, limited to plain error affecting substantial rights. See *In re Sanborn*, 337 Mich App at 258. Generally speaking, the rules of evidence apply during an adjudicative trial, but they do not apply during the dispositional phase of the proceedings. *In re Sanders*, 495 Mich 394, 405-406; 852 NW2d 524 (2014). If termination did not occur at the initial disposition hearing and the case later proceeds to termination on grounds that formed the basis for adjudication, the rules of evidence—except those for privilege—typically do not apply at the termination hearing. See MCR 3.977(H); MCR 3.977(H)(2). Instead, "[a]t the hearing all relevant and material evidence, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value." MCR 3.977(H)(2). Under MCR 3.977(F)(1)(b), at a termination hearing on "a supplemental petition that seeks to terminate the parental rights of a respondent over a child already within the jurisdiction of the court on the basis of one or more circumstances new or different from the grounds that led the court to take jurisdiction," the trial court's findings must be based on "legally admissible evidence."

Here, with regard to respondent-mother, the circumstances leading to the adjudication were substance abuse (especially the use of methamphetamine), domestic violence, and the fact that the children were not going to school. At the termination hearing, however, petitioner cited new and different circumstances, including, most notably, respondents' alleged failure to protect KL from sexual assault by others. The new and different circumstances also included respondent-mother's

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lack of housing,[3] employment issues, and criminality. Because all those circumstances were "new and different" from the circumstances proved at the adjudication, legally admissible evidence was required. See MCR 3.997(F)(1)(b); *In re Snyder*, 223 Mich App 85, 90; 566 NW2d 18 (1997).

Notably, the only proof offered to support the claim that KL was sexually assaulted—and respondents failed to protect her from those assaults—was inadmissible hearsay. See MRE 801(c); MRE 802; *In re Gilliam*, 241 Mich App 133, 137; 613 NW2d 748 (2000). During the termination hearing, two caseworkers recounted KL's allegations of sexual abuse and her statements about not feeling safe in respondents' homes. That hearsay evidence was not admissible, and because it was inadmissible, it could not be used to support the finding that respondents failed to protect KL. See MCR 3.997(F)(1)(b). Under the plain-error standard, this error was clear or obvious, and it also affected the outcome of the proceedings.

The trial court cited the failure-to-protect allegation at length in its findings, even going so far as to conclude that KL was afraid to return to her parents' homes because KL did not think that they would keep her safe and there was a risk she would again be sexually assaulted in their homes. The trial court also noted this alleged lack of safety in respondents' homes—and the comparative safety of the foster homes—when addressing the children's best interests. This evidentiary error affected the outcome of the proceedings. Thus, in our view, this serious error was prejudicial, and relief is warranted on plain-error review, particularly when coupled with the numerous other errors, including, as discussed later in this opinion, the unwarranted suspension of parenting time and the inappropriate consideration of marijuana without a showing of harm to the children as a reason to terminate parental rights. Based upon this outcome-determinative evidentiary error, we vacate the termination of respondents' parental rights, and we remand with instructions that "any allegations of new or different circumstances from those that justified the original assumption of jurisdiction must be established with legally admissible evidence." *In re Gilliam*, 241 Mich App at 137-138.

Admission of hearsay to prove that respondents failed to protect KL from sexual assault is the most glaring and obviously prejudicial error under MCR 3.997(F)(1)(b). Respondent-mother also asserts that legally inadmissible evidence was introduced on other topics, including housing, employment, and criminality. But contrary to respondent-mother's concern, much of that evidence would be admissible because respondent-mother made admissions to the caseworkers about, for example, her employment and housing. Her statements would be admissible against her as party-opponent admissions under MRE 801(d)(2). Respondent-mother also testified about some of those issues at the termination hearing, and her testimony on matters within her own personal knowledge was clearly admissible. See MRE 602. Nevertheless, inadmissible hearsay was admitted on those topics, including JL's hearsay report that he had a cockroach in his cereal. See MRE 801(c); MRE 802. Likewise, KL's hearsay statement that, at one time, she personally had a stash of marijuana at respondents' house was hearsay unrelated to the circumstances that led to the adjudication. The

[3] At times, both the trial court and petitioner blurred respondents' respective issues leading to the adjudication. Respondent-*father* lacked adequate housing when the case started, but respondent-mother did not. Early in the case, her trailer was deemed adequate, although there were notes that she was in the process of renovating or that it was "cluttered." It was not until later in the case that allegations of cockroaches and inappropriate housing arose.

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petition and adjudication involved no assertion whatsoever that *KL* used drugs. See MRE 801(c); MRE 802. On remand, the trial court must assess any new or different circumstances on the basis of legally admissible evidence. See *In re Gilliam*, 241 Mich App at 137-138.

Finally, although respondent-father failed to raise this evidentiary issue on appeal, we find it appropriate to exercise our discretion under MCR 7.216(A)(7) to also grant relief to him on that basis. The requirements of MCR 3.997(F)(1)(b) apply with equal force to respondent-father, and the plain error in admitting inadmissible evidence to prove new or different circumstances applies equally to him. When entering a plea, he admitted to methamphetamine use and homelessness; he did not admit to failing to protect KL from sexual assault or any of the other new issues identified by petitioner. Thus, we find it just to afford relief to respondent-father on the basis of respondent-mother's evidentiary argument, despite his attorney's failure to raise the issue for him on appeal. See MCR 7.216(A)(7).

D. STATUTORY GROUNDS FOR TERMINATION

Next, we take up respondent-mother's argument that the trial court erred when it relied on marijuana use as a basis for terminating respondents' parental rights because no evidence showed that the marijuana use put the children at risk of harm. In challenging the trial court's analysis of statutory grounds for termination, respondent-mother also argues that the trial court clearly erred by finding statutory grounds to terminate her rights to KL and JL when her infant was in her care. We review for clear error the trial court's decision that statutory grounds for termination have been proven by clear and convincing evidence. *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012). "A trial court's decision is clearly erroneous if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *Id*. at 41 (quotation marks, citation, and brackets omitted). "This Court gives deference to a trial court's special opportunity to judge the weight of the evidence and the credibility of the witnesses who appear before it." *In re TK*, 306 Mich App 698, 710; 859 NW2d 208 (2014).

"To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground under MCL 712A.19b(3) has been established." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). Here, the trial court terminated respondents' parental rights under MCL 712A.19b(3)(c)(*i*), (g), and (j). Those provisions state:

> (3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
>
> * * *
>
> (c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:
>
> (*i*) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

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* * *

> (g) The parent, although, in the court's discretion, financially able to do so, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.
>
> * * *
>
> (j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

In the case of respondent-mother, the conditions leading to adjudication included drug use (specifically methamphetamine), domestic violence, failure to send the children to school, and her act of allowing the children to run the streets unsupervised. By the time of the termination hearing, additional issues had surfaced, including failure to protect KL from sexual assault, housing, and employment. The trial court relied on the same reasons for terminating respondents' rights under all three subsections. But, as discussed, the failure-to-protect allegation was not proved by legally admissible evidence, see MCR 3.997(F)(1)(b), so it could not be cited to support the termination of respondents' parental rights. The only issues, therefore, were drug use, domestic violence, lack of schooling, and housing.

Of those issues, there was one single allegation of domestic violence before the case began. There was no other evidence of domestic violence, the caseworker did not think domestic violence constituted a barrier at the time of the termination hearing, and it was not a factor in the trial court's termination ruling. Similarly, there was no indication that the children were not attending school, and that did not seem to enter into the trial court's analysis. Although RL's employment was not entirely consistent throughout the case, he obtained employment and supported respondent-mother financially while she stayed at home with their baby. Respondent-mother and her partner, RL, to their credit, addressed their methamphetamine problem. Indeed, no one in this case tested positive for methamphetamine for over a year before the termination hearing.

