

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of AMANDA HUDSON, Minor.

COUNTY OF VAN BUREN,

Petitioner-Appellee,

v

JAMES A. MENTER,

Respondent-Appellant.

FOR PUBLICATION

June 24, 2004

9:20 a.m.

No. 246373

Van Buren Circuit Court

Family Division

LC No. 00-012934

Official Reported Version

Before: Hoekstra, P.J., and O'Connell and Donofrio, JJ.

HOEKSTRA, P.J., (*dissenting*).

I respectfully dissent.

I disagree with the majority's reliance on the Michigan Uniform Transfers to Minors Act (UTMA), MCL 554.521 *et seq.*, for guidance in determining who is a custodian under MCL 712A.18(2), a provision of the probate code concerning juveniles. There is no reason to think that the word "custodian," as used in the UTMA and in the Probate Code, is related or needs to be harmonized because these provisions address completely different legislative purposes. Notably, the title of the UTMA states, in part, that the act was established "to regulate certain transfers of property to minors" and "to make uniform the law regulating certain transfers of property to minors."¹ In contrast, "[f]airly characterized, the paramount purpose of the juvenile section of the Probate Code is to provide for the well-being of children." *In re Macomber*, 436 Mich 386, 390; 461 NW2d 671 (1990). More specifically, "[t]he purpose of [MCL 712A.18(2)] is to obligate parties to help shoulder the costs the state incurs during the period that a child is ordered into out-of-home placement." *In re Reiswitz*, 236 Mich App 158, 165; 600 NW2d 135 (1999), quoting *In re Brzezinski*, 214 Mich App 652, 676-677; 542 NW2d 871 (1995) (Griffin,

¹ "Although a preamble is not to be considered authority for construing an act, it is useful for interpreting its purpose and scope." *Malcolm v East Detroit*, 437 Mich 132, 143; 468 NW2d 479 (1991); *Lake Isabella Dev, Inc v Lake Isabella*, 259 Mich App 393, 402; 675 NW2d 40 (2003).

P.J., dissenting).² Further, I find no basis for the conclusion that the word "custodian" has a specialized meaning in the law by virtue of its definition and use in the statutory scheme of one statute, the UTMA. See MCL 8.3a.

If a word is not defined in the statute, it should be understood according to the common and approved usage of the language, taking into account the context in which the word is used. *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 8; 614 NW2d 169 (2000). The context or setting in which a word or phrase is used gives it meaning. *G C Timmis & Co v Guardian Alarm Co*, 468 Mich 416, 420-421; 662 NW2d 710 (2003). Here, MCL 712A.18(2) requires that the cost of care of a juvenile outside the juvenile's own home and under agency supervision be reimbursed "by the juvenile, parent, guardian, or custodian" Used in this context, it is apparent that the word "custodian" is to be understood as being one who has responsibility for the care and support of the child. This meaning is entirely consistent with the common definition of the word "custodian," see *Random House Webster's College Dictionary* (1992) ("a person who has custody; keeper; guardian") and is indicated in light of its use in the juvenile section of the Probate Code.

The determination that respondent was the child's custodian for the purpose of requiring reimbursement under MCL 712A.18(2) is a fact question. This Court reviews a trial court's determination of a fact question for clear error. MCR 2.613(C). Here, the record reflects that respondent, although never having adopted the child, has provided for the child from an early age. Respondent and the child's mother began living together, albeit unmarried,³ from the time of the child's infancy, and fed, clothed, and sheltered the child when she was a baby. Further, respondent has participated in the discipline of the child and has attended the child's school activities. On this record, I conclude that the trial court did not clearly err in finding that respondent, a stepparent, was a custodian of the minor child.

I would affirm.

/s/ Joel P. Hoekstra

² The Michigan Supreme Court summarily reversed this Court's decision for the reasons stated in Judge Griffin's dissent. *In re Brzezinski*, 454 Mich 890 (1997).

³ Apparently respondent and the child's mother married in 1994 or 1995.