

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BRIANA CHURCH, KEELEY CHURCH, and MICHAEL CHURCH, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ANGELA CHURCH,

Respondent-Appellant,

and

DONALD CHURCH,

Respondent.

In the Matter of MICHAEL ASHTON CHURCH, BRIANA CHURCH, and KEELEY CHURCH, Minors.¹

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ANGELA MARIE CHURCH,

Respondent-Appellant,

and

UNPUBLISHED

April 11, 2006

No. 263541

St. Joseph Circuit Court

Family Division

LC No. 05-000209-NA

No. 265112

St. Joseph Circuit Court

Family Division

LC No. 05-000209-NA

¹ This appeal concerns only Michael Church.

DONALD RAY CHURCH, JR.,

Respondent.

Before: Kelly, P.J., and Jansen and Talbot, JJ.

PER CURIAM.

Respondent-appellant appeals from several circuit court orders concerning the court's exercise of jurisdiction over the minor children and the continued placement of the children outside of her care. We affirm in part and reverse in part.

The children were removed from respondent-appellant's care pursuant to an emergency removal order because she was incarcerated following her arrest. Immediately before this incident, petitioner filed a petition alleging that the children came within the court's jurisdiction under MCL 712A.2(b) because of the parents' neglect. Specifically, petitioner made several allegations against respondent-appellant, primarily concerning her continued mental instability and substance abuse, and also alleged that the children's legal father (Donald Church), who was not a custodial parent, was violent and abusive, had been imprisoned, and had little contact with the children. After conducting a preliminary hearing, wherein the court heard extensive testimony concerning respondent-appellant's mental stability and her ability to care for the children, the court authorized the petition based on Donald's stipulation to the court's jurisdiction and ordered that the children continue to be placed outside of respondent-appellant's care. Respondent-appellant subsequently demanded a jury trial on the allegations made against her. Thereafter, over respondent-appellant's objection, the court assumed jurisdiction over the children based solely on Donald's plea and his supporting testimony, wherein he admitted that he was not financially supportive of the children and failed to protect the children from respondent-appellant's emotional and mental instability. The court then proceeded to disposition and ordered respondent-appellant to comply with a case services plan and that the children continue placement outside of her custody. Petitioner then withdrew the allegations of neglect made against respondent-appellant. After the court exercised its jurisdiction in the child protection proceedings under MCL 712A.2(b), based on Donald's plea, there was a judicial determination in the parents' divorce proceeding that Donald was not Michael's father and Michael was not a child of the marriage, and an order to that effect was entered. Respondent-appellant then moved for dismissal of the court's jurisdiction over the proceedings concerning Michael, which the court denied.

In Docket No. 263541, respondent-appellant argues that the trial court violated her right to procedural due process when it deprived her of the physical custody of her children based solely on the non-custodial father's admission of neglect and without adjudicating her parental fitness at a trial. We disagree. Whether a due process violation occurred is a legal question subject to de novo review. *In re CR*, 250 Mich App 185, 203; 646 NW2d 506 (2002).

Procedural due process "limits actions by the government and requires it to institute safeguards in proceedings that affect those rights protected by due process, such as life, liberty,

or property.” *In re CR, supra* at 204, quoting *In re AMB*, 248 Mich App 144, 209; 640 NW2d 262 (2001). “A procedural due process analysis requires a court to consider ‘(1) whether a liberty or property interest exists which the state has interfered with, and (2) whether the procedures attendant upon the deprivation were constitutionally sufficient.’” *Id.* at 204, quoting *In re AMB, supra* at 209. “[P]arents have a due process liberty interest in caring for their children,” *In re CR, supra* at 204, and that liberty interest is at stake in an adjudicative proceeding. *In re Brock*, 442 Mich 101, 110-111, 114-115; 499 NW2d 752 (1993). Thus, “the pertinent question [is] whether the procedures used were constitutionally adequate.” *In re CR, supra* at 204.