The trial court, however, concluded that respondent-mother failed to address her substance-abuse problem because she continued to test positive for low levels of THC and RL, her partner, admitted that he used marijuana. RL's THC levels on his drug tests were quite high. In addressing marijuana as a basis for terminating parental rights, the trial court stated:

> One of the things that this Court has said is no use of drugs or alcohol including marijuana. Yes, marijuana is now legal. There was a time when people went to prison for marijuana. That's not the case. It's legal. But this Court doesn't want parents using mind altering substances in order to and—and be parenting.
>
> In an example of why that is goes back to the BRISSA [sic] report where [KL] says she was drinking alcohol and using marijuana when she was living in her mother's house. And the father's home. And on page 11. Is that appropriate? It's

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> legal. It's legal for 21-year-olds using. Again, it's not legal for this Court. This Court doesn't accept it and has ordered and specifically mentioned time after time after time this case and many other cases, use of marijuana is not allowed here. It's not allowed on probation in our criminal cases either and I make a point of that.
>
> Mom's live together boyfriend, [RL] who is part of this whole situation, that's who Mom lives with, that's her significant other. That's her testimony today. This drug testing, it would appear here that the cutoff point where they don't measure any higher is 1000 on THC, THC marijuana, specifically here. When I'm looking at Exhibit 4 which is [RL's] test results you got a few of these that fall less than a 1000 but the vast majority of them appear to me, now you've got some that are a low here of 209 and 105 it looks like perhaps is the lowest, yeah, that's the lowest, on one occasion.
>
> So many other ones he's at a thousand which means they stopped counting at a thousand. That's like way up here. Mom thinks it's okay that he goes to IAC and smokes dope on the way to work. She sees nothing wrong with that. Her testimony is it's legal. It must be okay to do it. It's 1egal to drink alcohol too. You think drinking a pint of vodka on the way to work at IAC is acceptable? No. It's not acceptable. It's not acceptable to use marijuana at these kind of levels specifically when I've ordered there cannot be marijuana use and he's part of family. He and Mother are tied together. They were all tied together in the trailer, still tied together. He completely ignores getting the children back, stopping the use of marijuana.
>
> Mom sees nothing wrong with it. Once again, it's okay to smoke dope on the way to work. There's nothing wrong with that. It's legal. She's choosing [RL] over and above the return of her children. Actions speak louder than words. Anybody can say anything but it's what you do that's counted.

The trial court's reasoning is flawed, and it does not support the termination of respondents' parental rights on the basis of marijuana use. Use of drugs—even *illegal* drugs—cannot just be assumed to cause harm to children or to warrant the termination of parental rights. *In re LaFrance Minors*, 306 Mich App at 731. There are certainly cases that "dramatically illustrate that substance abuse can cause, or exacerbate, serious parenting deficiencies," *id*., but there must be evidence that the drug use is linked to abuse or neglect. That cannot be assumed. *Id*.; see also *In re Richardson*, 329 Mich App 232, 255; 961 NW2d 499 (2019) (holding that substance abuse must be viewed in the context of the effect on parenting ability and the substance abuse's actual harm or articulable risk of harm cannot be presumed, but must be supported by facts in the record).

Indeed, with respect to marijuana in particular, under MCL 333.27955(3) of the Michigan Regulation and Taxation of Marihuana Act (MRTMA), MCL 333.27951 *et seq*., "[a] person shall not be denied custody of or visitation with a minor for conduct that is permitted by this act, unless the person's behavior is such that it creates *an unreasonable danger* to the minor that can be clearly articulated and substantiated." (Emphasis added). That provision of the MRTMA applies to child-protective proceedings in particular. *In re Ott*, ___ Mich App ___, ___; ___ NW2d ___ (2022)

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(Docket No. 362073); slip op at 10. See also *In re Richardson*, 329 Mich App at 255 (applying a comparable statutory provision in the Michigan Medical Marihuana Act, MCL 333.26421 *et seq*., in the context of a statutory-grounds analysis to conclude that termination could not be based upon marijuana use alone without a showing that it affected parenting ability). Here, the trial court quite significantly disapproved of the use of marijuana by respondents and RL and respondent-mother's tolerance of RL's marijuana use. But missing from the trial court's analysis is an explanation of how that marijuana use affected respondents' ability to parent. The trial court emphasized KL's hearsay statement that she had marijuana while she was living in respondents' home. But the claim that KL used drugs was a new or different circumstance, meaning that hearsay statements should not have been admitted to prove that point, see MCR 3.977(F)(1)(b); MRE 802, and the trial court erred by relying on KL's purported drug use as a basis to terminate parental rights.

Even if KL's hearsay statement is considered, no evidence even suggests that respondents provided her with marijuana, that they knew she had marijuana, or that they failed to secure their marijuana so that she could have taken it from them. To the contrary, the testimony on this matter was that respondents kept their marijuana under lock and key. Even the caseworker conceded that there was no smell of smoke in the home and no indication that respondents used marijuana around the children. Beyond that, during the case, the children spent overnight visits in the home, yet the only major concern arising from those visits was KL's allegation of sexual assault by teenagers in the home. But, as discussed, the allegation that respondents failed to protect KL constituted a new or different circumstance that could only be established by legally admissible evidence, see MCR 3.997(F)(1)(b), which was not presented at the termination hearing. Nothing in the findings of the trial court or the evidence presented indicates that respondents' use of marijuana—or respondent-mother's tolerance of RL's marijuana use before going to work—posed any danger to the children or otherwise affected respondents' ability to parent. The trial court may personally disapprove of marijuana use, but, without more, that is not a valid basis for terminating parental rights. See *In re Richardson*, 329 Mich App at 255.

The only remaining concern is respondent-mother's housing, which was not identified as a barrier until late in the case. Indeed, respondents were evicted from the trailer where they lived on October 24, 2022, approximately five weeks before the termination hearing on November 30, 2022. When new issues arise—and housing was a new issue for respondent-mother that was not a basis for her adjudication[4]—respondents must be afforded notice and a reasonable opportunity to rectify the conditions. See MCL 712A.19b(3)(c)(*ii*). For most of the case, respondent-mother lived with RL in a trailer, where she also permitted respondent-father to live. Although sometimes described as cluttered or messy, the trailer was, for most of the case, deemed stable housing even if it was not perfect. See *In re Kaczkowski*, 325 Mich App 69, 75; 924 NW2d 1 (2018) (finding that housing posed no threat to the child when the housing was "stable, even if it is not perfect"). Respondent-mother was evicted from the trailer on October 24, 2022, when she moved into a hotel. The DHHS apparently considered the hotel to be inadequate housing. But, rather than providing

[4] The trial court and petitioner blurred respondents' respective issues leading to the adjudication. Respondent-*father* lacked proper housing when the case began. Respondent-mother did not. Early in the case, her trailer was deemed adequate, although there were notes that she was in the process of renovating. Much later in the case, allegations of cockroaches and inappropriate housing arose.

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respondent-mother with services or making any effort to assist her in obtaining new, low-income housing, the DHHS sought termination of her parental rights and identified housing as a basis for termination. If housing was an issue, respondent-mother should have been afforded an opportunity to rectify this new condition. See MCL 712A.19b(3)(c)(*ii*).

Moreover, the record does not indicate, by clear and convincing evidence, that respondent-mother's housing was inadequate. Respondent-mother was not homeless after eviction. Instead, while she saved money for new housing, respondent-mother moved into a hotel, where she had a bedroom and a living room. Living in a hotel might seem less than ideal, but there is no indication that the hotel was unsafe, unclean, or otherwise unfit for the children. Housing need not be perfect to be suitable for children. See *In re Kaczkowski*, 325 Mich App at 75. Indeed, we note that, while seeking termination of respondents' parental rights to KL and JL and contending that respondent-mother's trailer and her new hotel room constituted inappropriate housing, the DHHS nonetheless permitted respondent-mother's baby to remain in respondent-mother's care. In a similar situation involving multiple children, this Court once concluded that it was "significant" that the department claimed a house was unacceptable for children, but had no concern about allowing the respondents' young baby to remain in that home. *In re Newman*, 189 Mich App 61, 67; 472 NW2d 38 (1991). The same is true here. If respondent-mother's housing was so unacceptable, and if the marijuana use by respondent-mother and RL presented such an obstacle to parenting as to warrant termination of parental rights, an infant would be the child most imperiled by respondent-mother's purported failings. Yet, the infant—who was born in March 2022—remains in respondent-mother's care and custody. Despite numerous home visits, the DHHS made no attempt to file a petition to bring her under the trial court's jurisdiction. Although certainly not dispositive, when considered with the other circumstances here, the infant's continued placement with respondent-mother is significant in assessing whether the trial court's termination of respondents' parental rights was supported by clear and convincing evidence. See *id*.

