STATE OF MICHIGAN

COURT OF APPEALS

In re A. M. Sluiter, Minor.

FOR PUBLICATION
June 20, 2024
9:15 a.m.

No. 368266
Wexford Circuit Court
Family Division
LC No. 23-030657-NA

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

FEENEY, J.

Respondent appeals from the initial order of disposition following adjudication in this child protective proceeding.[1] The trial court assumed jurisdiction following a jury trial in which the jury returned a verdict finding that there were grounds for assumption of jurisdiction.[2] Respondent argues on appeal that there was insufficient evidence to support the jury's verdict. We affirm.

The original petition in this case was filed on January 13, 2023, and alleged jurisdiction existed under both MCL 712A.2(b)(1) and (2). Following a preliminary hearing on January 17, 2023, the trial court entered an order removing respondent from the home and releasing the children to the mother. On June 30, 2023, an amended petition was filed, again alleging that jurisdiction existed under MCL 712A.2(b)(1) and (2) and with updated factual allegations.

The adjudication trial took place over three days, with the third day covering only closing arguments, jury instructions, and the return of the jury's verdict. The first witness called was Theresa Jackson, a Children's Protective Services (CPS) Investigator for the Department of Health and Human Services (DHHS). She became involved in the case on January 4, 2023, when CPS received an allegation of sexual abuse by respondent on AMS, who was three-years-old at the time.

[1] MCR 3.993(A)(2).

[2] Jurisdiction was obtained over the mother's four children. But respondent is the father of only one of the children, AMS, and the question of jurisdiction regarding the other three children is not before the Court.

AMS was initially examined at a local primary care office in Cadillac, where she was seen by a nurse practitioner.[3] Jackson testified that the mother took AMS to the primary care office because AMS was complaining of genital itching. Both the physician assistant and law enforcement requested an examination by a Sexual Abuse Nurse Examiner (SANE), which was done in Traverse City by Gabrielle McClain, a registered nurse at Munson. The next day Jackson was informed by law enforcement that a warrant had been issued for respondent's arrest for first-degree criminal sexual conduct.[4]

Jackson was present during the forensic interview conducted at the Children's Advocacy Center (CAC) by Teresa Lutke. AMS and a half-sibling were interviewed that day. An interview of a second half-sibling was also conducted, who reported domestic violence in the house. Jackson also interviewed the third half-sibling and during that interview, the half-sibling disclosed that he witnessed respondent choking the mother in front of AMS and the mother yelled at the half-sibling to take AMS out of the room. She also testified that there were Friend of the Court orders with respect to two of the three half-siblings that respondent was not to have contact with them.[5]

The next witness was Brianna Blamer, also a CPS investigator. She testified that the CPS investigation was initiated due to a complaint regarding an incident in which there was an altercation between respondent and the mother in the presence of AMS.[6] In speaking with the mother, the mother confirmed that the incident occurred. Briefly, there was a verbal altercation between the mother and respondent while the mother was in her car and AMS was asleep in her car seat. The mother requested that respondent get out of the car, he refused, and he attempted to remove AMS from the vehicle. The mother went to a nearby house and called the police. In speaking with Blamer, the mother "talked about several different types of domestic violence that were occurring in her relationship with Andrew."

Next was Siera Houghton, also a CPS investigator. She was the investigator on a previous complaint from October 22, 2018.[7] This investigation involved a complaint of physical abuse against respondent-mother's older daughter. Houghton's description of the event is that there had

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[3] At various points in her testimony, Jackson refers to AMS being seen by a physician. But Jackson clarified that, although she referred to AMS being taken to a physician, it was in fact a nurse practitioner named Soomin Han.

[4] Respondent is currently servicing a prison sentence for a conviction for fleeing and eluding that arose from a car chase from Wexford to Missaukee County as respondent attempted to avoid arrest on the CSC charge.

[5] Gerald Moyer, the father of one of half-siblings, SM, testified that there was a stipulated order in the custody arrangement that when SM was with respondent-mother, SM would have no contact with respondent. The provision arose out of an incident in which respondent assaulted SM and respondent-mother, for which respondent spent one year in the county jail. The incident happened before AMS was born. Similarly, Kyle VanHulst, the father of one of the other half-siblings testified that there was a court order precluding respondent from being around that half-sibling.

[6] This is a separate incident from the one that the half-sibling revealed to Jackson.

