

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
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In re R. BELCHER, Minor.

No. 380515
Genesee Circuit Court
Family Division
LC No. 26-141313-NA

Before: BORRELLO, P.J., and BAZZI and LIEVENSE, JJ.

PER CURIAM.

Respondent appeals as of right the trial court’s order removing her infant son from her care and authorizing a neglect petition. We affirm.

I. FACTS

On March 1, 2026, when the child, RB, was just about one month old, Children’s Protective Services (CPS) received detailed allegations that the child was at risk of harm and was not being cared for by respondent. The allegations also included that the child’s putative father and nonrespondent, Raymond Gilbert,¹ was a methamphetamine user and may have been using drugs in the child’s presence, and that Gilbert “does not work and cannot supply anything for” the child. A CPS investigator spoke with respondent’s mother, the child’s grandmother, who reported that respondent and Gilbert had no interest in the child and did not know how to care for him, referencing specific examples. The grandmother told CPS that she had access to respondent’s text messages, where respondent and Gilbert stated “evil things about hurting” the child. Finally, the grandmother reported the child appeared to be sick and in need of medical care and believed the child should be removed and placed in foster care immediately.

¹ Gilbert was not named in the child’s birth certificate, had not signed an affidavit of parentage, and was not a party to any Friend of the Court proceeding.

CPS investigators also interviewed respondent on March 1. During the interview she admitted that Gilbert was a drug addict, but she left the child with him at times. She also admitted texting Gilbert that “if it were legal she would kill her child,” and that she acted on her thoughts by shaking the child with such force that a medical wellness assessment was required. Respondent demonstrated to investigators how she shook the child. Respondent also revealed she and the child were currently living with Douglas Heckel, a convicted sex trafficker who trafficked her when she was a minor. Respondent admitted she was creating pornographic videos with Heckel in motel rooms and in exchange for money. The grandmother would not allow respondent and the child to live with her. Following the interview, it appears respondent took the child to the hospital for medical evaluation, then voluntarily committed herself for inpatient psychiatric treatment because of the threats made toward the child.

Further investigation by CPS on March 2 revealed text messages between respondent and Heckel which suggested respondent was creating pornographic videos while in the child’s presence. The text messages also suggested Heckel and respondent may have been sexually abusing the child and using him to create pornographic videos or making plans to do so. Other text messages between respondent and Gilbert demonstrated she punched the child and told Gilbert to “throw [him] out in the snow.”

On March 3, 2026, following the CPS investigation, petitioner, the Department of Health and Human Services, offered a child neglect petition to the trial court to take jurisdiction of the child under MCL 712A.2(b)(1) and (2) that contained the allegations set forth above as well as other details. By the time of the emergency removal hearing on March 3, the child had been evaluated and was medically cleared for discharge but had nowhere to go. Respondent was not present at the hearing because she was still hospitalized and had made no arrangements for the child’s care upon his release from the hospital. However, an attorney was present on respondent’s behalf, and a lawyer-guardian ad litem had been appointed for the child. The CPS investigator who prepared the petition provided testimony on the allegations contained in it, including that there was no suitable relative with whom the child could be placed. CPS was still attempting to contact Gilbert, who was “transient” and without a home address. The trial court ordered the child be removed from respondent’s care and immediately placed in petitioner’s custody and care because of respondent’s “mental health issues, physical abuse, and threatened harm.” The trial court suspended respondent’s parenting time and adjourned the preliminary hearing until respondent could be served with the neglect petition. Respondent was served a copy of the petition on March 5, 2026, while still in the hospital.