As our discussion presages, we conclude that the trial court's finding of statutory grounds to terminate respondent-mother's parental rights is unsupported by clear and convincing evidence. The two most significant issues in the trial court's analysis were ongoing marijuana use and the lack of safety in respondents' home stemming from their failure to protect KL from sexual assault. For the reasons we have discussed, the failure-to-protect allegation had to be established by legally admissible evidence, not the hearsay presented at the termination hearing. Further, the trial court erred by injecting its personal views of marijuana and using its disapproval of respondents' use of marijuana—without linking that use of marijuana to abuse or neglect—as a basis for termination. Other issues—including use of methamphetamine and domestic violence—were resolved.[5] Even though there was evidence that respondent-mother's hotel housing was not ideal, the evidence does not clearly and convincingly support termination, particularly given the short timeframe between respondent-mother's eviction and the termination of her rights. If better housing is needed, she should be given time and assistance to obtain it.

[5] The only other issue mentioned was respondent-mother's criminality, which comprised a single retail-fraud conviction. Criminal history alone—even a violent criminal history—does not justify termination. See *In re Mason*, 486 Mich at 165.

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Respondent-father does not expressly address statutory grounds, but he does argue that he was not provided reasonable services, which "ultimately relates to the issue of sufficiency." *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005). We note that, as compared to respondent-mother, the case for termination of respondent-father's rights under MCL 712A.19b(3)(c)(*i*), (g), and (j) is somewhat stronger because housing has been a consistent concern for him since the very beginning of the case, and despite time to rectify that problem, his housing was still unstable at the time of the termination hearing in November 2022. Although he made considerable progress by abstaining from methamphetamine use and securing employment, his failure to address his housing concerns, despite ample time, tends to support termination. But, just as with respondent-mother, two of the trial court's principal reasons for termination—marijuana use and lack of safety flowing from KL's allegations of sexual assault—do not support the trial court's ruling in this case. Setting aside these issues, clear and convincing evidence does not support the trial court's conclusions that respondent-father will be unable to provide proper care in a reasonable time, particularly if some housing assistance is provided by the DHHS, or that the children face a reasonable likelihood of harm in his care. See MCL 712A.19b(3)(c)(*i*), (g), and (j). Having determined that respondent-mother's parental rights should not be terminated, on the facts of this case, we also conclude that termination of respondent-father's parental rights would be premature without a showing that he will not be able to care for the children in a reasonable period of time either personally or through *relatives*, e.g., respondent-mother. Because there remains a reasonable likelihood that respondent-father will be able to provide proper care (either personally or through respondent-mother) for KL and JL within a reasonable time, termination is inappropriate. *In re Mason*, 486 Mich at 164-165.

E. PARENTING TIME

Respondents both challenge the trial court's decision to condition parenting time on three consecutive clean drug screens. In addition, respondent-mother insists that the trial court erred by suspending parenting time in the wake of KL's allegations of sexual abuse. Respondents contend those parenting-time decisions were improper absent any finding of harm to the children. Without a finding of harm to the children, the suspension of parenting time, including supervised parenting time, at the beginning of the case—and the threat that it would be suspended again if respondents tested positive in the future—was "patently invalid." See *In re Ott*, ___ Mich App at ___; slip op at 11. Under MCL 712A.13a(13), "[i]f a juvenile is removed from the parent's custody at any time, the court shall permit the juvenile's parent to have regular and frequent parenting time with the juvenile." See also MCL 712A.18(1)(p). But "[i]f the court determines that parenting time, even if supervised, may be harmful to the juvenile's life, physical health, or mental well-being, the court may suspend parenting time until the risk of harm no longer exists." MCL 712A.13a(13). See also MCL 712A.18(1)(p). Applying these provisions in the context of drug use, we recently explained that a respondent's use of marijuana did not justify denial of her parenting time unless the trial court concluded that such parenting time may be harmful to the child. *In re Ott*, ___ Mich App at ___; slip op at 11. Because no such determination was made, this Court decided that "the orders suspending respondent's parenting time for THC-positive drug screens and requiring three consecutive negative drug screens before parenting time could resume were patently invalid. *Id*. That conclusion applies "to the suspension of parenting time for positive drug screens regardless of whether marijuana is involved or some other drug." *Id*. at ___; slip at 11 n 11.

Here, the trial court erred in March 2021—when respondents were still engaged in the use of methamphetamine—by conditioning parenting time on three clean drug screens without making

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the required determination that parenting time, even if supervised, would have been harmful to the children's lives, physical health, or mental well-being. See *id*. at ___; slip at 11. Similarly, in September 2022, the trial court erred by completely suspending parenting time following KL's allegations of sexual assault by someone in respondent-mother's home. Even if KL's allegations warranted suspension of in-home, unsupervised visits, the trial court should have considered the availability of supervised parenting time and decided whether parenting time, even if supervised, could have been harmful to the children's lives, physical health, or mental well-being. See *id*. We also note that this inquiry should have been conducted individually for KL and JL. Parenting time should only be suspended when it "may be harmful to the juvenile's life, physical health, or mental well-being . . . ." MCL 712A.13a(13). This language indicates that the impact of parenting time upon a child must be analyzed for each child. Even if suspension of parenting time with KL was warranted, it does not follow that JL also should have been deprived of parenting time. In short, the trial court failed to make the appropriate findings to warrant suspension of parenting time in March 2021 or in September 2022. On remand, the trial court shall adhere to MCL 712A.13a(13) and MCL 712A.18(1)(p) before denying respondents parenting time.

F. REASONABLE EFFORTS

Finally, we briefly note that respondents both challenge the reasonable efforts made by the DHHS, contending that they were denied appropriate services—or that services were improperly delayed—and that the termination of their parental rights was premature absent reasonable efforts. Respondent-father emphatically asserts that he was denied housing services and that substance-abuse services were not provided to him until late in the case. Respondent-mother, in comparison, emphasizes that after the BRISA assessment, a recommendation was made that she and KL engage in therapy together, but that therapy was not implemented. Because of our decision to vacate the termination of respondents' parental rights, we find it unnecessary to address whether termination was premature in light of respondents' complaints about the reasonable efforts made. We leave it to the trial court on remand to ensure that reasonable efforts were, or are, provided for respondents.

Vacated and remanded for additional proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Christopher P. Yates
/s/ Stephen L. Borrello
/s/ Sima G. Patel

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STATE OF MICHIGAN
IN THE SUPREME COURT

IN RE D V LANGE MINOR

Supreme Court Case No. 166509

Court of Appeals Case No. 362365
Wayne County Circuit Court, Juvenile Division Case No. 2021-000658-NA

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A Yes.
Q And when was that?
A He was hospitalized around June 4th of 2021.
Q Did Ms. Kathleen Lange take the child to the hospital?
A Yes.
Q And why did she take the child to the hospital?
A Deante was taken to the hospital because he was making threats to harm himself and the family pets and others in the home.
Q Did Ms. Kathleen Lange report whether or not Deante had made these threats before?
A Yes.
Q What history does she report of Deante?
A Deante has a history of trying to start a fire in mother's home. Deante has also, I'm trying to review the petition, if that's okay.
Q Yes?
A Thank you.

It is reported that he has a history of attempting to set fires in the home and he has attempted to kill the family pets with household cleaning products.

Q And the department has been working with this family since June; is that correct?
A Correct.

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Q And is Deante still hospitalized from that June 4th incident?
A Yes.
Q Has the department had contacts with the hospital regarding what treatment will be necessary for Deante once he's released from the hospital?
A Yes.
Q And was the hospital initially seeking in-patient treatment for the child?
A Yes. They were initially seeking an in-patient psychiatric facility for the child.
Q Is the hospital currently seeking in-patient psychiatric treatment for the child?
A No.
Q Did the hospital do any sort of exam on the child to determine that he could be released without in-patient treatment?
A If he was evaluated by staff members and physicians at the hospital and is no longer meeting the criteria for in-patient treatment.
Q Does the hospital recommend that Deante have intensive out-patient mental health services?
A Yes.
Q Has the hospital made any recommendations for where he might obtain those treatments?

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attempt to locate a suitable in-patient facility for Deante.

Q Have the out-patient options been discussed with Kathleen Lange?

A Yes.

Q Is she willing to care for Deante and assist him in receiving that out-patient care?

A Not at this time, no.

Q Have you talked to Ms. Kathleen Lange regarding Deante's return to her home?

A Yes.

Q Has she refused to allow Deante to return to her home?

A Yes.

Q Has she refused to care for Deante in the home with any other service besides in-patient treatment?

A Yes.

Q And Deante is currently ready to be medically discharged; is that correct?

A Yes.

Q Are the other children, Joshua and Caiden, currently in a safety plan?