[7] This incident was before AMS was born and involved one of her older half-siblings.

been an argument, respondent-mother tried to pack her things, respondent grabbed her, choked her, and slammed her head against the wall. He also grabbed the daughter's arm, yanked her, and spanked her. The spanking left a bruise on her buttocks. Houghton endeavored to develop a safety plan, which respondent-mother participated in but respondent refused. Respondent-mother stated to Houghton that respondent pulled out some of her hair during the assault and that he hurts her daughter.

Michigan State Police Trooper Caleb Killingbeck testified that he investigated the claim that respondent sexually abused AMS. He spoke with the physician assistant, Han, while on his way to Munson Hospital to conduct the investigation. Han reported that there was an injury to AMS's vagina, specifically a tear. Further, the SANE nurse, McLain, reported to him that there was an abrasion to AMS's vagina. As a result, an arrest warrant was sought for respondent. Trooper Killingbeck described the attempt to apprehend respondent on the warrant as follows:

> We had the warrant probably in our hands for about two or three minutes and we attempted a traffic stop on Andrew Sluiter. He fled from that traffic stop on Mackinaw Trail. We chased him roughly 18 miles by vehicle up towards Manton, back down on the freeway to Cadillac. He got off at Boon Road and then traveled at 100 miles an hour into the state land in Missaukee County where he was apprehended by canine unit.
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> * * *
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> He got to the end of the road where there was no further way to move his vehicle forward so then he took off running. They released the canine unit and the dog essentially ran him down and held him on the ground until the Trooper arrived to handcuff him.
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> * * *
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> He was transported to Munson hospital for injuries from the bite. He requested to go to the hospital. And then that's I interviewed him there. [Sic.]

The first witness on the second day of trial was Teresa Lutke, the director of Intervention Services at the Traverse Bay Children's Advocacy Center. She conducted the forensic interview with AMS. When AMS was asked who gave her a bath when she was at respondent's house, she replied that respondent did. When asked what dad did in the bath, she stated there were "bubbles in the bathtub and bubbles in her pee-pee." When asked how the bubbles got in her pee-pee "she said that dad put them there." When Lutke asked about AMS's doctor's visit and asked what the doctor did, AMS replied that "the doctor took a picture of my pee-pee" and when asked why the doctor took a picture of her pee-pee, "she said because there were bubbles in it." And then when asked how or with what dad put bubbles in there, "she said a rubber ducky."

Lutke stated that there were a number of things that AMS said that Lutke could not understand. When asked what she liked to do with her dad, AMS replied, "I don't like my dad" and that "he's mean to me." When Lutke asked what he did that was mean, AMS "gave me quite a narrative but I wasn't able to understand most of it. But I did understand the word kick and the word feet in that narrative that she presented to me in that moment."

Next, Gabrielle McLain, a registered nurse at Munson Medical Center and SANE nurse testified regarding her examination of AMS. McLain stated that AMS's mother reported that, while AMS was fully potty trained, she had been wetting her pants for the previous two weeks, saying that every time she went to the bathroom that her pee-pee hurt. And when McLain did the physical exam, AMS was "screaming, crying, yelling, kicking, we actually had to physically hold her down . . . ." This was just for the genital examination. McClain reported that AMS "had redness to her entire vaginal area. It was painful anywhere that we touched. And there was a reddened abrasion at the base of her vagina between her vaginal opening and her rectum." She also testified that during the exam AMS "was yelling um—that she doesn't want anything in her pee-pee, asking us please not to touch it, and then at the end of the exam when we had finished she said I don't want daddy to touch my pee-pee anymore." Lutke defined an "abrasion" as "a break in the skin." She further defined a "laceration" as "an open cut." And a "tear would be what we call irregular edges but would be open up more like a laceration."

Megan Heuker, the mother of two of respondent's other children, testified regarding respondent's history of domestic violence. She was with respondent for approximately seven years and during that time he "would verbally, physically, and emotionally abuse me just about every day." The children were present during these assaults. She described respondent physically abusing her in front of the children. Their relationship ended after he was incarcerated for assaulting her. Petitioner rested after Ms. Heuker's testimony.