The trial court continued the preliminary hearing on the petition on April 7, 2026. Respondent was present and represented by counsel and waived a formal reading of the petition. By this time, respondent was seeing a therapist and was on psychotropic medication. The trial court heard testimony from a different CPS investigator than the one who offered the petition for filing, but the new investigator testified that she spoke with the prior investigator and was familiar with the case. The trial court found sufficient probable cause to authorize the petition and found the allegations in the petition fell within MCL 712A.2b(1) and (2) because the “physical abuse,” . . . “as well as [respondent’s] mental health issues, made the home environment an unsafe place for the child to live.” Respondent’s attorney asked that the court grant supervised parenting time, but the court ordered that parenting time remain suspended until a psychological evaluation could be completed, or a copy of one could be obtained from respondent’s in-patient psychiatric

stay in March 2023. The trial court ordered that reasonable efforts to reunify the family be made, and a pretrial hearing was set for April 29, 2026.

Respondent appeals and challenges the trial court's orders removing the child and the order authorizing the petition.

II. PRESERVATION OF ISSUES AND STANDARDS OF REVIEW

Authorizing a child protective proceeding petition “is merely a determination that the petition is sufficient to be delivered to, and accepted by, the clerk of the court.” *In re KNK*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 370841); slip op at 3-4 (quotation marks and citation omitted). Because authorization is a threshold determination made at the preliminary hearing, a parent must object at or before that preliminary hearing to preserve the issue for appellate review. *In re Ferranti*, 504 Mich 1, 14; 934 NW2d 610 (2019).

At the March 3, 2026 emergency removal hearing, respondent's attorney did not challenge the trial court's decision to place the child in petitioner's protective custody, but merely stated, in response to petitioner's request that parenting time be suspended: “just [] for a general denial on mom's behalf.” It appears this “general denial” was only to the suspension of parenting time. At the continued preliminary hearing on April 7, 2026, respondent, petitioner, and the child's lawyer-guardian ad litem waived presenting additional evidence or raising any challenge to authorizing the petition. Respondent again did not object to the trial court's initial removal order or authorization of the petition and only challenged the trial court's order to suspend parenting time. Therefore, respondent's challenges to the removal order and the order authorizing the petition are unpreserved. *Id.*

Unpreserved issues in child protective proceedings are reviewed for plain error affecting substantial rights. *In re VanDalen*, 293 Mich App 120, 135; 809 NW2d 412 (2011); *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253, 260 (2008).² “To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights.” *In re VanDalen*, 239 Mich App at 135. Generally, an error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings. *Id.* at 9. The asserting party bears the burden of persuasion with respect to prejudice. *In re Pederson*, 331 Mich App 445, 463; 951 NW2d 704 (2020).

This Court reviews for clear error a trial court's findings of fact underlying its decision to assume jurisdiction. *In re McCarrick/Lamoreaux*, 307 Mich App 436, 463, 861 NW2d 303 (2014). A finding of fact is clearly erroneous if, “after reviewing the entire record, we are definitely and firmly convinced that the trial court made a mistake.” *Id.* The application of factual findings to a

² Petitioner's brief on appeal states that we review the trial court's decision to authorize the petition for an abuse of discretion, citing *In re Nikooyi*, 341 Mich App 490; 991 NW2d 619 (2022). But that is wrong, as the procedural posture of that case was different: it involved a preserved challenge to the dismissal of a petition for lack of standing and did not reach the merits under MCL 712A.2b. *Id.* at 494-500.

statute “presents a question of law that we review de novo.” *In re Leach*, 347 Mich App 26, 30; 14 NW3d 178 (2023).

III. ANALYSIS

On appeal, respondent argues the trial court plainly erred when it removed the child from her custody and care and authorized the neglect petition because there was insufficient evidence to support the trial court’s decisions. We disagree.

As an initial matter, respondent incorrectly asserts that “preponderance of the evidence” was the applicable standard of proof to authorize the petition. Only probable cause needs to be established for an initial removal and for authorizing a petition, which is a lower threshold than the preponderance standard that is applicable to the adjudication phase of a child protective proceeding. *In re Ferranti*, 504 Mich at 15. “Probable cause requires a quantum of evidence sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief” that the matter asserted is true. *People v Yost*, 468 Mich 122, 126; 659 NW2d 604 (2003) (cleaned up).