A They are currently with non-respondent mother, Lisa Lange.

Q Would Ms. Lisa Lange -- does Ms. Lisa Lange have share custody of those children?

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BY MS. WALKER:

Q Ms. Snarski, I was a little confused.

Were all three children living with Kathy Lange before the department got involved?

A Kathy Lange and Lisa Lange share 50/50 custody of the other two children. It was my understanding that they resided with Ms. Lisa Lange for the majority of the school year due to their schooling.

When summer had began they had anticipated to start back with their regular parenting time schedule.

Q And Deante was included in that Ms. Lange, at Lisa Lange's house?

A I believe that was just the two children that Lisa Lange is the legal mother to.

Q To the best of your knowledge, were there any, I guess, physical incidents against the other two children as far as from Deante?

A I'm not sure. I do believe there was some prior allegations, but I do not recall specific incidents with the other children.

Q And you said the two younger ones do not have any special needs and nothing that they need from the Court; is that right?

A Right, not that I'm aware of.

Q Do you think they need a trauma assessment?

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A No.
Q And so you haven't seen a written report from that place either, correct?
A Correct.
Q So has anybody spoken to Deante, has he articulated why he feels he's not safe to be in the home with his two brothers?
A He has not disclosed that.
Q You said the hospital was initially seeking in-patient treatment?
A Correct.
Q And do you know where they were seeking in-patient treatment and why it was refused?
A I don't know what specific facility, but I do know they were attempting to get him into in-patient treatment. However, there were no available openings at the time.
Q Ms. Lange who had them mostly in the summer, didn't she tell the agency that Deante has tried to perform oral sex on his brothers in the home when she hasn't been able to supervise?
THE COURT: Which Ms. Lange?
MS. POSNER: Kathy.
A I don't recall. I don't believe she said that to me specifically, but that may have been disclosed with the petitioner, Ms. Davis.

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any other person, including his brothers, his mother?

THE COURT: Counsel, she can't -- she's just going to tell you what it said. She said he's ready for discharge and your client said I don't care, I'm not taking him home.

MS. POSNER: That's not exactly what she said, your Honor, but I take real --

THE COURT: That's the reality of it.

MS. POSNER: The reality is he's gonna burn down their house and rape his brothers.

THE COURT: I don't know about that.

MS. POSNER: That's I don't care?

THE COURT: Yeah. Anything else?

MS. POSNER: I don think that's I don't care.

(Simultaneous speakers)

MS. POSNER: You're right, your right.

THE COURT: Ms. Snarski, a couple of thing.

MS. POSNER: Okay.

THE COURT: I'm talking to Ms. Snarski, Ms. Posner.

I'm going to make sure I understand your testimony. The two mothers have divorced and there's a 50/50 custody order as to the two of the three children? Deante is not subject to the custody order, correct?

A Correct.

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MS. POSNER: I would like to add one thing. I've known this family for a long time and Kathy Lange has done everything in her power to help Deante. I suggested --

MS. WHITE: Your Honor, I would object to Ms. Posner unless she's going to be sworn in as a witness.

MS. POSNER: Okay, I'm done. I'll take care of it on the next go round.

THE COURT: This will be my recommendation and then if anyone disagrees you have seven days to file a review before the Presiding Judge Edward Joseph. Otherwise, the recommendation will be become a final order.

Kathy Lange, you have 21 days from today to file a claim of appeal with the Michigan Court of Appeals on the issue of removal of your son from your care. If you cannot afford an attorney for the appeal or the transcripts necessary to effectuate the appeal, the Court will do them for you, will provide them for you free of charge.

But the Court does find it's clearly contrary to the welfare of Deante to return to his mother, Kathy Lange's care.

First of all, let me tell you, Ms. Lange, I think I have an idea what Ms. Posner was trying to say

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in terms of her knowledge of you and I appreciate that. But you don't have to have knowledge of you personally to know that you've probably made Herculean efforts to deal with the mental illness of your son.

My heart breaks. I have been in child welfare for 35 years and RAD is a diagnosis that nobody would wish upon anyone that they love. So I am very, very sorry. I have no, if in fact, your son has been diagnosed with RAD as disorder that is a pill that is hard to swallow in terms of that.

But what I have before me is a very limited issue. It isn't that you don't love your son. It isn't that you haven't probably bankrupt yourself emotionally and financially to take care of your son. The issue is very small and it does come within the provisions of the juvenile code and that is the child is without proper care and custody. If the hospital -- and that's the testimony here today. If we're going to have a probable cause hearing. Maybe there will be witnesses that will say something different.

But what I have before me at a probable cause hearing and again we're continuing it for completion, but the department is requesting a placement order for your son is that child is without proper care and custody because you won't take him home with the

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department. I'm ordering that you not cash anymore adoption subsidy checks. So they're over. They are to be turned over to the State of Michigan for reimbursement for the cost and care of the child who is no longer in your care.

If you are paying for that, Ms. Snarski you can contact the adoption subsidy office, but in the interim, Ms. Lange will not cash those checks and arrangements will be made through the child's attorney if necessary for those to be diverted for reimbursement to the County of Wayne, State of Michigan for Deante's care.

I will allow regular and frequent visitation between Deante and his mother pending resumption of the hearing. Ms. Walker is going to meet with Deante and make further recommendations and Ms. Walker is to be notified with 24 hours of the child's placement once he's picked up by the department and they have this order, so she knows where he is at all times.

Ms. Walker is to be notified of any changes within 24 hours of the child's placement, mental health, education or physical conditions. He is to have supervised sibling visits once a month with his siblings as is required.

I'm going to dismiss Joshua and Caiden from

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the petition. To my belief, these children have really limited contact with Wayne, other than to visit their mother, but they reside in Macomb County. But more importantly there are no allegations that Kathleen, at least, that I've heard today has maltreated Joshua and Caiden.

There is a Friend of the Court order is to be filtered in. Lisa Lange feels that Kathy Lange's alleged abandonment of Deante impedes or impacts upon the possibility to provide proper care of Joshua and Caiden, she can go to the Friend of the Court in Macomb County and get a full custody order or have a hearing dispute on that issue.

So I'm dismissing those two children from the petition. I am authorizing placement of Deante with the department pending presumption of the probable cause hearing.

I'm going to order that -- I'm sure he's had a mental health assessment. He's been in the hospital. So I'm not going to order that. But clearly he needs a trauma assessment and must be in trauma based counseling.

Anything further on behalf of the department, Ms. White pending resumption of the probable cause hearing?

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heard the testimony that I summarized from the initial preliminary hearing. You will waive probable cause and we will proceed to pretrial and you can then adjudicate this through a trial; is that right?

MS. POSNER: Correct.

THE COURT: Any objection, Mr. Smitt?

MR. SMITT: No.

THE COURT: Ms. Patrick?

MS. PATRICK: No objection.

THE COURT: Ms. Patrick, Deante is where? Do you know?

MS. PATRICK: He's in Hanley House and my colleague, Ms. Walker, had a zoom conference with him this morning.

THE COURT: Excellent. Is he able to see his siblings or his mom? What's going on with that, do we know?

MS. PATRICK: I do not know.

THE COURT: Let's ask Ms. Snarski.

Ms. Snarski, is he visiting anybody over there at Hanley House?

MS. SNARSKI: I'm not sure, Referee Allen. I actually left employment with the Department on August 9th and the cases were transferred to foster care. So I unfortunately been able to receive any updates on that.

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care once discharged?
A Yes, sir.
Q Basically you would be preparing for a placement other than the current residential placement if the child was discharged, correct?
A Yes, sir.
THE COURT: Alright, we've got it covered then.
MR. BOYD: Yes.
DIRECT EXAMINATION (Continuing)
BY MR. BOYD:
Q And lastly that the ongoing assessment of the strengths and needs of the child continues to support the determination that the child's needs cannot be -- strike that. I can say it simply.
Sir, you believe that the needs of the child could not be met in another placement at the current time, such as a foster family, correct?
A Currently, yes.
MR. BOYD: Thank you, your Honor.
THE COURT: Alright.
DIRECT EXAMINATION (Continuing)
BY MR. BOYD:
Q And do you need anything new in terms of orders for the child?

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THE COURT: -- No, no. Look, I understand what both of you have this view of what this Court should hear.

What I want to hear about is, it sounds like your whole case, Mr. Boyd, rests on whether or not Ms. Lange was neglectful by not taking him out of the hospital when she considered it unsafe to do so.

