

STATE OF MICHIGAN
COURT OF APPEALS

In re BLOCK, Minors.

UNPUBLISHED
October 13, 2016

No. 332222
Genesee Circuit Court
Family Division
LC No. 14-130975-NA

Before: FORT HOOD, P.J., and GLEICHER and O'BRIEN, JJ.

PER CURIAM.

The circuit court terminated respondent-father's parental rights to his twin sons at a proceeding it improperly treated as a combined adjudication and initial disposition. The Department of Health and Human Services (DHHS) waited 2½ years to seek jurisdiction in relation to respondent. Respondent never pleaded to grounds supporting jurisdiction or waived his right to an adjudicative trial. Absent a proper adjudication, the court never acquired jurisdiction, the dispositional phase of these proceedings never began, and termination could not be had. As such, we vacate the circuit court's adjudicative and termination orders and remand to handle the proceedings in the manner and order dictated by law.

I. BACKGROUND

Respondent's girlfriend gave birth to twin sons on August 8, 2013. In March 2014, while respondent was incarcerated, Child Protective Services (CPS) took the twins into care on an emergency basis. On April 1, the children's mother pleaded to grounds for jurisdiction. As *In re Sanders*, 495 Mich 394; 852 NW2d 524 (2014), had yet to be decided, the circuit court instructed respondent, as well as the fathers of the mother's older children, that her plea brought all parents into the court's jurisdiction.

On June 2, 2014, the Supreme Court reached its decision in *Sanders* abolishing the one-parent doctrine. Thereafter, circuit courts in child protective proceedings were required to adjudicate an individual parent unfit in order to take jurisdiction in relation to that parent. At a September 3 hearing, counsel for the other fathers involved in the proceedings advised the court that this had not been done. Despite this notice, the DHHS waited until December 18, 2015 to file a supplemental petition seeking jurisdiction over respondent and termination of his parental rights.

Several proceedings were conducted over the following two months, but respondent never pleaded to grounds supporting jurisdiction or waived his right to an adjudicative trial. At a

January 5, 2016 referee hearing, the court indicated, “I do believe there’s a basis for the Court, given that he will be incarcerated for nearly another year, to take jurisdiction with respect to [respondent] and proceed to termination[.]” But the circuit court did not thereafter enter an adjudicative order. Rather, it merely authorized the DHHS petition.

On February 26, 2016, the court heard testimony from respondent and two caseworkers and took evidence from both sides. At the conclusion of this presentation, the court indicated that it took jurisdiction over respondent based on his failure to provide proper custody and guardianship of his children while he was incarcerated. The court then immediately terminated respondent’s parental rights.

II. ANALYSIS

The failure to adjudicate respondent before proceeding to disposition was a fatal flaw in these proceedings.

“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). During the adjudicative phase, the court considers the propriety of taking jurisdiction over the subject child. *Sanders*, 495 Mich App at 404. This can be done in two ways. First, a parent may plead to the allegations in a jurisdictional petition, thereby bringing the child under the court’s protection. MCL 3.971; *Sanders*, 495 Mich at 405; *AMAC*, 269 Mich App at 536. Second, the parent may demand a trial (bench or jury) to contest the allegations. MCL 3.972; *Sanders*, 495 Mich at 405; *AMAC*, 269 Mich App at 536.

Before *Sanders*, the one-parent doctrine “permit[ted] 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.” *Sanders*, 495 Mich at 408. During the dispositional phase, the court decides “what action, if any, will be taken on behalf of the child.” *AMAC*, 269 Mich App at 537. Pre-*Sanders*, the court could order the unadjudicated parent to participate in services and could proceed toward termination of that parent’s rights. *In re CR*, 250 Mich App 185, 202-203; 646 NW2d 506 (2002).

On June 2, 2014, a mere three months into this proceeding, the one-parent doctrine was abolished. *Sanders*, 495 Mich at 421-422. Now the court must seek an adjudication against the particular parent in order to move into the dispositional phase as to that parent. *Id.* The dispositional phase can only begin after adjudication. *AMAC*, 269 Mich App at 538.

A review of the record reveals that neither MCR 3.971 nor MCR 3.972 was followed as to respondent. The DHHS filed its supplemental petition on December 18, 2015. At the proceedings on December 23, 2015, and January 5, January 6, and February 2, 2016, no one offered respondent an opportunity to plead to the allegations for jurisdiction or to demand a trial to contest the allegations. As respondent did not enter a plea, he did not waive his right to trial, *AMAC*, 269 Mich App at 536 n 1, let alone his right to a jury trial. MCR 3.911.

In this case, it is a mischaracterization to say that termination occurred at the initial disposition. In order to have an initial disposition, there must *first* be an adjudication. As described in *AMAC*, 269 Mich App at 537-538:

Termination of parental rights may be ordered at the initial dispositional hearing. MCR 3.977(E); see also MCL 712A.19b(4). However, several conditions must be met, including (1) that the original or amended petition requested termination, (2) *that the trier of fact found by a preponderance of the evidence at the adjudicative hearing that the child came within the jurisdiction of the court*, and (3) that at the initial dispositional hearing, the court finds by clear and convincing legally admissible evidence that *had been introduced at the adjudicative hearing or the plea proceeding* or that is introduced at the dispositional hearing that a statutory ground for termination is established, “unless the court finds by clear and convincing evidence, in accordance with the rules of evidence as provided in subrule (G)(2), that termination of parental rights is not in the best interests of the child.” MCR 3.977(E). [Emphasis added.]

In *AMAC*, the circuit court conducted an adjudicative hearing and took jurisdiction over the child in relation to the respondent-parent. But the court then proceeded to terminate the respondent’s parental rights without moving into the dispositional phase. This could not be done. This Court held that the dispositional hearing could be conducted “immediately following the adjudicative hearing” but the two could not be converged such that there was no distinction. *AMAC*, 269 Mich App at 538.

Here, the melding happened in reverse. The circuit court failed to conduct an adjudicative trial and instead took evidence in one sitting before reaching a jurisdictional decision followed immediately by a dispositive termination ruling. This was procedurally unsound.

Accordingly, we must vacate the adjudicative and termination orders in relation to respondent-father. On remand, the circuit court must offer respondent the opportunity to plead to the allegations for jurisdiction or demand a trial to contest those allegations. Only after that has occurred may the court move onto the dispositional phase during which termination can be considered.

We vacate and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Karen M. Fort Hood
/s/ Elizabeth L. Gleicher
/s/ Colleen A. O'Brien