A child protective proceedings petition must include facts that, if proven, would allow the trial court to assume jurisdiction over the child. Under MCL 712A.13a(2), a trial court may authorize a petition for child protective proceedings after a preliminary hearing, or inquiry “upon a showing of probable cause that 1 or more of the allegations in the petition are true and fall within the provisions of [MCL 712A.2(b)].” See MCR 3.965(B)(12) and MCR 3.962(A).

MCL 712A.2b)(1) and (2) permit a trial court to exercise jurisdiction over a minor child:

(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.

The trial court need only find one statutory ground exists to take jurisdiction. *In re SLH*, 277 Mich App 662, 669; 747 NW2d 547 (2008).

When a petition requests placement of the child and the child has been taken into protective custody, the trial court must conduct a preliminary hearing to determine whether to authorize the filing of the petition and, if it is authorized, whether the child should remain in the home, be returned home, or be placed in foster care pending trial. MCR 3.965(A)(1) and (B)(12). If the court authorizes the petition but finds that returning the child to the home would be contrary to the child’s welfare, it may order that the child be temporarily placed in foster care. MCR 3.965(B)(12)(b) and (C).

A. EMERGENCY REMOVAL

The trial court did not plainly err in removing the child from respondent's care and placing the child in protective custody at the hearing on March 3, 2026.

MCL 712A.13a(9), mirrored by MCR 3.965(C)(2), allows for removal and placement into foster care if all the following conditions are met:

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

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

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

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

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

The trial court must make a sufficient record of its findings regarding each of these conditions to enable meaningful appellate review, although it is "not obligated to articulate extensive findings regarding every conceivable detail." *In re Williams*, 333 Mich App 172; 183, 958 NW2d 629, 636 (2020). The record in this case does not support respondent's claim that the trial court failed to adequately articulate its factual findings supporting the statutory requirements for removal under MCL 712A.13a(9)(a), (b), (c), and (e).

The testimony at the March 3 hearing created a sufficient record regarding each of these conditions, which the trial court addressed. The CPS investigator testified that respondent admitted to shaking the child with force requiring medical assessment. Respondent also made homicidal threats toward the child as revealed in text messages she sent to Gilbert. According to the petition, respondent repeated some of those threats to care providers during her in-patient psychiatric stay.

Respondent argues that court intervention was unnecessary and that the trial court improperly relied heavily on her statements about harming the child which were made during a mental-health crisis, and that the child was not physically harmed. But respondent's threats, and acting on those threats by shaking the child, and potentially punching the child (according to the texts she sent to Gilbert), were enough to find physical abuse, and so the threat of physical harm to the child existed under MCL 712A.13a(9)(a). Even though the child was examined and no physical injury resulted from respondent's actions, courts need not wait for actual physical injury to intervene to protect a child. *In re Middleton*, 198 Mich App 197, 199-200; 497 NW2d 214 (1993).

The trial court also heard testimony that respondent had not arranged for the child's care during her inpatient psychiatric stay and he was to be discharged from the hospital the day of the preliminary hearing with nowhere to go because CPS could not locate Gilbert, and respondent's mother refused to provide care. Thus, the trial court correctly found that no other arrangement except removal of the child was reasonably available to adequately safeguard the child from further physical abuse under MCL 712A.13a(9)(b).

Further, according to the CPS investigator's testimony on March 3, respondent also admitted she lacked a bond with the child and was unable to provide basic care for him and had left him with Gilbert, whom she knew was addicted to methamphetamines and living in a "trap house" where illicit drugs were sold. Also, there was evidence that, when the child was in respondent's custody, respondent was making or planning to make pornographic videos with a convicted sex trafficker in the child's presence, and the evidence suggests the child may have been or was about to be sexually abused as well. This testimony, as well as the testimony that respondent admitted to shaking the child, supports the trial court's factual finding that "[c]ontinuing the child's residence in the home is contrary to the child's welfare due to mom's mental health issues, physical abuse, and threatened harm," under MCL 712A.13a(9)(c).