The first witness respondent-mother called was her own mother, Christina Knoch. Knoch testified to multiple instances of respondent abusing respondent-mother. She first described an incident in which she came home and found her daughter laying on the floor of the bathroom, naked and in a fetal position. Her daughter related that she had gotten into a fight with respondent, who ripped off her clothes, forced her to have sex, "smacked her with a coffee cup," and that she had a cut across her lip. In another incident, Knoch was laying down in the bedroom and heard her daughter screaming. As Knoch came into the living room, she saw her daughter with some bags trying to leave the house. Respondent had grabbed her by the hair and head and slammed her face into a sliding glass door. Knoch also described threats respondent made to kill respondent-mother, the children, the children's fathers, and Knoch. She also described numerous threatening phone calls, often made hour after hour, day after day. She also stated that responded had struck one of AMS's half-siblings, with the victim being taken to the hospital, but suffered no serious injury.

Next, respondent-mother testified on her own behalf. She testified that respondent first became violent with her three months into their relationship. They ran into a friend of hers who gave her a hug; afterward, respondent pulled her close, called her names, and slammed her head off the window. Her testimony confirmed the bathroom incident and the on-going threats respondent made. She also described him saying that if she left him, she would lose her kids. She related an incident in June 2020 when she tried to leave and he choked her and threw her against the wall. She related that respondent would choke her and punish her for not obeying him. He told her that the dog was better than her because at least the dog would obey.

Respondent was the final witness. His version of the incident in which respondent-mother met a friend on the street and gave him a hug was that the man had "grabbed her butt," which upset him to the point of tears. She apologized to respondent, "kept grabbing at me," and he pushed her

away. When asked about the incident Knoch described that sent AMS's half-sister to the hospital, responded gave his version of events:

> So in family court CPS came in and testified that they had a hospital report that said there was child abuse and they testified that they had pictures of a bruise on [the half-sister's] butt. They then removed my two kids from me for 7.5 months. Um—they sent me to see a counselor. And when I seen [sic] the counselor and we sat down and had a meeting, they asked her if I need counseling. The counselor told her that I did it. They then asked if I needed counseling for domestic violence or anger management and the counselor told them that I didn't need counseling for any of that. And they asked her what I need counseling for, she told them that I need counseling for what they were doing to me. We ended up going to court and it got brought up through the hospital report that they were lying and they committed perjury so they dismissed the case with prejudice. And I was told I'd never [hear] about it again and as long as I never heard about it again I couldn't see the judge, I couldn't see the prosecutor and I couldn't see CPS.

Respondent admitted to having arguments with respondent-mother, but denied any violence. But then admitted to "some violence" in the incident that led to his earlier incarceration. But that the violence was on respondent-mother's behalf. He described the incident as starting when respondent-mother's ex came to the house, an argument ensued, that he told respondent-mother to leave, she refused and grabbed respondent by the hair. She then pushed his head down and he went to the floor. He suffered carpet burns, he then pushed her and grabbed her bangs to try and get her to let go. She did let go but came after him again and he "put her in a bear hug and I pushed her to the patio door." He then opened the door, pushed her outside, then shut and locked the door. She then threw a bottle at the door, he opened the door and she threw another bottle into the house which "put a hole in the wall on the opposite side of the house." He re-shut the door, whereupon she picked up a big rock and was about to throw it at the door, so he reopened the door and jumped off the porch and tackled her and took the rock away. He told her to leave, which she did. It ended with the police arriving and arresting him.

With regard to the fleeing-and-eluding incident on January 5, 2023, respondent denied knowing that there was a criminal sexual conduct investigation being conducted on him. Rather, he explained why he did not pull over for the police as follows:

> I was contacted by the Supreme Court which put me in touch with Sergeant Detective State Trooper with the police department [sic] and they asked me to make a complaint on corruption on what had taken place between CPS and what Friend of the Court were doing with their court orders. They told me that if I put the complaint in that if I was right about the people who were in office then to expect to be retaliated against and targeted, but in the end that they would have my back and they would take care of everything that they've done. So when they—the way that they arrested me I assumed in my mind that I done nothing wrong, I hadn't even broke a traffic law. And I called 911 and I told 911 this while they were chasing me. The way that the officer tried to apprehend me made me fear for my life. I believed that they were coming after me because of the corruption complain that I put in. So I was scared. I didn't know what to do.

He was then asked what dispatch told him, to which he replied:

> Dispatch told me I had a warrant for my arrest. I asked them what for and they told me they couldn't tell me. They just told I needed to pull over. I told dispatch that every time I've slowed down the officer would ram in the back of my vehicle so I couldn't pull over. I asked them to tell the police officers to back off because it was icy, we had an ice storm in January, there was accidents that were on the road that we passed. They told me they would not back off. They tried to run me off the Manton on ramp where it's got the steep grade going down the side where if I woulda went off the side I would have rolled the vehicle and been in serious health trouble.

