

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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*In re* BEY/MILLER, Minors.

UNPUBLISHED  
September 23, 2021

No. 355793  
Wayne Circuit Court  
Family Division  
LC No. 20-000832-NA

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Before: CAVANAGH, P.J., and K. F. KELLY and REDFORD, JJ.

PER CURIAM.

Petitioner, the Department of Health and Human Services, appeals as of right the trial court’s order of adjudication providing that petitioner failed to establish grounds for jurisdiction over the minor child, DB, under MCL 712A.2(b)(1) (failure to provide child with necessary care) and (2) (home environment is unfit for the child). We affirm.

These proceedings began when petitioner filed a temporary custody petition asserting that there were grounds to exercise jurisdiction over DB under MCL 712A.2(b)(1) and (2). Pertinently, petitioner alleged that respondent-father (respondent) physically abused DB and left the child alone with the child’s mother while she was under the influence of drugs. DB’s mother entered a plea of admission and acknowledged that she used inhalants in DB’s presence. Respondent declined to enter a plea of admission, and the trial court held an adjudicatory hearing to determine whether there were grounds to exercise jurisdiction over DB under MCL 712A.2(b)(1) and (2). During the hearing, petitioner presented evidence that respondent left DB alone with his mother while she was under the influence of drugs before respondent eventually removed DB from the mother’s home and took DB to live in Ohio. Petitioner also presented evidence that respondent struggled to manage his anger on multiple occasions. However, petitioner failed to present any direct evidence that respondent physically abused DB. Ultimately, the trial court entered an order of adjudication denying the petition because petitioner failed to establish statutory grounds for jurisdiction over DB. This appeal followed.

Petitioner argues that the trial court clearly erred when it found that petitioner failed to establish grounds for jurisdiction over DB under MCL 712A.2(b)(1) and (2). We disagree.

In child protective proceedings, jurisdiction is properly exercised if the trial court finds by a preponderance of the evidence that petitioner established grounds for jurisdiction under MCL

712A.2. *In re Long*, 326 Mich App 455, 460; 927 NW2d 724 (2018). The factual findings upon which the trial court relies are reviewed for clear error. *Id.* “A finding is clearly erroneous if, although there is evidence to support it, [this Court is] left with a definite and firm conviction that a mistake has been made.” *Id.* (citation and quotation marks omitted). Additionally, the interpretation and application of statutes and court rules are reviewed de novo. *In re Sanders*, 495 Mich 394, 404; 852 NW2d 524 (2014).

In Michigan, child protective proceedings comprise two phases: the adjudicative phase and the dispositional phase. Generally, a court determines whether it can take jurisdiction over the child in the first place during the adjudicative phase. Once the court has jurisdiction, it determines during the dispositional phase what course of action will ensure the child’s safety and well-being. [*Id.*]

Under MCL 712A.2(b)(1), a trial court may properly exercise jurisdiction over a child

[w]hose 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.

Under MCL 712A.2(b)(2), a trial court may properly exercise jurisdiction over a child “[w]hose 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.”

Petitioner first argues that the record supported a finding of jurisdiction under MCL 712A.2(b)(1) because respondent failed to protect DB. Specifically, petitioner argues that respondent was aware that DB’s mother used inhalants in DB’s presence but chose to leave DB alone with his mother on multiple occasions when he went to work. The trial court did not clearly err by concluding that petitioner failed to prove, by a preponderance of the evidence, that respondent failed to protect DB such that grounds for jurisdiction existed under MCL 712A.2(b)(1).

During the adjudicatory hearing, respondent testified that he left DB alone with DB’s mother on multiple occasions despite his belief that DB’s mother used inhalants in DB’s presence. Although respondent did not immediately take action to protect DB from his mother’s drug use, respondent reported the drug use to the police on two occasions, respondent cared for DB while DB’s mother attended in-patient substance abuse treatment, and respondent ultimately removed DB from his mother’s home after in-patient substance abuse treatment proved unsuccessful. As recognized by the trial court, respondent should have taken immediate action to protect DB from his mother’s drug use. However, respondent attempted to help DB’s mother overcome her drug addiction and removed DB from his mother’s home after respondent realized that he could not do so. Thus, respondent actually did act to protect DB. Accordingly, we are not left with a definite and firm conviction that the trial court made a mistake when it found that petitioner failed to prove,

by a preponderance of the evidence, that respondent failed to protect DB such that grounds for jurisdiction existed under MCL 712A.2(b)(1).

