

STATE OF MICHIGAN
COURT OF APPEALS

In re JONES, Minors.

UNPUBLISHED
September 14, 2017

No. 336271
Oakland Circuit Court
Family Division
LC No. 2016-847735-NA

Before: GADOLA, P.J., and CAVANAGH and SWARTZLE, JJ.

PER CURIAM.

Petitioner, Department of Health and Human Services, appeals as of right the trial court's order dismissing the petition to adjudicate and terminate the parental rights of respondent to her three minor children. We reverse and remand for further proceedings consistent with this opinion.

Respondent is the mother of four minor children. Three of those children have lived in Oakland County with their nonrespondent father since the Oakland Circuit Court granted him sole legal and physical custody in 2014. Respondent-mother was not granted parenting time with those children. The fourth child, AM, lived with respondent-mother in her home in Wayne County until, on May 15, 2016, AM was found dead in respondent-mother's residence. When found, AM's body was moderately decomposed and positioned on an adult bed in a manner that suggested he was moved there postmortem. The medical examiner was unable to determine precisely when AM died, but did, however, rule the death a homicide.

Respondent-mother never reported AM's death to police or emergency personnel. Respondent-mother was arrested and charged with felony murder, second-degree murder, first- and second-degree child abuse, and failure to report a dead body. She currently awaits trial in Wayne County.

Petitioner filed a petition to terminate respondent-mother's parental rights to her three surviving children in the Oakland Circuit Court. Respondent-mother waived the probable cause determination and Oakland Circuit Court authorized the petition. Oakland Circuit Court then ordered that the case be transferred to Wayne County in the interest of trial convenience as

respondent-mother resided there. Wayne County Circuit Court, however, refused to accept the transfer.¹

Respondent-mother did not admit the allegations in the petition. Before an adjudication trial could be held, however, Oakland Circuit Court (the trial court) dismissed the petition. The trial court reasoned that jurisdiction pursuant to MCL 712A.2b focuses on the environment in which the children were living at the time the petition was filed. In this case, when the petition was filed, the children were living with their nonrespondent-father and respondent-mother had no contact with the children. The trial court noted that there was no allegation that nonrespondent-father was an unfit parent and therefore reasoned that, because the children were not being neglected, there was no substantial risk of harm to their well-being, and their home was sufficient, there were no grounds upon which the trial court could assume jurisdiction over the children. The trial court also noted that assuming jurisdiction over the children when respondent-mother was unlikely to be released from custody or ever see the children was not in the interests of judicial economy.

The sole issue on appeal is whether the trial court erred in summarily dismissing the petition based on an alleged impossibility of establishing jurisdiction. We review the trial court's rulings regarding jurisdiction "for clear error in light of the court's findings of fact." *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). "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." *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

"Child protective proceedings have long been divided into two distinct phases: the adjudicative phase and the dispositional phase." *In re AMAC*, 269 Mich App 533, 536; 711 NW2d 426 (2006). "The adjudicative phase occurs first and involves a determination whether the trial court may exercise jurisdiction over the child, i.e., whether the child comes within the statutory requirements of MCL 712A.2(b)." *Id.* "In order to find that a child comes within the court's jurisdiction, at least one statutory ground for jurisdiction contained in MCL 712A.2(b) must be proven, either at trial or by plea." *In re SLH*, 277 Mich App 662, 669; 747 NW2d 547 (2008).

Our Supreme Court provided a detailed description of the adjudicative process in *In re Sanders*, 495 Mich 394, 405-406; 852 NW2d 524 (2014):

To initiate a child protective proceeding, the state must file in the family division of the circuit court a petition containing facts that constitute an offense against the child under the juvenile code (i.e., MCL 712A.2(b)). MCL 712A.13a(2); MCR 3.961.3. If the court authorizes the petition, the court may release the child to a

¹ Because the children were "found within" Oakland County at the time of the petition, the petition was properly filed in the first instance in Oakland County. MCL 712A.2(b); MCR 3.926(A). Whether transfer of venue to Wayne County would have been appropriate in this instance for the convenience of the parties and witnesses, MCR 3.926(D)(1), is not before this Court as no party has asserted on appeal that this case should proceed in Wayne County.

parent, MCR 3.965(B)(12)(a), or, if the court finds that returning the child to the home would be contrary to the child's welfare, order that the child be temporarily placed in foster care, MCR 3.965(B)(12)(b) and (C). The respondent parent can either admit the allegations in the petition or plead no contest to them. MCR 3.971. Alternatively, the respondent may demand a trial (i.e., an adjudication) and contest the merits of the petition. MCR 3.972. If a trial is held, the respondent is entitled to a jury, MCR 3.911(A), the rules of evidence generally apply, MCR 3.972(C), and the petitioner has the burden of proving by a preponderance of the evidence one or more of the statutory grounds for jurisdiction alleged in the petition, MCR 3.972(E). When the petition contains allegations of abuse or neglect against a parent, MCL 712A.2(b)(1), and those allegations are proved by a plea or at the trial, the adjudicated parent is unfit. While the adjudicative phase is only the first step in child protective proceedings, it is of critical importance because "[t]he procedures used in adjudicative hearings protect the parents from the risk of erroneous deprivation" of their parental rights. [*In re*] *Brock*, 442 Mich [101,] 111[; 499 NW2d 752 (1993).]

In the instant case, petitioner argues that the trial court clearly erred by dismissing the petition on the ground that there was no possibility of establishing jurisdiction over the minor children. According to petitioner, that the children are safely placed with their father does not detract from the danger respondent-mother poses to the children if they were ever to be returned to her care and does not prevent the trial court from finding jurisdiction under MCL 712A.2(b). Respondent-mother and the children's lawyer-guardian ad-litem (L-GAL) disagree, arguing that, because the children were safely in the care of their nonrespondent-father, they were not being neglected, had not been abandoned, and were not at a substantial risk of harm to their mental wellbeing, see MCL 712A.2(b)(1), the trial court could not have possibly had jurisdiction pursuant to MCL 712A.2(b).

When the state is concerned that a parent should not be entrusted with the care and custody of her children, "the state has the authority—and the responsibility—to protect the children's safety and well-being." *In re Sanders*, 495 Mich at 421-422. The state may exercise that responsibility by seeking an adjudication against both parents or either parent as the circumstances warrant. *Id.* Indeed, this Court has already held that it is permissible to terminate the rights of one parent while the children are safely living with the other parent. See *In re Medina*, 317 Mich App 219, 233-235; 894 NW2d 653 (2016); *In re Marin*, 198 Mich App 560, 568; 499 NW2d 400 (1993).

We are bound by this precedent. MCR 7.215(J)(1). Accordingly, we are unable to adopt the interpretation of MCL 712A.2(b) proposed by respondent-mother and the L-GAL and implemented by the trial court. Such an interpretation would mean that, when the children subject to the petition reside with a non-respondent parent, the trial court may terminate the respondent's parental rights per *In re Medina* and *In re Marin*, but cannot exercise the predicate jurisdiction over the child required to enter that termination order. We decline to implement such an illogical result.

Therefore, we find that the trial court clearly erred by concluding that the children's safe placement with their non-respondent father barred its exercise of jurisdiction under MCL

712A.2(b). Because the trial court did not conduct an adjudication trial, we are left without any evidence from which we may determine whether jurisdiction would be appropriate in this case. Accordingly, we remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael F. Gadola

/s/ Mark J. Cavanagh

/s/ Brock A. Swartzle