He states that he was told that the CSC case was going to be dismissed. Moreover, he denied ever having inappropriately or sexually touching any child.

Petitioner explored the issue of respondent being asked to participate in a corruption investigation in more detail:

> Q: Mr. Sluiter, can you explain to me why the Supreme Court—are you talking to the Supreme Court of Michigan or of the United States of America:
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> A: I'm not sure what it came down from. I wrote both of them, I did hear that this Federal Supreme Court um—had gotten into it with New York and Michigan Supreme Court and two other courts—
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> Q: Okay. Okay, let—let me just go back a little bit. You testified that the Supreme Court of Michigan, I think you said, contacted you, a convicted felon, and asked you to do some sounds like undercover work regarding something going on between the courts and what—why would they choose you?
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> A: Because they were targeting and retaliating against me for the last five years through—
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> Q: Who's they?
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> A: CPS, the Friend of the Court.
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> Q: And the Supreme court became aware of this and decided they wanted you to go undercover and find out the real story?
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> A: The Supreme Court became aware of it through the State Courts [sic] Administrator Office. I made complaints with them on what CPS and Friend of the Court were doing. I expressed that it was illegal because it violates constitutional rights.
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> Q: Okay. But who from the Supreme Court contacted you?
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> A: It was one of the clerks. I believe it was the Chief Clerk.

Q: Does that clerk have a name?

A: Um—I'm not 100 percent sure if it was him or not but Jerome Kinlaw or something like that.

* * *

Q: Okay. So according to your testimony today um—Megan Heuker uh—falsely accused you and you were falsely convicted, is that fair?

A: She falsely accused me, yes. And I took a plea deal on that.

* * *

Q: You didn't attack her?

A: No.

Q: You didn't choke her?

A: What they had me plead to was the domestic violence. They said when I stopped her from stealing my car and I pushed her from the driver's seat to the passenger seat to stop her from leaving with my vehicle that that was domestic violence.[8]

Q: Do you not think that was domestic violence?

A: When you're trying to prevent somebody form stealing your vehicle I don't think pushing them from the driver seat to the passenger seat would be domestic violence.

Q: Okay. If the—the information that was attached to the criminal complaint talked about you choking her.

A: And—

Q: Is that—is that not domestic violence?

A: I never choked her.

Q: Okay. So that was false?

A: Yes, it was false.

[8] This appears to refer to an incident in which respondent-mother, with AMS in the car, was attempting to leave and respondent stopped her by physically pulling her out of the car.

Q: Okay. So when Amber Madrigal accused you of kind of a similar MO of chocking her, that didn't happen either?

A: No.

Q: Okay. So you were again falsely convicted, falsely accused?

A: Yes.

Petitioner also had respondent read text messages that he had sent respondent-mother (and which had been attached to respondent-mother's application for a PPO). The text messages are somewhat repetitive, but the gist of them are reflected in the following passages:

> You lied, cheated, and broke your promise and your oath to me and God. You want to go back to church but you're not even Christian enough to follow your own promises to God, Amber. You can't ever be my wife, you don't ever listen or obey what I ask. And then it goes to say you're gonna lose your kids.
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> You're gonna lose your kids and your life so bad, Amber, then don't answer. You're just dooming yourself. Okay, Amber, say goodbye to you kids when you see them, Amber, because you don't know what day is going to be your last with them. Okay, you made your decision, Amber.
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> * * *
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> If you think I'm kidding, Amber, I'm not. I will make sure you lose everything even if it results in me being dead. I can live with that. All I need to know before I die [is] that I took everything you took from me. If die [sic] in the process, I don't care because I'll know that I've taken what you cherish the most, Amber. You want to take our family away I'm gonna take yours away. I'll take everything from you. You think it was worth it to act the way you are . . . than [sic] I hope you're prepared for the consequences of your actions because I won't let this shit fly.

After reading the text messages to the jury, responded denied that they constituted threats. Respondent also denied abusing the mother of his older children, but admitted that he pled guilty to domestic violence but that he "didn't specifically pled [sic] guilty to abusing her."

Petitioner then returned to the topic of respondent working with our Supreme Court on the corruption investigation:

Q: Is the Supreme Court aware that you're here today testifying?

A: Yes, they are.