Petitioner next argues that the record supported a finding of jurisdiction under MCL 712A.2(b)(2) because respondent's behavior created an unfit home environment for DB. The trial court did not clearly err by concluding that petitioner failed to prove, by a preponderance of the evidence, that respondent's behavior created an unfit home environment for DB such that grounds for jurisdiction existed under MCL 712A.2(b)(2).

At the outset, we acknowledge that petitioner presented evidence that respondent struggled to manage his anger when interacting with Ohio Child and Family Services workers. Indeed, Ohio Child and Family Services worker Lateshia Ollison testified that respondent drove away with DB in his vehicle while she was conducting an investigation regarding allegations that respondent physically harmed DB. According to Ollison, respondent drove erratically but ultimately complied with her request to pull over. Upon doing so, respondent exited his vehicle and screamed at Ollison. Ohio Child and Family Services worker Nicole Rose similarly testified that respondent became irate when she informed him that she was going to remove DB from his care. The trial court considered the testimony of Ollison and Rose, and determined that respondent presented credible explanations for his behavior. Respondent maintained that he was not fleeing from Ollison, and the trial court found respondent's explanation to be credible because respondent pulled over at Ollison's request. Respondent explained that he was leaving his home in order to run errands and did not believe that Ollison had asked him to stay in his home. Respondent also acknowledged that he was upset because he felt that DB was being removed from his care without justification. The trial court found respondent's explanation to be credible, and noted that Ollison and Rose appeared to be under the impression that respondent had shaken DB when there was no evidence corroborating the allegation that respondent had done so. When reviewing a trial court's factual findings, this Court gives "due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004). Thus, we are not left with a definite and firm conviction that the trial court made a mistake when it found that respondent presented credible explanations for his behavior when he interacted with Ohio Child and Family Services workers.

In addition, petitioner presented evidence that respondent struggled to manage his anger when interacting with DB's mother and DB's maternal grandmother. Notably, DB's mother testified that respondent strangled her on one occasion, and DB's maternal grandmother testified that respondent sent her an email in which he threatened to tell other individuals that DB's maternal grandmother kidnapped DB. Because the trial court did not address the allegation raised by DB's mother, it does not appear that the trial court gave significant weight to her testimony. Importantly, the testimony of DB's mother was uncorroborated, DB's mother did not report the alleged incident to the police, and respondent denied strangling DB's mother. Moreover, the trial court considered the testimony of DB's maternal grandmother and, again, determined that respondent presented a credible explanation for his behavior because DB's maternal grandmother wrongfully interfered with respondent's right to spend time with DB. Accordingly, we are not left with a definite and firm conviction that the trial court made a mistake when it declined to find grounds for jurisdiction based upon the testimony of DB's mother and DB's maternal grandmother.

Lastly, we acknowledge that petitioner presented evidence that respondent struggled to manage his anger when attempting to put DB to bed. Indeed, respondent's father testified that he heard respondent yell at DB on multiple occasions when DB would not fall asleep. Although this behavior is certainly concerning, it does not appear that respondent's behavior rose to the level of neglect, cruelty, drunkenness, criminality, or depravity. As noted by the trial court and acknowledged by petitioner, petitioner failed to present any direct evidence substantiating the allegation that respondent physically abused DB. Although Rose testified that she could see respondent's father nodding his head when she was speaking to respondent regarding the allegations of abuse, respondent's father testified that he did not have any reason to believe that respondent physically abused DB. Moreover, there was no evidence that DB suffered from symptoms of shaken baby syndrome. On this record, the trial court did not clearly err by concluding that petitioner failed to prove, by a preponderance of the evidence, that respondent's behavior created an unfit home environment for DB such that grounds for jurisdiction existed under MCL 712A.2(b)(2).

In summary, the trial court did not clearly err when it found that petitioner failed to establish grounds for jurisdiction over DB under MCL 712A.2(b)(1) and (2).

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Kirsten Frank Kelly  
/s/ James Robert Redford