We find that the trial court’s actions in the instant case were adequate. Once jurisdiction over the children was properly established under MCL 712A.2(b), by the father’s plea admitting neglect, the court was not required to hold an adjudicative hearing to substantiate the allegations against respondent-appellant before entering orders involving her “that provide services, placement, and parental visitation, necessary and beneficial for the children.”² *In re Brock, supra* at 108; *In re CR, supra* at 201-203; MCR 3.973. As this Court explained in *In re CR*:

[O]nce the family court acquires jurisdiction over the children, MCR 5.973(A) [now MCR 3.973(A)] authorizes the family court to hold a dispositional hearing “to determine measures to be taken...*against any adult*. . . .” MCR 5.973(A)(5)(b) [now MCR 3.973(F)(2)] then allows the family court “to order compliance with all or part of the case service plan and *may enter such orders as it considers necessary in the interest of the child*.” [*In re CR, supra* at 202-203 (emphasis supplied).]

As we have explained, the court rules simply do not place a burden on a petitioner like the FIA to file a petition and sustain the burden of proof at an adjudication with respect to every parent of the children involved in a protective proceeding before the family court can act in its dispositional capacity. The family court’s jurisdiction is tied to the children, making it possible, under the proper circumstances, to terminate parental rights even of a parent who, for one reason or another, has not participated in the protective proceeding. [*In re CR, supra* at 205.]

Accordingly, in this case, where the father admitted to neglecting the children, the trial court did not commit procedural error in failing to hold an adjudication trial concerning the allegations of

² Under MCL 712A.6, during the dispositional phase of child protective proceedings the court has the authority under MCL 712A.6 to make dispositional orders affecting *any adult* to ensure the safety or well-being of the child, including orders affecting a parent who was not the subject of the petition’s allegations of neglect, so long as the child is under the court’s jurisdiction. *In re CR, supra* at 202-203.

neglect directed at respondent-appellant or entering orders placing the children outside of her custody.

We also reject respondent-appellant's argument that the trial court misused its authority under MCL 712A.6 to deprive her, as the custodial parent, of the custody of her children where jurisdiction was established based solely on the non-custodial father's admission of neglect. MCL 712A.6 clearly and unambiguously gave the court the jurisdictional authority to make orders affecting *any adult* that it deemed necessary for the well-being of the children, once jurisdiction over the children was established. The statute did not limit the court's discretion in such a way as to prevent the court from entering an order placing the children outside of the custodial parent's care whose neglect did not factor into the assumption of jurisdiction over the children. *In re Macomber*, 436 Mich 386, 391; 461 NW2d 671 (1990); *In re CR*, *supra* at 202. "When the Legislature has unambiguously conveyed its intent in a statute, the statute speaks for itself, and judicial construction is not permitted." *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002). Respondent-appellant correctly notes that MCL 712A.6 limits the court's discretion by its language requiring that the orders must be incidental to the jurisdiction of the court. However, contrary to respondent-appellant's argument, the court's orders were incidental to the court's jurisdiction over the children as the record revealed her continued mental instability remained at issue and arguably placed the children at a risk of harm and jeopardized their wellbeing. The trial court, in ordering continued placement outside of respondent's care, properly acted within the scope of authority granted to it under MCL 712A.6 as it: (1) acted after it had proper jurisdiction over the children, (2) acted to ensure the children's well-being, and (3) entered orders "aimed at" respondent that were incidental to its jurisdiction over the children. *In re Macomber*, *supra* at 399.

In Docket No. 265112, respondent-appellant argues that the trial court erred in continuing to exercise jurisdiction over the proceedings concerning Michael after the legal determination that Donald, upon whose admission of neglect jurisdiction was established, was not Michael's father. We agree and reverse the trial court's order denying respondent-appellant's motion to dismiss jurisdiction over the proceedings concerning Michael. Whether a court has subject matter jurisdiction is a question of law subject to de novo review. *Ryan v Ryan*, 260 Mich App 315, 331; 677 NW2d 899 (2004); *In re Martin*, 237 Mich App 253, 255; 602 NW2d 630 (1999).