Q: Do they have a representative here to back up your story? Do you see someone in the courtroom?

A: No. Would you like me to elaborate on—on what I'm tolds [sic] taken place? I can go into—

Q: Please do.

A: I can go into a little bit of it but I can't go into the full investigation. Um—I received word two weeks ago that the corruption office at the attorney general's office is also working on the case. They are working to get me out of prison. Um—the prison counselor approximately three days ago told me my prison case is—is closed and they only do that when you're about ready to get released from prison. The Supreme Court told me that they will take care of it if the attorney general's office doesn't. The State Police has informed me that once all the cases are closed and finalized, they will file their motions. There is also a motion in the Supreme Court right now that says everything that is being done to me is targeting, retaliation and it is illegal and it's um—the prosecution of it was even illegal.

* * *

A: There is a motion on one of my criminal court cases that is filed up in there.

Q: Who filed that?

A: Eric Sheppard.

Q: Who's Eric Sheppard?

A: Eric Sheppard is the attorney on the terrorism case.

Q: There's a terrorism case?

A: Yes.

Q: What's going on with that?

A: So after I filed the corruption complaint um—the state police went and spoke with Friend of the Court and they wrote up a 58-page police report that documented all the corruption that was taken place from 2018 until current except the new charges. They sent that to the prosecutor's office that said corruption. The prosecutor denied to charge the public officials with corruption. So the Supreme Court asked the police officer to put the same report through and to put my name on it. The police officer did that and the prosecutor in this county decided to charge me with two counts of false reports of threats of terrorism one for referencing Ruby Ridge. I don't know if anybody knows what Ruby Ridge is and the government overreach. I wrote that in a letter and

> I sent it to the referee at Friend of the Court that they were committing government overreach like they did to Randy Weaver. They charged me with one count of false reports of threats of terrorism. They second count they charged me with was for stating that I would use my first amendment, the constitutional rights to stop Friend of the Court by any force necessary from illegally taking my wife's children. They charged me with false reports of terrorism. First Amendment constitutional rights are your right—
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> Q: I have no further—
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> A: to freedom of speech, freedom to grievance the government, freedom of the press. Nothing of a threat of terrorism. Nothing of firearms in your first amendment, nothing but the use of legal force against them and they charged me with terrorism for it.

The jury thereafter returned its verdict, finding that the trial court had jurisdiction over AMS. Respondent appeals and argues that there was insufficient evidence presented at trial from which the jury could conclude by a preponderance of the evidence to establish jurisdiction. We disagree.

Turning first to whether the issue has been properly preserved for appeal, this case presents in a unique posture: an appeal in a child neglect case in which the adjudicative hearing was conducted by jury trial and respondent is challenging the sufficiency of the evidence to allow the trial court to assume jurisdiction. Cases involving adjudication by jury trial are virtually nonexistent. Neither party addresses the preservation issue nor was this Court able to find a case that perfectly fits that issue. But this Court recently stated in *In re Doe*[9] that the "raise or waive" rule in civil cases does not apply in a termination of parental case. *Doe* relied on this Court's opinion in *Tolas Oil & Gas Exploration Co v Bach Services & Manufacturing, LLC*.[10] In *Tolas*, this Court concluded that the "raise or waive" rule applies in civil cases and that the plain error rule does not apply.[11] But the Court also stated that its "holding does not apply to termination of parental rights cases, which present different constitutional considerations. See, e.g., *In re Hudson*, 483 Mich 928; 763 NW2d 618 (2009)."[12] With this in mind, we conclude that, as with criminal cases,[13] it was not necessary for respondent to move for a directed verdict at the adjudication trial

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[9] *In re Doe*, ___ Mich App ___; ___ NW3d ___ (Docket No. 366773, issued 1/25/2024), *slip op* at 3.

[10] *Tolas Oil & Gas Exploration Co v Bach Services & Manufacturing, LLC*, __ Mich App __; ___ NW3d ___ (Docket No. 359090, issued 6/15/2023).

[11] *Tolas, slip op* at 2.

[12] *Tolas, slip op* at 3 n 3.

[13] See *People v Cain*, 238 Mich App 95; 605 NW2d 28 (1999) ("Criminal defendants do not need to take any special steps to preserve a challenge to the sufficiency of the evidence.").

in order to preserve for appeal the argument that there was insufficient evidence presented at trial for the trial court to assume jurisdiction.