So put on your case. Let me hear the evidence. I'll hear the arguments.

I agree that while what has happened at Hanley House is concerning. It's not necessarily directly probative as to what was on mother's mind when she told St. John's apparently nobody is contesting that she told St. John's she couldn't take him home, because it wouldn't be safe for her other children.

So that I think where this is at the moment. So let's just hear it from the witnesses.

MR. BOYD: I understand. So is Ms. Anderson going to be sequestered then?

THE COURT: Yes. I presume that --

(Simultaneous speakers)

THE COURT: Unless the attorneys want to agree that everybody can hear all the testimony, I don't have any objection.

MR. BOYD: It doesn't matter to me.

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be happy to rephrase it, fair enough?
A Fair.
Q We can get through this in a very civil manner, which would be my preference; is that fair?
A Yes. That would be my preference as well.
Q Thank you.
So now you also have at some point in time you were married; is that correct?
A Yes, I was.
Q And that was with Lisa Lange?
A Correct.
Q And the two of you then adopted Joshua and Caiden together; would that be fair to say?
A Yes.
Q And since then have the two of you,are you divorced?
A (No verbal response)
Q What was that?
A Yes, we are.
Q And as it relates to child Joshua and Caiden, you share custody 50/50?
A Yes, we do.
Q Is there a custody order as it relates to Deante or no because Lisa was never a legal parent to that child?
A That's correct. She was not involved.
Q So it is my understanding that -- how old was Deante

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when you adopted him?
A Five.
Q Five years old?
A Yes.
Q And how old was he -- did he have problems when you first adopted him? Were there issues you were working with?
A Yes, there was. He was with a therapist and psychiatrist at that time.
Q And you were aware of that when you adopted him?
A Yes.
Q So part of the adoption process, my understanding is you get background information on their mental health and medical, things of that nature?
A That was known at that time, yes.
Q And you've actually had him approximately in 2020; you sent him to some place in Montana for treatment; is that fair to say?
A Yes, it is.
Q And that was some type of a year long program to address some mental health needs?
A Correct.
Q What are the primary mental health needs of Deante?
A Deante suffered from post traumatic stress disorder, has been diagnosed with reactive attachment disorder as well

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as oppositional defiance disorder as well kind -- he had been through, other than that his diagnosis were ADHD was the only other diagnosis that he had. I'm not sure if that answered the question.

THE COURT: I'm sorry. Wait. You said PTSD, reactive attachment disorder and then what was similar to that was what?

A Oppositional defiance disorder.

THE COURT: Thank you.

A You're welcome.

DIRECT EXAMINATION (Continuing)

BY MR. BOYD:

Q And at some point in time, did he leave the program in Montana and come back to your home?

A Yes. He was dismissed from the program six months into it.

Q Now at that time when Deante came back from Montana, were you with your wife then or was that over?

A That was over.

Q And when was that?

THE COURT: Wait, wait.

Ms. Lange, are you saying he was supposed to be in this program for a year and then he got dismissed from it because of his behavior?

A Yes, sir.

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A It was actually due to him threatening to kill himself and he had attempted to set fire to the home.
Q And he received treatment for a period of time at St. John's Hospital?
A St. John's was not equipped with pediatric psychiatric care in any way.
Q I didn't ask you if they were equipped. I just asked you if he was at St. John's for a period of time?
A He was, but he did not receive care from them.
Q Then you had contact with the CPS specialist Tonya Davis?
A Yes.
THE COURT: I'm sorry. Ms. Lange, I'm not sure I got this right and I apologize. I'm just not as fast.
So you said you took him due to him, did you say attempting to set fire to the home or threatening to set fire to the home?
A (Audio interference)
THE COURT: I couldn't hear you.
A He attempted to set fire to the home.
THE COURT: Attempting to set fire to the home and then you said there was something else he did, too, right?
A Yes. He had been threatening to kill himself as well.

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A Yes, that's what they recommended.
Q And at that point in time you didn't pick up the child and take him home; is that fair to say.
A That is fair to say.
Q During that period of time you refused to allow him to return home?
A Correct.
Q And was then -- was there a team decision meeting approximately July 13, 2021 that you were present with?
A Yes.
Q Was it discussed about out-patient mental health services for Deante that would allow him to be discharged into your care?
A Yes.
Q And that was something that you weren't interested in at the time?
A Not that I wasn't interested. It wasn't safe for him to be in my care.
Q Your testimony is you don't feel it was safe to take him home, correct?
A (No response)
Q Is that a yes?
A Yes, that is correct.
Q I didn't hear you. I think I saw you nod your head, sorry.

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was not a criminal matter because the ages and age differences did not warrant criminal in Montana.

Q But the complaint was clearly about sexually acting out, sex acting out with these boys, correct?

A (No response)

Q And it was Deante who initiated it, correct?

A Deante and another boy, yes,

Q There was a time that -- you went to a few places before you got to St. John's, correct, for help?

A He had been admitted probably six or seven times to psychiatric admission to both Hubbard Oaks and what's the name of the other one.

Q Havenwyck?

A Havenwyck.

Q And did he get services any of those six times?

A Yes, he did complete as each.

Q Why was he taken there six times?

A Various different things, threatening -- and there was twice the fire. He was physically combative with both Lisa and I. There were times when he was -- and other kids in the house.

Q Wait, what did you say? I'm sorry, you broke up?

A He was threatening physically Lisa and I actually telling us that he was going to kill us in our sleep and then there was a time where he was threatening to kill

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A Actually, it worked out that the head of the program out there was coming to Indiana to pick up a car he had purchased. So he came to Indiana and I drove to Indiana to pick Deante up at the airport there.

Q And then you took him to your house, correct?

A Yes.

Q And that was what month?

A April of 2021.

Q And then were there incidents that happened after he came home?

A Yes, there were.

Q He just list.

A He would become very afraid and would run out of the house threatening to run away. He would become physical with his brothers, taunting them into fighting with him. He was also breaking things in the house. He threw a football at a window and this was a house that I was renting. He damaged the flooring, damaged furniture. It was his destructive behaviors just ongoing from that point forward.

Q Did he ever sexually try -- did he ever try any sexual activity with his brothers?

A His younger brother when he was two years old. So that would have made Deante eight years old. He attempted to get his brother to do something, but it was found out

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before it happened and that's when we put Deante in his own room with door alarms on the door, so we would know when he came in or out and from that point forward he was never left alone with any of the kids.

Q And how old was he when that happened?

A He was 8.

Q And he lived there as many times as you brought him home and is that how he lived with the door lock and the --

A Yes.

Q -- what you just described?

A Yes.

Q I am going to move forward.

So then you took him to St. John's. You testified on June 4th of 2020, correct?

A Correct.

Q And you explained to the social worker what the problems were?

A Yes, I did.

Q And they admitted him?

A He was there for medical clearance to be sent to a pediatric psychiatric hospital, but there was no pediatric hospital that would take him because of his level of extreme behaviors. So they had to admit him because they had no choice.

Q So they admitted him because they knew about his

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(Audio interference)

Q Now up until the 9th where all those days, weeks that he was there, they agreed that he needed treatment in-patient and they couldn't find it; is that correct?

A That's correct.

Q And then they just decided the next step -- up to that point they decided to discharge him, medically discharge him, is that correct?

A That's my understanding was that an adult psychiatric physician did a consult with him and based on that said that he could be discharged for their out-patient treatment program intensive, whatever.

Q Ms. Davis, was she involved in any of that?

A No. She was aware that it happened, but she was not party to it, no.

Q Was she trying to help -- did she try to help you get something accomplished where they would not discharge him?

A Yeah. We argued that he didn't receive any treatment and how could he possibly be discharged when the behaviors are so extreme that the psychiatric hospitals for pediatrics is not accepting him.

Q So Ms. Davis knew about that, is that correct?

A (No response)

Q And she was in the process of trying to help you further

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not in a position to take him because she could not, you know, care for him.

There's also a concern that, you know, based on his behavior would be a risk, you know, to the, you know, other children but arrangements could always be made where the one child is not going to be around, you know, the other child, so she should not necessarily need to abandon her one child, you know, Deante, in order to see her other children.

THE COURT: Well, how does she do that though? I mean, if she's got three children, she's a single parent. How does a single parent keep their three children separate unless she has like two homes and she keeps them in separate homes?

MR. BOYD: Well, your Honor, I believe there's her ex-wife he has a home and has children but I don't think for the Court to take jurisdiction needs to figure out the mechanics of, you know, how the mom, you know, is supposed to do that.

