

STATE OF MICHIGAN
COURT OF APPEALS

In re N. R. HOCKETT, Minor.

FOR PUBLICATION
October 21, 2021
9:05 a.m.

No. 353132
Wayne Circuit Court
Family Division
LC No. 19-002135-NA

Before: MURRAY, C.J., and K. F. KELLY and STEPHENS, JJ.

STEPHENS, J.

Respondent appeals as of right the trial court’s order of disposition following a combined adjudicatory and dispositional hearing in which the trial court determined that petitioner presented sufficient evidence to establish by a preponderance of the evidence that there was a statutory basis to exercise jurisdiction over respondent’s child, NRH, 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

These proceedings began in December 2019 when petitioner filed a temporary custody petition requesting that the trial court take jurisdiction over NRH and enter an order making NRH a temporary court ward. At the combined adjudicatory and dispositional hearing, Akedia Lewis, Children’s Protective Services (CPS) specialist, testified that in October 2019, CPS was contacted by hospital staff when respondent refused to retrieve NRH, who has multiple mental health diagnosis, from the hospital. Lewis testified that she contacted respondent and respondent agreed to pick up NRH from the hospital. CPS was contacted again in November 2019, with the same complaint of respondent having left NRH at the hospital. A family team meeting was held with respondent and respondent told CPS that she had left NRH at the hospital because NRH needed more help with his mental health problems. Respondent also told CPS that she had been evicted and was homeless.

At the hearing, respondent testified that NRH was taking three medications and receiving in-home therapy twice a week until the family was evicted in October 2019. When respondent

was evicted, she placed NRH with a family friend and his brother, MH, in relative care. On the same day, that friend called the police because NRH threatened to harm her 11-year-old grandson. NRH threatened suicide when the police arrived and the officer took NRH to the hospital again. Respondent testified to NRH's hospitalization in July 2019 when he undressed in front of her home, the police were called, and he expressed suicidal ideations. A little over a month later, NRH took himself to the hospital for care. Respondent testified that she agreed to take NRH home in late October 2019 because CPS had promised her assistance. It was then that respondent arranged for the unsuccessful placement with a family friend that led to the hospitalization where she declined to pick NRH up from the hospital. Respondent testified that she had refused to take NRH home at that time until he received the help he needed and because she was homeless. Respondent attempted to arrange for the hospital staff to transfer NRH to a separate children's unit for additional care. Lewis investigated respondent's concerns and relied on the hospital's determination that NRH was able to be discharged. It is noteworthy that NRH's hospitalizations were never more than a week and usually a matter of days, and appeared to be accelerating in frequency.

After testimony concluded, the trial court determined that the evidence presented was sufficient to establish a statutory basis to exercise jurisdiction over NRH. This appeal followed.

II. STANDARD OF REVIEW

"We review the trial court's decision to exercise jurisdiction for clear error in light of the court's findings of fact." *In re Long*, 326 Mich App 455, 460; 927 NW2d 724 (2018) (citation and quotation marks omitted). "A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made." *Id.* (citation and quotation marks omitted).

III. ANALYSIS

"To properly exercise jurisdiction, the trial court must find that a statutory basis for jurisdiction exists." *Id.* (citation and quotation marks omitted). "Jurisdiction must be established by a preponderance of the evidence." *Id.* (citation and quotation marks omitted).

Relevant to this appeal, MCL 712A.2(b) provides that the trial court has jurisdiction over a juvenile under 18 years of age:

(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. [MCL 712A.2(b)(1) and (2)].

The trial court held that respondent “failed to provide proper and necessary support and care for [NRH], who was subject to a substantial risk of harm to his mental health and wellbeing.” The court’s conclusion was based on a finding that respondent refused to pick up NRH when the hospital determined him ready to be discharged. 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 NRH 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 NRH 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.” *Matter of Sterling*, 162 Mich App 328, 339; 412 NW2d 284 (1987). 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. 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 health care for children likely places other parents in the same situation as this respondent. We can only look to our policy makers for a resolution to this conundrum. However, “culpability is not a prerequisite for probate court intervention under § 2(b)(2).” *Id.* at 41. Respondent’s admitted inability, not her *unwillingness* to care for NRH’s special needs with the level of assistance she was receiving, along with her homelessness rendered NRH’s home 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.

Respondent briefly asserts that the trial court erred when it determined that there were grounds to exercise jurisdiction over NRH because NRH had already been placed in a residential facility that could address NRH’s mental health needs, and therefore, any alleged threat to NRH’s well-being had ceased by the time the trial court assumed jurisdiction. We disagree. 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 MU*, 264 Mich App 270, 279; 690 NW2d 495 (2004). At the time the petition was filed, NRH was still at the children’s hospital and had not been placed in a residential facility capable of addressing NRH’s mental health needs. Thus, the threat to NRH’s well-being had not ceased by the time the trial court assumed jurisdiction over NRH.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Christopher M. Murray
/s/ Kirsten Frank Kelly