

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

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In re SEARLES/JOHNSON, Minors.

UNPUBLISHED  
October 23, 2014

No. 319879  
Washtenaw Circuit Court  
Family Division  
LC Nos. 2012-000100-NA;  
2012-000101-NA;  
2012-000102-NA;  
2012-000103-NA;  
2012-000104-NA;  
2012-000105-NA

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Before: FITZGERALD, P.J., and GLEICHER and RONAYNE KRAUSE, JJ.

PER CURIAM.

The circuit court terminated the respondent-mother's parental rights to her six minor children—DUS, BLJ, ALJ, LLJ, DJJ, and JOJ—following the death of her infant son, IC, and her improper placement of the six children in an unfit home. Before the termination hearing, the circuit court denied respondent her statutory right to a jury trial at the adjudication because jurisdiction had already been assumed in relation to the children's fathers. Adjudication as to one parent based on the adjudication of the other has since been deemed unconstitutional. Accordingly, the court erroneously denied respondent her jury trial right. We therefore vacate the termination order and remand for an adjudication before a jury.

**I. BACKGROUND**

Respondent has a long history with Children's Protective Services (CPS) and the Department of Human Services (DHS). In 2000, a child protective proceeding was initiated in relation to respondent's three oldest children. Although the current record provides sparse details, respondent's rights were ultimately terminated and the children were adopted by a maternal aunt.

Between 2002 and 2012, respondent gave birth to nine more children with multiple fathers.<sup>1</sup> The oldest child, DUS, was briefly removed from her parents' care as an infant after a substantiated CPS complaint. The DHS provided services to respondent at that time. Seventeen other CPS complaints were lodged against respondent over the years, but none led to intervention. Two infants born to respondent died, one in 2005 and another in 2007. Respondent also ran afoul of the law, being sentenced to a probationary term for uttering and publishing in 2010. In 2011, respondent moved herself and the six subject children into the home of her parents. While the children lived consistently with their grandparents, respondent was present only intermittently, leaving the children's care to her parents.

In fall 2012, respondent gave birth to IC. On the evening of October 6, 2012, she and the baby attended a social gathering at a relative's home. Although her story changed several times throughout the proceedings, it appears that respondent took a Vicodin and used marijuana at some point that day. She also drank several cans of beer. Respondent refused an offer from her oldest daughter, who was then an adult, to take the baby for the night. Instead, respondent left the relative's home at 5:00 a.m. on October 7, 2012. Although her license had been suspended due to multiple traffic violations, respondent elected to drive. She placed IC's rear-facing, infant car seat into the front passenger seat of an uninsured van and failed to secure it to the van's seat. Shortly thereafter, respondent struck a legally parked truck, skidded, and collided with a landscaping boulder and then a fence. The vehicle's passenger-side airbag deployed, crushing the car seat and causing severe head trauma to the baby. IC died approximately a week later in the hospital. When police arrived at the scene, they found an open beer can and a half-full bottle of cognac between the front seats. Respondent's blood alcohol content measured .05%. She was arrested on a warrant issued in Wayne County for probation violations.

The DHS filed a petition seeking jurisdiction over respondent's six minor children and requesting termination of respondent's parental rights. The DHS continued the children in their grandparents' care and prohibited respondent contact with the children until she submitted to two negative drug screenings. Despite that termination was sought from the beginning, the DHS also provided respondent a case service plan. Respondent was to submit to random drug tests, participate in substance abuse counseling, undergo a psychological evaluation and follow up with necessary treatment, secure housing and employment, and enroll in parenting classes. Respondent attended parenting classes and her psychological evaluation. Respondent's psychological evaluation revealed "severe limitations in intellectual functioning that interfere[d] with" her ability to understand verbal instructions and to engage in abstract thinking. Respondent claimed that she attended Alcoholics' Anonymous meetings but provided no verification. She also did not submit to two random drug screenings before she was jailed in November 2012 on an uttering and publishing charge.

Respondent participated in services from February 19, 2013, until some point in early April 2013, when she was charged and arrested in connection with IC's death. The children

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<sup>1</sup> It appears from the record that the parental rights of the various fathers listed in the petition were terminated shortly after those of respondent.

were also removed from the maternal grandparents' home that month. A maternal uncle living in the home was suspected of "some type of drug activity" and police "raided" the home. The home was in such poor condition that it was condemned. The six children were divided into three foster homes. Further investigation revealed that JOJ's "asthma machine" (likely his nebulizer) was "polluted with cigarette smoke." DJJ and LLJ lacked age-appropriate social skills. ALJ showed aggressive tendencies and was suspended from school multiple times. As a result of academic delays, he needed to repeat the first grade. And respondent's daughters, DUS and BLJ, reported having suffered sexual and physical abuse in their grandparents' home. Their grandfather later pleaded nolo contendere to criminal sexual conduct charges. Both girls required intensive counseling and DUS expressed suicidal ideations.

In August 2013, respondent committed three additional acts of forgery and uttering and publishing. She ultimately pleaded guilty to those charges and was sentenced to 1 to 14 years' imprisonment. Thereafter, respondent pleaded nolo contendere to operating a motor vehicle while intoxicated causing death, driving without a license causing death, and second-degree child abuse. Her minimum sentence for those charges exceeded four years' imprisonment.