THE COURT: All right.

MR. BOYD: So ultimately, the child was at St. Johns Hospital on, you know, July 9, 2021 and the child was ready for, you know, discharge and

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So look, I think that the facts are pretty clear. That Deante Lange has a very severe detachment disorder. It causes him to act out in very dangerous ways and that the mother has made numerous efforts to try to have Deante's condition addressed. The mother has two other children and, and I'm being told that, look, if the hospital says he's ready to be discharged then as long as she doesn't come and pick him up regardless. It doesn't matter what other circumstances she has to deal with, including the fact that she has two other children who would be at risk if she brought Deante home who is, as far as I can tell, that would be like bringing a ticking time bomb into your home. Nobody here has told me what the mother -- what, what she was supposed to do except to say she was supposed to go pick him up at the hospital. The rest of it, it's her problem despite the fact that she's made numerous attempts to try to find help for him and been unsuccessful. It's her job to pick him up at the hospital even if it means that her other children are going to be abused because she's a single parent, and she has three children in one home. I don't know how anybody is supposed to manage that situation. That is beyond my comprehension. No one has explained

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that to me. I agree that you've made out a record that she failed to pick him up when they, when the hospital, "Said he's ready for discharge", but I, you know, I guess, you know, this is a case that can be appealed. I've never had a case like this. I can't find that the mother -- I just don't see how I can find that she's been neglectful or abusive in terms of her actions to date and this is a very prickly problem. It's sad but and maybe, you know, maybe the law needs to be changed or perhaps a dependency petition can be filed because whatever I decide here, Deante still needs help. Nobody is going to dispute that. Deante needs help. Mother is trying to get him help. Mother is trying to keep her other children safe. I'm being told that she doesn't really have choice. She just has to choose to bring him home or be deemed neglectful on the part of the law and I, I just -- that, you know, if I can't figure out what I would do as a parent in a situation like this then how am I supposed to say, well, she's neglectful and she's abusive because she didn't do what I -- what I wouldn't know what to do besides what she was doing so, you know, for those reasons I'm going to deny the petition.

I just -- and of course, the parties

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department and Foster Care can't do it because we do not have jurisdiction of him. CPS will file another petition but it will be for the same abandonment. It will be the same petition.

MS. POSNER: We're all aware of that. Thank you.

THE COURT: That's up to the department.

MR. BOYD: Right.

THE COURT: The department can review and decide whether, under the circumstances and based on my comments, whether it might be appropriate to think about filing a dependency petition because I certainly, from everything I heard, it sounds like that would be a perfect path to the Court taking jurisdiction but, other than that, I haven't heard anything has changed; that it's any safer for Ms. Lange to bring Deante home now than it was ten months ago or whatever the time frame is. I, I, you know, so and you're right, Ms. Lamont. You're right. You know, if the mother doesn't come and pick Deante up, you know, Foster Care can't do it. You're right. I'm not disputing that. I'm just, you know, saying that under these circumstances I just, I just can't justify a finding

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MS. LANGE: This is a no win situation. I love Deante with all my heart. I've done everything I can and the only thing I know is that he's not safe to have in the home and I'm looking to the state that I live in for help and there is no help and, you're right, the laws need to be addressed and we need to address our mental care because it's not happening and I don't want to be another news story. I don't want my kids to suffer because I had to do what I had to do and it's like it's Sophie's choice for me and I'm taking a stand because it's the only way I know how to make change. I'm not a bad mother and I love Deante and I want him healed but nothing since he's five years old. We have exhausted everything the State as to offer, everything, and nothing has made a difference. He's incredibly intelligent and it works against him. I'm looking for any help. Any help from anybody but when you say the services, these are the same services that we have and they're not good enough and that's all I'll say.

THE COURT: Yeah, I'm going to talk to the lawyers in a breakout room. I got another idea, so and so I appreciate hearing that, Ms. Lange.

If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

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STATE OF MICHIGAN

COURT OF APPEALS

In re D V LANGE, Minor.

UNPUBLISHED
November 2, 2023

No. 362365
Wayne Circuit Court
Family Division
LC No. 2021-000658-NA

Before: REDFORD, P.J., and O'BRIEN and FEENEY, JJ.

PER CURIAM.

In this child protective proceeding, petitioner, the Department of Health and Human Services ("DHHS"), appeals by right the circuit court's order dismissing for lack of jurisdiction the petition to take temporary custody of the minor child, DVL. Because a preponderance of the evidence supports a finding of jurisdiction under MCL 712A.2(b)(1) and (2), we reverse and remand for further proceedings.

I. FACTUAL AND PROCEDURAL BACKGROUND

In 2013, through a single parent adoption, respondent adopted five-year-old DVL. Because he had been exposed to trauma and abuse while in the care of his family of origin, DVL treated with both a therapist and a psychiatrist. DVL suffers from post traumatic stress disorder, reactive attachment disorder, oppositional defiance disorder and attention deficit hyperactivity disorder. Over the years, DVL's behaviors escalated and his mental health deteriorated. DVL has a history of attempting to set fires in the family home and attempting to injure family pets. Due to DVL's destructive and sexualized behavior, respondent installed door alarms on his bedroom door and never left him alone with his two siblings. Between the ages of 10 and 13, DVL was hospitalized six or seven times to receive psychiatric care at Hubbard Oaks and Havenwyck for threatening to kill his parents and siblings. The hospitalizations were typically two weeks in duration and were followed by outpatient treatment. As respondent testified at trial, DVL returned home after each hospitalization:

> Yes [out-patient treatment was provided] and each time he was provided with day treatment programs to follow-up with the in-patient treatment and he would complete that and things would be ok for a while and then it would go right back where it was.

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DVL also has a history of sexually inappropriate behaviors at home and while in placement. In November 2020, respondent enrolled then 13-year-old DVL into a year-long out-of-state residential treatment program.[1] Six months in, the program terminated DVL for sexually inappropriate behavior with other residents. DVL returned to respondent's home in April 2021.

After his return to Michigan, DVL's behaviors worsened. In early June 2021, when he attempted to start a fire in the home and threatened suicide, respondent took DVL to St. John Hospital. Respondent sought the hospital admission because she knew DVL first needed to be medically cleared before he could enter into an inpatient treatment program. On June 10, 2021, Children's Protective Services ("CPS") received a referral after respondent informed hospital staff that because of safety concerns, she was unwilling to manage or care for DVL's mental health needs. Thereafter, CPS and the hospital emergency room social worker unsuccessfully searched for a suitable pediatric inpatient psychiatric program for DVL. While at the hospital in the holding area and in the hospital's general population waiting to be transferred, DVL was not receiving treatment; he was only being held until a suitable pediatric psychiatric facility could be found. According to respondent, who was the only witness to testify at the adjudication, the pediatric psychiatric hospitals would not take DVL due to the severity of his issues and "they couldn't guarantee the safety of the other patients."

On July 8, 2021, DVL was not cleared for discharge home. Amazingly, on July 9, 2021, DVL's medical providers at St. John Hospital cleared him for discharge with the recommendation that DVL receive intensive outpatient mental health services. Upon learning of the impending discharge, respondent refused to pick up DVL from the hospital and indicated that she would not allow him to return to her home because it was unsafe for all of them; respondent testified that "to hear that there was no help was . . . heartbreaking." During a July 2021 team decision meeting, CPS offered respondent assistance in securing outpatient mental health services for DVL but she refused based upon DVL's numerous prior short-term inpatient stays, subsequent outpatient treatment. and ongoing mental health issues that made him a significant threat to himself and others

On July 16, 2021, DHHS filed a petition alleging that respondent's abandonment of DVL allowed the court to assume jurisdiction over DVL, as well as his two siblings.[2] At the preliminary hearing, a referee entered an interim placement order that permitted DHHS to place DVL in a residential home. The two-day adjudication trial commenced in May 2022, and concluded in June 2022. At the conclusion of the trial, the court found that a statutory ground to exercise jurisdiction over DVL did not exist. Consequently, it dismissed the petition. This appeal followed.

II. STANDARD OF REVIEW

We review a trial court's jurisdiction decision for clear error in light of the court's findings of fact. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). A finding is clearly erroneous

[1] Respondent testified that the year-long residential program DVL attended in 2020 cost $2000 per month and the parents covered the cost as it was not covered by insurance.

[2] At the preliminary hearing, respondent's other two children were dismissed from the petition and, throughout the lower court proceedings, they remained in the care of their other legal parent.