Once again, the unique posture of this case presents a challenge to determine the correct standard of review. The parties simply refer to the oft-cited case of *In re BZ*[14] and its pronouncement that:

> To properly exercise jurisdiction, the trial court must find that a statutory basis for jurisdiction exists. *In re PAP*, 247 Mich App 148, 152–153; 640 NW2d 880 (2001). Jurisdiction must be established by a preponderance of the evidence. MCR 5.972(C)(1); *Ryan v Ryan*, 260 Mich App 315, 342; 677 NW2d 899 (2004); *In re Snyder*, 223 Mich App 85, 88; 566 NW2d 18 (1997). We review the trial court's decision to exercise jurisdiction for clear error in light of the court's findings of fact, *In re S R*, 229 Mich App 310, 314; 581 NW2d 291 (1998).

Clear error is established when "the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses."[15] But a circuit court referee, not by a jury, conducted the adjudication in *BZ*.[16] The parties do not refer to a case involving a jury trial.[17]

The challenge presented with applying the clear error standard of review in the case of a jury trial is that there are no findings of fact made by the jury and placed on the record for this Court's review. The jury merely renders a conclusion. For example, in this case, when the jury returned its verdict, the trial court asked "As to father, Andrew Sluiter, do you find the Court has jurisdiction over [AMS]?" to which the foreman responded, "Yes."

Given the "different constitutional considerations" present in a termination of parental rights case,[18] and the due process considerations present in a child-neglect proceeding,[19] it is logical to look to the criminal law in determining the standard of review for a sufficiency of the evidence argument. The Supreme Court summarized this standard of review in a criminal case in *People v Oros*[20] as follows:

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[14] *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004).

[15] *BZ*, 264 Mich App at 296-297.

[16] *Id*. at 293-294.

[17] The unpublished case of *In re Slocum* involved an adjudication via jury trial and the respondent challenged on appeal the assumption of jurisdiction, but *Slocum* also merely cites *BZ* for the proposition that appellate review of the trial court's decision to assume jurisdiction for clear error in light of the trial court's findings of fact.

[18] *Tolas, slip op* at 3 n3.

[19] See, e.g., *In re Brock*, 442 Mich 101, 109; 499 NW2d 752 (1993).

[20] *People v Oros*, 502 Mich 229, 239; 917 NW2d 559 (2018).

> "In determining whether sufficient evidence exists to sustain a conviction, this Court reviews the evidence in the light most favorable to the prosecution, and considers whether there was sufficient evidence to justify a rational trier of fact in finding guilt beyond a reasonable doubt." *People v Harris*, 495 Mich 120, 126; 845 NW2d 477 (2014). But more importantly, "[t]he standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict. The scope of review is the same whether the evidence is direct or circumstantial. Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000) (quotation marks and citation omitted; emphasis added). "It is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences." *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002) (emphasis added).

We believe that applying the principles set forth in *Oros*, modified to fit a child neglect case, such as substituting "petitioner" for "the prosecution" and "jurisdiction" for "guilt," is the best approach. Accordingly, where a respondent-parent appeals and challenges the sufficiency of the evidence in a child-neglect case where adjudication was done by jury trial, we apply the following standard of review as modified from *Oros*:

> In determining whether sufficient evidence exists to sustain a jury's verdict finding jurisdiction in a child-neglect proceeding, this Court reviews the evidence in the light most favorable to the petitioner, and considers whether there was sufficient evidence to justify a rational trier of fact in finding jurisdiction by a preponderance of the evidence. Because this review is deferential, a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict. And it "is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences." *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

With this standard of review in mind, looking at the evidence in the light most favorable to the petitioner and deferring to the jury in determining what evidence is to be believed and the weight to be attached to the evidence, we conclude that there was sufficient evidence to support the jury's conclusion that a preponderance of the evidence established jurisdiction over the minor child as to respondent.

Petitioner alleged jurisdiction under both MCL 712A.2(b)(1) and (2), which provides as follows:

> (b) Jurisdiction in proceedings concerning a juvenile under 18 years of age found within the county:
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> (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.
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> * * *
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> (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.

For the court to acquire jurisdiction, the factfinder must determine by a preponderance of the evidence that the child comes within one or more of these statutory grounds.[21]

The fundamental flaw in respondent's arguments on appeal is that he focuses on what he believes the jury *should* have concluded rather than what the jury *could* have concluded. That is, respondent ignores the deference that courts give to the jury's role in determining what evidence to believe and what weight to give that evidence. It is not necessary for petitioner to establish that all statutory grounds were proven. Accordingly, this Court's focus is directed to what statutory grounds the jury could conclude were established by a preponderance of the evidence.