The DHS filed an amended petition, adding as grounds for termination that respondent would be unable to care for her children for an unreasonable length of time given her more than four-year minimum sentence. The court had assumed jurisdiction over the children based on allegations against their fathers in April and June 2013. On October 28, 2013, respondent requested that an adjudicatory jury trial be conducted in relation to the allegations against her before the court considered termination of her parental rights. Circuit Court Judge Donald Shelton denied respondent's request based on the one-parent doctrine of *In re CR*, 250 Mich App 185; 646 NW2d 506 (2002).

Circuit Court Referee Molly Schikora immediately proceeded with the termination hearing, which continued into November 21, and December 6, 2013. Despite that Judge Shelton had denied respondent an adjudicatory trial, at the continuation of the October 28 proceeding, Referee Schikora indicated that she was conducting both an adjudication and a disposition and would separate the evidence accordingly. And despite that petitioner had won the jurisdictional battle based on the one-parent doctrine less than an hour earlier before Judge Shelton, he raised no objection to the referee's assessment. The matter proceeded without a jury, however.

At the close of the proceedings, Judge Shelton terminated respondent's parental rights under MCL 712A.19b(3)(b)(i), (h), (j), and (l).<sup>2</sup> Despite that Judge Shelton had denied respondent an adjudicatory trial, in the termination order, the judge described that "[t]estimony was given regarding adjudication and disposition" at the hearing. Before reciting the grounds for termination, the judge also "concluded[d] that grounds for adjudication exist."

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<sup>2</sup> The court found insufficient evidence to support termination under MCL 712A.19b(3)(i).

## II. INADEQUACY OF ADJUDICATION

On June 2, 2014, less than six months after the circuit court terminated respondent's parental rights, and approximately six weeks after respondent filed her appellate brief, our Supreme Court overturned the one-parent doctrine of *In re CR*. In *In re Sanders*, 495 Mich 394, 408; 852 NW2d 524 (2014), the Supreme Court described:

[T]he one-parent doctrine permits courts to obtain jurisdiction over a child on the basis of the adjudication of either parent and then proceed to the dispositional phase with respect to both parents. The doctrine thus eliminates the petitioner's obligation to prove that the unadjudicated parent is unfit before that parent is subject to the dispositional authority of the court.

And during the dispositional phase, the petitioner's burden is lessened as the rules of evidence do not apply. *Id.*

*Sanders* definitively states that a disposition conducted absent an adjudication of parental unfitness is constitutionally inadequate to protect the parent's fundamental right to the care and custody of his or her children. *Id.* at 414-415. Requiring an adjudication as to each parent "significantly reduce[s] any risk of [an] erroneous deprivation of the parent's right to parent his or her children. The trial is the only fact-finding phase regarding parental fitness, and the procedures afforded respondent parents are tied to the allegations of unfitness contained in the petition." *Id.* at 417. The Court continued:

Dispositional hearings simply do not serve this same function. At the dispositional phase, the court is concerned only with what services and requirements will be in the best interests of the children. There is no presumption of fitness in favor of the unadjudicated parent. See MCL 712A.18f. The procedures afforded parents during the dispositional phase are not related to the allegations of unfitness because the question a court is answering at a dispositional hearing assumes a previous finding of parental unfitness. [*Id.* at 418.]

Here, the circuit court deemed unfit the various fathers of the six subject children and took jurisdiction over the children. While respondent complains that her parental fitness was never adjudicated, that is not accurate. Judge Shelton denied respondent a jury trial, and held that no adjudication was required, but Referee Schikora did conduct an adjudicative trial from the bench. Judge Shelton then proceeded to consider the admissible evidence relevant to adjudication and make a ruling in that regard.

The real issue is that respondent was denied her statutory right to a jury at the adjudication. MCL 712A.17(2) creates a parent's right to a jury at an adjudication trial: "Except as otherwise provided in this subsection, in a hearing other than a criminal trial under this chapter, a person interested in the hearing may demand a jury of 6 individuals. . . ." Prior to *Sanders*, a line of unpublished opinions of this Court held that the denial of a jury trial in relation to one parent was harmless where the court already obtained jurisdiction based on the adjudication of the other parent. Such reasoning can no longer stand. A parent is

“constitutionally entitled to a fitness hearing,” and pursuant that right, “MCL 712A.17(2) affords him [or her] the statutory right to demand a jury because a parental-fitness hearing qualifies as a noncriminal hearing under the juvenile code.” *Sanders*, 495 Mich at 419 n 15. This is true as to each parent.

Respondent demanded a jury trial as was her statutory right. The circuit court violated respondent’s right by denying her a jury trial upon request. We therefore vacate the order terminating respondent’s parental rights and remand for further proceedings. In doing so, we acknowledge that respondent is now imprisoned in connection with the death of her youngest child. Respondent’s imprisonment does not render harmless the denial of her jury trial right. As noted in *Sanders*, 495 Mich at 420-421, “[a]n incarcerated parent can exercise the constitutional right to direct the care of his or her children while incarcerated.” Accordingly, respondent may potentially exercise her parental rights from prison by directing a new and appropriate relative placement for her children.

As the matter of adjudication must be reconsidered by the circuit court, we need not address the statutory grounds for terminating respondent’s parental rights at this time.

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

/s/ E. Thomas Fitzgerald  
/s/ Elizabeth L. Gleicher  
/s/ Amy Ronayne Krause