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if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re Long,* 326 Mich App 455, 460; 927 NW2d 724(2018) (citation omitted). To the extent that the jurisdictional issue presents a question of statutory interpretation, we review that issue de novo. *In re LaFrance,* 306 Mich App 713, 723; 858 NW2d 143 (2014).

III. ANALYSIS

DHHS argues on appeal that the trial court clearly erred when it refused to exercise jurisdiction over DVL under MCL 712A.2(b)(1). We agree, and further find that the trial court also erred when it failed to assume jurisdiction over the minor child under MCL 712A.2(b)(2).

The purpose of child protective proceedings is the protection of the child. *In re Brock,* 442 Mich 101, 107; 499 NW2d 752 (1993). "Child protective proceedings are generally divided into two phases: the adjudicative and the dispositional." *Id*. at 108. The adjudicative phase determines whether the trial court may exercise jurisdiction over the child. *Id*. To establish jurisdiction, the petitioner must prove by a preponderance of the evidence that a statutory ground exists under MCL 712A.2(b). *In re SLH*, 277 Mich App 662, 669; 747 NW2d 547 (2008). A "preponderance of the evidence" means evidence of a proposition that when weighed against the evidence opposed to the proposition "has more convincing force and the greater probability of truth." *People v Cross,* 281 Mich App 737, 740; 760 NW2d 314 (2008).

In this case, DHHS requested that the court assume jurisdiction over DVL under MCL 712A.2(b)(1) and (2), which provide that a court has jurisdiction over a child in the following circumstances:

> (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. As used in this sub-subdivision:
>
> (A) "Education" means learning based on an organized educational program that is appropriate, given the age, intelligence, ability, and psychological limitations of a juvenile, in the subject areas of reading, spelling, mathematics, science, history, civics, writing, and English grammar.
>
> (B) "Neglect" means that term as defined in section 2 of the child abuse and neglect prevention act, 1982 PA 250, MCL 722.602.
>
> (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

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> 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.

We find that the trial court erred when it declined to exercise jurisdiction over DVL under both MCL 712A.2(b)(1) and (2). A preponderance of the evidence established that respondent refused to provide proper or necessary mental health care to her son and that her admitted inability to care for DVL's significant mental health needs, despite repeated efforts to obtain effective treatment for him, rendered her home statutorily unfit.

This Court's recent opinion in *In re Hockett,* 339 Mich App 250; 981 NW2d 534 (2021), guides our resolution of the jurisdictional issue in this case. The facts in *In re Hockett* are substantially similar to those in the present case. In *In re Hockett*, minor child NRH had a history of mental illness that included brief yet frequent hospitalizations, suicidal ideation, and threats of harm to others in the home. *Id.* at 252-253. The respondent-mother similarly refused to take her mentally ill child home from the hospital until he received the help she believed he needed. *Id*. Notably, as in the present case, the Department of Health and Human Services relied on the hospital's determination that NRH should be discharged. *Id.* at 253. The trial court found that NRH came within the court's jurisdiction under MCL 712A.2(b)(1). *In re Hockett,* 339 Mich App at 255. Specifically, the trial court ruled that the respondent failed to provide her child proper care and custody when she refused to pick up NRH from the hospital. *Id.* This Court affirmed the order of the lower court, but determined that jurisdiction was proper under MCL 712A.2(b)(2), not MCL 712A.2(b)(1). *In re Hockett,* 339 Mich App at 256. This Court's analysis of the provisions of MCL 712A.2(b) is instructive:

> It is unfortunate that our statute uses the word "unfit" to describe situations such as this. We note that "the underlying purpose of the statutory scheme is to protect children from an unfit homelife." *In re Sterling*, 162 Mich App 328, 339; 412 NW2d 284 (1987). Unfitness connotes active wrongdoing, which we do not see in this case. The statute, however, implies some understanding of the existence of parents who do not have the resources to provide for their children in the phrase "when able to do so." *This mother was unable to manage the complex mental health needs of her child. The referee correctly determined that respondent declined to retrieve her child upon discharge. The referee also correctly noted that respondent had the physical capacity to retrieve her minor child and did not do so.* Our concern is that this mother, who took desperate action to get care for her child, is now labeled "unfit" and listed on a registry for persons who acted to harm children when she, in fact, was seeking to protect her child. *The scant and costly resources available for mental healthcare for children likely places other parents in the same situation as this respondent. We can only look to our policymakers for a resolution to this conundrum. However, "culpability is not a prerequisite" for court intervention under MCL 712A.2(b)(2). In re Jacobs*, 433 Mich 24, 41; 444 NW2d 789 (1989). Respondent's admitted inability, not her unwillingness, to care for NRH's special needs with the level of assistance she was receiving, along with

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> her homelessness[3], rendered NRH's environment a place of danger for the seriously ill child and, thus, statutorily unfit. In this case, we are not left with a definite and firm conviction that the trial court was mistaken in finding statutory grounds to exercise jurisdiction over NRH. [*In re Hockett,* 339 Mich App at 255-256; emphasis added.]

Applying the rationale employed by this Court in *In re Hockett*, we conclude that the trial court erred when it declined to exercise jurisdiction over DVL under MCL 712A.2(b)(2). In this case, despite her efforts, respondent admitted that she could not care for DVL's special and significant mental health needs. She testified that DVL and her other two children would be at risk of harm if DVL were in the home. Testimony established that respondent refused DHHS's assistance in obtaining outpatient treatment, including in-home services. It is clear from the record that respondent had attempted years of outpatient therapy while DVL was living with her yet his behaviors continued to escalate. Even her attempts to have him placed in a year-long residential program that was intended to provide intensive mental health treatment ended prematurely because the residential program could not tolerate DVL's behavior. Yet the hospital and DHHS determined that DVL was safe to go home where he had threatened to harm his family, the home, his pets and himself.[4] A preponderance of the evidence supported a finding that respondent's actions rendered the home environment a place of danger for DVL, as well as respondent's other two children and, thus, statutorily unfit. See, *In re Hockett,* 339 Mich App at 256. Considering the record, we are left with a definite and firm conviction that the trial court erred when it failed to exercise jurisdiction over DVL under MCL 712A.2(b)(2).

Although the Court in *In re Hockett* found jurisdiction under MCL 712A.2(b)(2), it was reluctant to do so under MCL 712A.2(b)(1). A preponderance of the evidence in this case supports the assumption of jurisdiction under MCL 712A.2(b)(1), as well. *In re Hockett* did not involve a parent that *refused to cooperate in obtaining mental health services* for her child. The respondent mother in *Hockett*, like DVL's respondent mother, actually sought mental health services for her child. *In re Hockett*, 339 Mich App at 255-256. It is this salient fact that makes the Court's opinion in *In re Hockett* applicable to the present matter. Here, evidence presented at adjudication established that respondent refused to secure outpatient treatment for DVL—not because she refused to cooperate in obtaining mental health services for her son but because she had sought those services for years, DVL's behavior was escalating, and it was still unsafe for him to return home. During a July 13, 2021 team decision meeting, CPS offered respondent assistance in

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[3] Unlike the mother in *Hockett*, respondent had housing for DVL but testified that her home was not safe for DVL, her other children, or herself when DVL resided there.

[4] How in the course of one day DVL could go from being nondischargeable to dischargeable from the hospital without receiving treatment casts doubt on whether the hospital chose to wash its hands of this troubled youth rather than keep him in a holding pattern while DHHS tried but failed to find a suitable placement for him. This circumstance likely occurs throughout the state of Michigan as beds in pediatric residential treatment facilities are few and far between.

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securing outpatient mental health services for DVL after his discharge into her care.[5] DHHS also looked into a Community Mental Health referral that would have allowed DVL and respondent to receive services in the home.[6] Respondent, however, declined the offered services because her son required psychiatric care and "it wasn't safe for him to be in my care."

The trial court recognized the quandary that respondent faced:

> That DVL has a very severe detachment disorder. It causes him to act out in very dangerous ways and that the mother has made numerous efforts to try to have DVL's condition addressed. . . . It doesn't matter what other circumstances she has to deal with, including the fact that she has two other children who would be at risk if she brought DVL home who is, as far as I can tell, that would be like bringing a ticking time bomb into your home. . . . It's her job to pick him up at the hospital even if it means that her other children are going to be abused because she's a single parent, and she has three children in one home. I don't know how anybody is supposed to manage that situation. That is beyond my comprehension. No one has explained that to me.