Petitioner first points to the testimony of the SANE nurse, Gabrielle McLain, as well as the forensic interview conducted by Teresa Lutke of the Child Advocacy Center regarded sexual abuse of the child. It should also be noted that the SANE referral came from the physician assistant at the child's primary care office where AMS was initially taken based upon complaints of genital itching. McLain testified regarding a report of AMS breaking potty training for the prior two weeks, painful urination, and that when she did the physical exam, AMS had an extreme reaction when the genital examination was performed. The results of the examination showed that AMS "had redness to her entire vaginal area. It was painful anywhere that we touched. And there was a reddened abrasion at the base of her vagina between her vaginal opening and her rectum." She also testified that during the exam AMS "was yelling um—that she doesn't want anything in her pee-pee, asking us please not to touch it, and then at the end of the exam when we had finished she said I don't want daddy to touch my pee-pee anymore."

Respondent's response to this testimony was to point out that Lutke reported difficulty in understanding AMS during the forensic interview.[22] Respondent also suggests that there was evidence that respondent-mother coached AMS into making the allegations. The only evidence that respondent points to regarding "coaching" is testimony by the father of one of the half-

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[21] *Brock*, 442 Mich at 108-109; MCR 3.9072(E).

[22] Respondent's brief states this in absolute terms, that "the forensic investigator acknowledged that she could not understand AMS in the interview." While Lutke did acknowledge that there were a number of things AMS said that she could not understand, she did testify as to some things that Lutke could understand.

siblings; his daughter told him that respondent-mother told the daughter to "lie otherwise she would go to jail for the rest of her life and never see her again." It is not clear what the context of the alleged lie was about, but it appears that the witness, Gerald Moyer, was correcting his earlier statement that his daughter had not told him that respondent-mother had allowed the daughter to be around respondent despite the court order to the contrary. In any event, it was for the jury to determine the credibility of the witness and what weight, if any, to put on that testimony. And there is no clear indication that Moyer's testimony involved any coaching of AMS regarding her statements to McClain, Lutke, or any other investigator.

Respondent also points to the lawyer-guardian ad litem's closing argument in which he states that he does not believe that sexual abuse was proven by a preponderance of the evidence. First, that is argument, not evidence, and the jury was free to ignore it. Second, respondent conveniently picks out that portion of the L-GAL's argument to believe. Shortly after the above statement, the L-GAL argues that AMS "was subject to all that domestic violence," that she "was injured by Mr. Sluiter," and that he thought "easily you guys should be able to determine that there should be jurisdiction with Mr. Sluiter and [AMS] for all those reasons."

Respondent also argues that there were inconsistencies between the testimony of the physician assistant and the nurse regarding whether the injury to AMS's genital areas was an "abrasion" or a "tear." As noted above, McClain did explain the difference between an "abrasion" and a "tear," and there was a difference in nomenclature between the two in describing AMS's injury; but that is a distinction without a difference. The relevant fact is that both testified to an injury regarding AMS's genital area; whether the appropriate medical term is "abrasion" or "tear" is not particularly important. Respondent again repeats the claim that respondent-mother coached AMS to say that respondent was the source of the injury. But respondent points to nothing in the record to support this claim other than respondent's own self-serving testimony that all that the authorities had was what respondent-mother told AMS to say. Similarly, respondent argues that AMS's injury could have been caused by scratching or itching herself. But the only evidence that respondent refers to is, once again, his own testimony that an unidentified doctor that he asked to examine the hospital report "said yesterday that she could have that from scratching and itching herself. She coulda did it in a fall." Perhaps so, but the jury was free to reject that theory.

Petitioner also argues that jurisdiction could be obtained because of the domestic violence in the house. Respondent places great emphasis on the claim that AMS was not present during any altercation. Respondent also points to his own testimony that no physical violence or threats occurred during his arguments with respondent-mother. He also emphasizes that respondent-mother never sought to charge him with domestic violence after respondent's release from incarceration in 2020.[23]

[23] Cf. *In re Dearmon*, 303 Mich App 684, 690-691, 697-698; 847 NW2d (2014) (the jury found jurisdiction where the respondent-mother denied that the children were present during an altercation between her and her boyfriend; she also insisted that she did everything possible to distance herself from him. However, one child, in a forensic interview, recounted those adults fighting with weapons, the children attempting to hide, and respondent-mother bleeding).

