

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of WILLIAM KYLE, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ROBIN H. KYLE and LISA KYLE,

Respondents-Appellants.

UNPUBLISHED

October 2, 2007

No. 271320

Wayne Circuit Court

Family Division

LC No. 06-454281

Before: O’Connell, P.J., and Murphy and Fitzgerald, JJ.

PER CURIAM.

Respondents appeal by leave granted the order of the circuit court, family division, that required respondents to present the minor child for a medical assessment for sexual abuse at the Children’s Hospital of Michigan. The order further provided that it would be effective ten days after entry unless an application for leave were filed, which did occur; therefore, the order has not been effectuated. We affirm.

Petitioner received a referral indicating that the minor child had engaged in conduct, while at school, that could be deemed or interpreted as sexual in nature, inappropriate, and atypical for a young child. An interview with the child allegedly produced a statement that his “private parts” had been touched a long time ago, although the child did not name the person who had touched him. Petitioner claims to have twice requested that respondents take the child for a medical examination in order to obtain a determination whether sexual abuse had occurred, but they declined to do so. Respondents’ position was that their child’s behavior was normal, innocently explainable, or that the behavior did not actually occur. Petitioner proceeded to petition the family court to take appropriate action, detailing the incidents at school and referencing the child’s acknowledgment of a prior touching. The family court ordered a medical examination for sexual abuse. Respondents filed an application for leave to appeal, and this Court granted leave.

Statutory interpretation, court rule construction, constitutional issues, and jurisdictional questions are all reviewed de novo on appeal. *In re AMAC*, 269 Mich App 533, 536; 711 NW2d 426 (2006); *Atchison v Atchison*, 256 Mich App 531, 534; 664 NW2d 249 (2003).

The legal principles that govern the interpretation and application of statutes apply equally to the construction of court rules. *Marketos v American Employers Ins Co*, 465 Mich 407, 413; 633 NW2d 371 (2001). Our primary task in construing a statute is to discern and give effect to the intent of the Legislature. *Shinholster v Annapolis Hosp*, 471 Mich 540, 548-549; 685 NW2d 275 (2004). The words contained in a statute provide us with the most reliable evidence of the Legislature's intent. *Id.* at 549. Statutes, as well as court rules, must be construed in accordance with their plain meaning. *In re Chrzanowski*, 465 Mich 468, 482; 636 NW2d 758 (2001).

We first find that the family court had subject-matter jurisdiction to entertain the petition pursuant to MCL 712A.2(b)(1). See *In re Hatcher*, 443 Mich 426, 437-438; 505 NW2d 834 (1993). MCL 712A.2(b)(1) provides that the family division of the circuit court has authority and jurisdiction "in proceedings concerning a juvenile under 18 years of age found within the county . . . [w]hose parent . . ., when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals[.]" The petition recited the alleged actions engaged in by the child, his comments during the interview, and respondents' decision not to take the child for a medical examination. The petition concluded that respondents had refused to provide proper and necessary care for the child by failing to submit him for a sexual abuse examination. Petitioner requested that the family court conduct a preliminary inquiry and determine the appropriate action. The nature of the allegations contained in the petition clearly falls within the purview of MCL 712A.2(b)(1); the action was of a class that the family court was authorized to adjudicate. *In re Hatcher*, *supra* at 437.

There can be no dispute that the family court has the authority to order a medical examination. MCL 712A.12; MCL 722.626(3); MCR 3.923(B). The procedure utilized by petitioner in pursuing such an order was through a preliminary inquiry, given that the petition was not accompanied by a request for placement and the child was not in the temporary custody of the state. MCR 3.962(A); *In re Hatcher*, *supra* at 434; see also MCL 712A.11. MCR 3.962 provides:

(A) When a petition is not accompanied by a request for placement of the child and the child is not in temporary custody, the court may conduct a preliminary inquiry to determine the appropriate action to be taken on a petition.

(B) A preliminary inquiry need not be conducted on the record or in the presence of the parties. At the preliminary inquiry, the court may:

(1) Deny authorization of the petition.

(2) Refer the matter to alternative services.