Subject-matter jurisdiction in child protective proceedings "is established when the action is of a class that the court is authorized to adjudicate, and the claim stated in the complaint is not clearly frivolous." *Ryan*, *supra* at 342, quoting *In re Hatcher*, 443 Mich 426, 437; 505 NW2d 834 (1993). "The valid exercise of jurisdiction is established by the contents of the petition after the court conducts a probable cause hearing on the allegations." *Id.* at 342, citing *In re Hatcher*, *supra* at 438. "If the trial court finds probable cause to believe that the allegations are true, it may enter preliminary, limited orders concerning the care and placement of the child pending the adjudicative trial." *Ryan*, *supra* at 342. "However, the trial court may exercise its full jurisdictional authority only following an adjudication at which at least one of the statutory grounds in MCL 712A.2(b) is proved by trial or plea." *Id.* at 342, citing *In re Hatcher*, *supra* at 437; *In re PAP*, 247 Mich App 148, 153; 640 NW2d 880 (2001). "Once jurisdiction of the subject matter and the parties is established, any error in the determination of questions of law or fact upon which the court's jurisdiction in the particular case depends is error in the exercise of jurisdiction." *In re AMB*, *supra* at 169.

The court's jurisdiction in child protective proceedings is governed by MCL 712A.2(b), which "specifically grants the family courts in this state subject-matter jurisdiction of cases concerning children under eighteen years of age if, among other factors, the child's parents or guardians are neglectful as defined in subsection 1 or have failed to provide a fit home as defined in subsection 2." *In re AMB, supra* at 167. "Parent" is defined under MCR 3.903(A)(17) as "the mother [or] father as defined in MCR 3.903(A)(7)." Under MCR 3.903(A)(7)(a) "father" is defined, in pertinent part, as "[a] man married to the mother at any time from a minor's conception to the minor's birth, unless a court has determined, after notice and a hearing, that the minor was conceived or born during the marriage, but is not the issue of the marriage."

At the time the trial court assumed jurisdiction over the proceedings concerning Michael, Donald was his legal "father" as defined by MCR 3.903(A)(7)(a) because he was married to respondent-appellant during the time from Michael's conception to his birth and there had been no legal determination that Donald was not Michael's father. Accordingly, Donald was a "parent" for the purpose of MCL 712A.2(b) and, based on his admission of neglect, it was proper for the court to invoke and exercise its jurisdiction because Michael belonged to the class of children over whom the court had the power to act. *In re Hatcher, supra* at 433; *In re Ryan, supra* at 342.

However, once it was legally determined that Donald was not Michael's "father," and thus not his "parent" as defined by court rule, the court no longer had a basis for exercising its jurisdictional authority over the proceedings concerning Michael under MCL 712A.2(b), which was derived solely from Donald's admissions of neglect. That is, the proceedings concerning Michael were no longer in the class of cases that the court had the authority to adjudicate under MCL 712A.2(b).³ *Ryan, supra* at 342. Accordingly, we find that the trial court erroneously continued to exercise its jurisdiction over the proceedings concerning Michael. *In re AMB, supra* at 169. "Child protective proceedings protect children, but the procedural rules are also designed to protect parents from the risk of an erroneous deprivation of the parents' liberty interest in the management of their children." *Ryan, supra* at 343. The court's continued exercise of its jurisdiction in these proceedings concerning Michael, without a basis for that jurisdiction under MCL 712A.2(b), posed a risk that respondent-appellant might be erroneously deprived of her right to care for Michael.

While we reverse the court's continued exercise of jurisdiction over Michael, we affirm the court's continuing exercise of jurisdiction over Briana and Keeley with the incidental

³ Although jurisdiction can also be established under MCL 712A.2(b)(1) over a child whose parent or *other person legally responsible for the care and maintenance* of the child and who is abandoned by his parent, guardian or other custodian and under MCL 712A.2(b)(2) over a child whose home or environment is an unfit place to live in by reason of neglect on the part of a parent, *guardian, nonparent adult or other custodian*, the court made a finding, that Donald was not a "custodian" after Donald indicated to the court that he barely knew Michael and met him one time.

authority to enter whatever orders concerning respondent-appellant that the court deems are necessary for their physical, mental or moral well-being.

Reversed in part and affirmed in part. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly

/s/ Kathleen Jansen

/s/ Michael J. Talbot