The trial court admitted it had never seen a case like this and the judge did not "see how I can find that she's been neglectful or abusive in terms of her actions to date and this is a very prickly problem." The court opined that a dependency petition could possibly be filed but it did not find respondent to be abusive or neglectful and denied to authorize the petition. Notably, the trial court as well as the Assistant Attorney General, the lawyer guardian ad litem and respondent's attorney all recognized that if the petition were not authorized, DVL needed to be picked up from his placement at the time (Hanley House); if respondent did not pick DVL up, DHHS would need to file another petition and the process would begin again. Respondent acknowledged that this was a "no-win situation" and she was facing a "Sophie's choice" because she loved DVL but they "exhausted everything the state has to offer, everything, and nothing has made a difference."

Based on this record, we are left with a definite and firm conviction that the trial court was mistaken in finding no statutory grounds to exercise jurisdiction over DVL. A preponderance of the evidence supports a finding that, despite recommendations made by an examining adult (not pediatric) psychiatrist, respondent, although able to do so, refused to pick him up from the hospital and failed to secure intensive outpatient treatment for her son. This was sufficient testimony to establish by a preponderance of the evidence that respondent refused to provide proper or

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[5] Indeed, DHHS discussed with respondent the option of using an adoption subsidy to obtain a residential treatment program for DVL. How DHHS or respondent would pay for such a program was irrelevant as the record is devoid of evidence that there were open residential programs in Michigan but no funds to place DVL in a qualified residential treatment program. This also ignores the fact that respondent had already invested in an out-of-state residential treatment program and that program terminated DVL due to his unacceptable behavior.

[6] Again, there is no evidence in the record to establish that community mental health programs coming to the home weekly were sufficient to address DVL's extensive mental health challenges.

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necessary care for DVL, who was subject to a substantial risk of harm to his mental well-being. MCL 712A.2(b)(1). *In re Hockett,* described respondent as well as NRH's parent when it found:

> This mother was unable to manage the complex mental health needs of her child. The [court] correctly determined that respondent declined to retrieve her child upon discharge. The [court] also correctly noted that respondent had the physical capacity to retrieve her minor child and did not do so. . . she, in fact, was seeking to protect her child. *In re Hockett*, 339 Mich App at 255.

Accordingly, we are left with a definite and firm conviction that a mistake has been made, and find that the trial court clearly erred when it failed to assume jurisdiction of DVL under MCL 712A.2(b)(1). *In re Long*, 326 Mich App 455, 460; 927 NW2d 724 (2018).[7]

Because the circuit court should have exercised jurisdiction over the minor child, we reverse the trial court's July 19, 2022 order finding no jurisdiction and dismissing the petition. We remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Colleen A. O'Brien
/s/ Kathleen A. Feeney

[7] We agree with the court in *In re Hockett*, 339 Mich App at 256, that "[w]e can only look to our policymakers for a resolution to this conundrum," i.e., providing services for the growing number of youth struggling with significant mental health issues in light of the "scant and costly resources available;" unless the Legislature addresses this crisis, more parent will be placed in the same unfortunate situation as the respondent here and in *Hockett*.

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STATE OF MICHIGAN

COURT OF APPEALS

In re D V LANGE, Minor.

UNPUBLISHED
November 2, 2023

No. 362365
Wayne Circuit Court
Family Division
LC No. 2021-000658-NA

Before: REDFORD, P.J., and O'BRIEN and FEENEY, JJ.

REDFORD, P.J. (*dissenting*).

In this child protective proceeding, I respectfully dissent because I am satisfied the trial court's decisions in this matter were not clearly erroneous. I would affirm.

The majority accurately summarizes the factual and procedural background in this case and correctly sets forth the standard of review.

In this appeal, DHHS argues that the trial court erred when it refused to exercise jurisdiction over DVL under MCL 712A.2(b)(1). I disagree, and conclude that the trial court did not commit reversible error when it declined to assume jurisdiction over the minor child under MCL 712A.2(b)(2).

In memorializing its decision to deny the petition sought, the trial court stated:

> So look, I think that the facts are pretty clear. That (DVL) has a very severe detachment disorder. It causes him to act out in very dangerous ways and that the mother has made numerous efforts to try to have (DVL)'s condition addressed. The mother has two other children and, and I'm being told that, look, if the hospital says he's ready to be discharged then as long as she doesn't come and pick him up regardless. It doesn't matter what other circumstances she has to deal with, including the fact that she has two other children who would be at risk if she brought (DVL) home who is, as far as I can tell, that would be like bringing a ticking time bomb into your home. Nobody here has told me what the mother—what, what she was supposed to do except to say she was supposed to go pick him up at the hospital. The rest of it, it's her problem despite the fact that she's made numerous attempts to try to find help for him and been unsuccessful. It's her job to pick him up at the hospital even if it means that her other children are going to be abused because she's a

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> single parent, and she has three children in one home. I don't know how anybody is supposed to manage that situation. That is beyond my comprehension. No one has explained that to me. I agree that you've made out a record that she failed to pick him up when they, when the hospital, "Said he's ready for discharge", but I, you know, I guess, you know, this is a case that can be appealed. I've never had a case like this. I can't find that the mother—I just don't see how I can find that she's been neglectful or abusive in terms of her actions to date and this is a very prickly problem. It's sad but and maybe, you know, maybe the law needs to be changed or perhaps a dependency petition can be filed because whatever I decide here, (DVL) still needs help. Nobody is going to dispute that. (DVL) needs help. Mother is trying to get him help. Mother is trying to keep her other children safe. I'm being told that she doesn't really have choice. She just has to choose to bring him home or be deemed neglectful on the part of the law and I, I—just that, you know, if I can't figure out what I would do as a parent in a situation like this then how am I supposed to say, well, she's neglectful and she's abusive because she didn't do what I—what I wouldn't know what to do besides what she was doing so, you know, for those reasons I'm going to deny the petition.

As the majority states, the purpose of child protective proceedings is the protection of the child. *In re Brock,* 442 Mich 101, 107; 499 NW2d 752 (1993). "Child protective proceedings are generally divided into two phases: the adjudicative and the dispositional." *Id*. at 108. The adjudicative phase determines whether the trial court may exercise jurisdiction over the child. *Id*. To establish jurisdiction, the petitioner must prove by a preponderance of the evidence that a statutory ground exists under MCL 712A.2(b). *In re SLH*, 277 Mich App 662, 669; 747 NW2d 547 (2008). A "preponderance of the evidence" means evidence of a proposition that when weighed against the evidence opposed to the proposition "has more convincing force and the greater probability of truth." *People v Cross,* 281 Mich App 737, 740; 760 NW2d 314 (2008).

In this matter, DHHS requested that the court assume jurisdiction over DVL under MCL 712A.2(b)(1) and (2), which provide that a court has jurisdiction over a child in the following circumstances:

> (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. As used in this sub-subdivision:
>
> (A) "Education" means learning based on an organized educational program that is appropriate, given the age, intelligence, ability, and psychological limitations of a juvenile, in the subject areas of reading, spelling, mathematics, science, history, civics, writing, and English grammar.
>
> (B) "Neglect" means that term as defined in section 2 of the child abuse and neglect prevention act, 1982 PA 250, MCL 722.602.

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> (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. 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.

There is no indication that DVL's mother did anything other than undertake exhaustive, comprehensive, and costly measures to try to care for DVL. Her refusal to allow DVL to be placed in her home with two other minor children who would be endangered was not an act of neglect, cruelty, drunkenness, criminality, or depravity. Nor was there evidence that she was able, despite her repeated and substantial efforts, to provide DVL with the proper or necessary support in her home.

As a result, I conclude that the trial court did not err when it declined to exercise jurisdiction over DVL under both MCL 712A.2(b)(1) and (2). Petitioner failed to establish that a preponderance of the evidence demonstrated that respondent refused to provide proper or necessary mental health care to her son and that her admitted inability to care for DVL's mental health needs rendered her home statutorily unfit. I would affirm.

/s/ James Robert Redford

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Court of Appeals, State of Michigan

ORDER

In re D V Lange Minor

Docket No. 362365

LC No. 2021-000658-NA

James Robert Redford
Presiding Judge

Colleen A. O'Brien

Kathleen A. Feeney
Judges

The motion for reconsideration is DENIED.

Presiding Judge

Redford, J., would grant the motion for reconsideration.

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

December 7, 2023
Date

Chief Clerk