Finally, respondent argues that the court should have ordered supervised agency parenting time, but the record does not support her assertion that the trial court failed to consider a less restrictive alternative to removal. She further contends that, instead of removal, the newborn should have remained in her care with a safety plan, rather than in protective custody, during a critical parent-child bonding period. But the trial court did not plainly err in concluding that, given respondent's homicidal ideations toward the child and potentially engaging in sexual encounters for money in the child's presence or involving the child (as reflected in the text messages to), there was no other alternative than keeping respondent away from the child, temporarily, pending further proceedings. The trial court was correct to consider that even in supervised parenting time upon respondent's release from in-patient psychiatric care, "we don't know . . . how stable she is, because in a split second, she could shake that child even if she's at the department. This is a six-week-old child. Even if they're watching her, she can choke this child, shake this child, and this child could be severely injured before even a worker can get across the room." Given these considerations, the trial court made a sufficient record that "conditions of child custody away from the parent are adequate to safeguard the child's health and welfare" under MCL 712A.13a(9)(e).

Thus, the trial court did not plainly err in removing the child because the facts showed, by a preponderance of the evidence, that returning the child to respondent upon her release from inpatient psychiatric care would be contrary to the child's welfare, and there was sufficient record of each of the challenged conditions listed in MCL 712A.13a(9). See also MCR 3.965(B)(12)(b) and (C).

B. AUTHORIZING THE PETITION

Nor did the trial court plainly err in authorizing the petition under MCL 712A.2(b) at the continued preliminary hearing in April 2026.

Respondent asserts the trial court erred because it did not meaningfully consider her changed circumstances between March 3 and April 7, 2026, and that there was no evidence she

injured the child, when it authorized the petition. Respondent emphasizes her voluntary completion of inpatient psychiatric treatment, her use of psychotropic medication, and her participation in therapy. While respondent took steps toward addressing her mental health issues, the trial court appropriately recognized lingering concerns regarding resolution of her mental-health issues that left in doubt whether she could safely care for the child.

Respondent also contends that the trial court improperly authorized the petition based on the limited testimony of a caseworker who was not the original CPS investigator. But it is well established that a child protective action is a single continuous proceeding, *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011), meaning evidence admitted at one hearing remains pertinent in all subsequent hearings within such a proceeding. And respondent does not explain why the testimony was inadmissible or improper to consider. The trial court therefore properly considered all testimony and evidence when determining whether to authorize the petition in the later preliminary hearing.

Finally, respondent argues that the court “effectively punished” her for experiencing a psychiatric crisis, even though she sought treatment and cooperated with intervention. But that is not an argument that the trial court somehow erred in authorizing the petition. Also, the trial court’s decisions were not the end of the proceedings: the trial court stated that it planned to revisit respondent’s parenting time later and ordered that reasonable efforts to reunify respondent and the child be made. The court was sensitive toward the child’s age, encouraging petitioner to arrange a psychological evaluation or obtain a release of one with “some expedience [] because this is a young child that does need bonding time with mother.” Nor did the trial court foreclose on the opportunity for supervised parenting time in the future. It stated parenting time would resume after the psychological evaluation was obtained and the results were reviewed.

In light of the evidence, the trial court reasonably concluded that that the child was without proper custody or guardianship and respondent had not met the child’s basic physical needs under MCL 712A.2b(1), due to respondent leaving the child in the care of a known drug addict and her inability to properly care for the child. Further, the trial court reasonably concluded that the home or environment was an unfit place for the child to live in under MCL 712A.2b(2) due to physical abuse and respondent’s mental health issues. The record supported the court’s factual findings of probable cause that one or more of the allegations in the petition were true and supported the trial court’s exercise of jurisdiction over the child.

Affirmed.

/s/ Stephen L. Borrello

/s/ Mariam S. Bazzi

/s/ Andrew J. Lievens