(3) Authorize the filing of the petition if it contains the information required by MCR 3.961(B),^[1] and there is probable cause to believe that one or more of the allegations is true. For the purpose of this subrule, probable cause may be established with such information and in such a manner as the court deems sufficient.

“The inquiry consists of an informal review of the petition by the juvenile court to determine an appropriate course of action.” *In re Hatcher, supra* at 434. In the case at bar, the court ordered respondents to present the child for a medical assessment for sexual abuse. This order did not deny authorization of the petition, but it is unclear whether the order was entered under MCR 3.962(B)(2) (alternative services) or MCR 3.962(B)(3) (authorized petition).

There is no dispute that the family court conducted the preliminary inquiry in chambers and off the record and that counsel for all parties were present in chambers during the inquiry. According to the parties, the court indicated that it would order a medical examination for purposes of determining whether sexual abuse occurred. The court did not entertain testimony from anyone.² If the court was proceeding under the “alternative services” provision of MCR 3.962(B)(2), there was full compliance with the court rule. If the court was proceeding under MCR 3.962(B)(3), which addresses the authorization of a petition, we also find compliance with the court rule. We recognize that the record does not contain a specific ruling that the family court was “authorizing” the petition, but because the court ordered a medical examination, which was the sole focus of the petition and the only demand sought by petitioner, the court may have been acting pursuant to MCR 3.962(B)(3) on the understanding that it was authorizing the petition. We reach no determination whether the order for a medical examination should fall under MCR 3.962(B)(2) or (B)(3). Assuming that MCR 3.962(B)(3) was implicated, and even if the court was not proceeding under that subsection, the contents of the petition, which are troublesome, and the information contained in the record support a conclusion that probable cause existed, even on consideration of the psychiatric report that was filed with the court. The probable cause standard, as defined in MCR 3.962(B)(3), presents a fairly low threshold. Additionally, no evidentiary hearing was required under MCR 3.962, nor was the inquiry required to be conducted on the record under that court rule.

MCR 3.962(B)(3) also mandates that the petition contain the information required by MCR 3.961(B).³ Respondents contend that the petition was deficient in this regard because it

¹ MCR 3.961(A) provides that “[a]bsent exigent circumstances, a request for court action to protect a child must be in the form of a petition.” Subsection B of MCR 3.961 describes the required contents of a petition, which we shall discuss in more detail below. Here, a petition was filed, and there was no claim of exigent circumstances.

² We note that, before the preliminary inquiry was conducted, respondents filed a motion to dismiss the petition, petitioner filed a response to the motion, and respondents followed by filing a reply to petitioner’s response. Respondents attached various pieces of documentary evidence to their filings, including an evaluation or report by a psychiatrist, hired by respondents, who opined that no sexual abuse occurred.

³ MCL 712A.11(3) also requires certain information to be contained in preliminary inquiry
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failed to include the information set forth in MCR 3.961(B)(3) and (4); therefore, the court lacked jurisdiction to proceed under MCR 3.962.

MCR 3.961 provides, in pertinent part:

(B) A petition must contain the following information, if known:

* * *

(3) The essential facts that constitute an offense against the child under the Juvenile Code.

(4) A citation to the section of the Juvenile Code relied on for jurisdiction.

With respect to MCR 3.961(B)(3), the alleged “offense” against the child was the failure to submit the child for a medical examination, which would be categorized as falling under MCL 712A.2(b)(1) of the Juvenile Code that speaks to the refusal of a parent to provide proper or necessary care, including medical care, for the child’s health or morals. The essential facts that constituted this offense are stated in the petition, which detailed specific actions of the minor child while in school that could be construed as sexual in nature, alluded to the child’s statement that he had been touched on his private parts, and which referenced respondents’ refusal to submit the child for examination on request. The petition thus complied with MCR 3.961(B)(3).