But more importantly, as detailed above, there was substantial evidence presented that domestic violence existed in the household, primarily directed against respondent-mother, as well as prior abuse against the mother of his older children. And the abuse against the mother of the older children also involved abuse that occurred in front of the children.

Although respondent emphasizes that AMS was not present during any of the alleged incidents of abuse, that, however, is not dispositive. First, it ignores the principle of anticipatory neglect.

> Our inquiry, however, cannot end with a determination that there is not an individual factual basis for the court to assume jurisdiction over JK under MCL 712A.2(b). In cases with multiple children, the doctrine of anticipatory neglect may apply to confer jurisdiction. *In re BZ*, 264 Mich App at 296. "The doctrine of anticipatory neglect recognizes that [h]ow a parent treats one child is certainly probative of how that parent may treat other children." *In re AH*, 245 Mich App. 77, 84; 627 NW2d 33 (2001) (quotation marks and citation omitted; emphasis added). "Abuse or neglect of the second child is not a prerequisite for jurisdiction of that child and application of the doctrine of anticipatory neglect." *In re Gazella*, 264 Mich App. 668, 680-681; 692 NW2d 708 (2005), superseded in part on other grounds *In re Hansen*, 285 Mich App. 158, 163; 774 NW2d 698 (2009). [*In re Kellogg*, 331 Mich App 249, 259; 952 NW2d 544 (2020).]

While the evidence of domestic violence primarily concerned violence targeting respondent-mother and the mother of respondent's older children, there was at least some evidence of abuse against one of the children, thus coming within the principle of anticipatory neglect. But perhaps most importantly, it ignores Jackson's testimony that in her interview with one of AMS's half-siblings, the sibling disclosed that he saw respondent choking respondent-mother in front of AMS. Accordingly, even though the evidence does not support that AMS ever directly witnessed respondent engage in domestic violence with respondent-mother, this is not dispositive given the domestic violence that AMS's half-siblings witnessed.

Moreover, even if we accept respondent's argument that none of the abuse against respondent-mother was done in the presence of AMS, there nonetheless was sufficient evidence to support the jury's conclusion that the trial court should assume jurisdiction. MCL 712A2(b)(2) states in part that the court has jurisdiction over a child: "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 testimony presented regarding respondent's abuse of respondent-mother, even if not witnessed by AMS, nevertheless reflects cruelty, criminality, and depravity on respondent's part, thus providing an unfit place for AMS to live. That is, a home where domestic violence repeatedly occurs is not a

fit environment in which to raise a child. There is no provision in the statute that requires such behavior be conducted in front of the child.[24]

In sum, respondent's argument focuses on what did not happen and what the jury could have and, according to respondent, should have, concluded did happen. While this would certainly be arguments to present to the jury, they are not arguments of merit on appeal. The issue on appeal is whether there was evidence from which the jury could conclude that jurisdiction existed, not whether the jury should have believed that evidence. And from the evidence presented at trial, the jury could conclude, based upon a preponderance of the evidence, that respondent abused AMS and that respondent has an extensive history of domestic violence to his partners and children, as well as other criminal behavior, that establishes that he is an unfit parent.

For these reasons, we affirm the jury's verdict finding that the trial court had jurisdiction over the child as to respondent.

Affirmed.

/s/ Kathleen A. Feeney
/s/ Colleen A. O'Brien
/s/ Michael J. Kelly

[24] Requiring children to be physically present to be detrimentally impacted by domestic violence defies reason. "Children live with the aftermath of and context surrounding violent incidents. Even children who do not contemporaneously observe violent incidents may still be affected deleteriously by these occurrences. The domestic violence victim may have bruises and other injuries, perhaps some severe enough to require hospitalization or create disability. . . .The child may experience absences from one parent or the other, and may be moved about as the victim seeks to escape the violence, if the perpetrator is apprehended by law enforcement authorities, or if the perpetrator is barred from contact with the family by a civil protection order. All of these factors suggest that childhood exposure to domestic violence is multifaceted, and there are many different ways in which it might have an impact on children's health and well-being." Weithorn, *Protecting Children From Exposure to Domestic Violence: The Use and Abuse of Child Maltreatment*, 53 Hastings L J 1, 84-85 (2001)