With respect to MCR 3.961(B)(4), the petition did not contain a numerical citation to the section of the Juvenile Code relied on for jurisdiction, but the petition did provide, “The parents have refused to provide proper and necessary care for William, i.e., the sexual abuse exam.” This language is clearly patterned on the language of MCL 712A.2(b)(1), leaving little doubt that said statutory provision was being relied on by petitioner. This was sufficient for purposes of MCR 3.961(B)(4), especially given that “[t]he rules are to be construed to secure fairness, flexibility, and simplicity.” MCR 3.902(A).⁴

Respondents also contend that the allegations concerning their refusals to submit the child for a “sexual abuse exam” were untrue; therefore, jurisdiction was not conferred. The record, however, establishes that respondents’ position throughout this case was that they would not voluntarily submit their child for an examination; the litigation itself belies respondents’ argument. In sum, reversal on the basis of MCR 3.962 is unwarranted.

Finally, we must address respondents’ argument that the procedures utilized by the family court, which necessarily requires contemplation of the procedures found in MCR 3.962, were unconstitutional as they violated due process, US Const, Ams V and XIV; Const 1963, art 1, § 17.

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petitions, and these requirements are comparable to those found in MCR 3.961(B).

⁴ Further, MCL 712A.1(3) provides that the chapter on juveniles “shall be liberally construed so that each juvenile coming within the court’s jurisdiction receives the care, guidance, and control . . . conducive to the juvenile’s welfare and the best interest of the state.”

“It is well established that parents have a significant interest in the companionship, care, custody, and management of their children. This interest has been characterized as an element of ‘liberty’ to be protected by due process.” *In re Brock*, 442 Mich 101, 109; 499 NW2d 752 (1993). Michigan law recognizes that parents are entitled and have the right to manage their children without state interference, absent compelling circumstances that threaten a child’s safety and welfare. *Ryan v Ryan*, 260 Mich App 315, 333; 677 NW2d 899 (2004). Due process provides heightened protection against governmental interference with a parent’s fundamental liberty interest to make decisions regarding the care and control of his or her child. *Id.*

The interest of the state is in supporting the welfare and protection of children, and a child’s welfare is primary in child protective proceedings. *In re Brock, supra* at 112-115. Additionally, “[t]he state’s interest in protecting the child is aligned with the child’s interest to be free from an abusive environment.” *Id.* at 113 n 19.⁵

Fundamental fairness forms the core of due process analysis, and fundamental fairness is determined in a particular case by assessing the several interests that are at stake and the relevant precedent. *Id.* at 111. In *In re Brock, id.*, the Michigan Supreme Court stated:

Generally, three factors will be considered to determine what is required by due process:

“First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” [Citation omitted.]

Respondents contend that they were denied due process because they were not given a hearing in which they could present testimony and evidence to counter the state’s claims and allegations, nor was any evidence presented by the state in support of their allegations. Respondents maintain that, given the highly intrusive nature of a medical examination undertaken to determine if sexual abuse occurred, their rights as parents to control and manage the care of their child, and the unlikelihood that any examination of a male would produce evidence of sexual abuse, especially touching years ago, due process minimally demanded an evidentiary hearing before their rights were infringed upon.⁶

⁵ Although respondents complain about the intrusion on not only their rights but also their son’s rights, the guardian-ad-litem representing the child has not appealed the order requiring a medical examination. Accordingly, we direct our attention only to respondents’ constitutional rights.

⁶ Respondents were provided notice of the preliminary inquiry and were represented by counsel at the inquiry. See MCR 3.921.

We conclude that due process was not violated in the present case despite the lack of an evidentiary hearing. Initially, as indicated above, documentary evidence was presented to the family court prior to the preliminary inquiry. It is not as if the court lacked input and evidence from respondents and was unaware of their contentions. Moreover, assessing the factors stated in *In re Brock*, respondents would not be severely or permanently deprived of their private interests in managing their child's care, as in a situation where the state takes custody of a child; rather, the deprivation would only entail a one-time, professional medical examination at a reputable children's hospital. Even if the risk of an erroneous deprivation was heightened by a failure to conduct an evidentiary hearing, the deprivation was minimal, and we question whether the value of additional procedural safeguards, i.e., an evidentiary hearing, would decrease the chance of an erroneous deprivation of rights. The probable cause standard found in MCR 3.962(B)(3) provided protection and, assuming that the order for a medical examination was encompassed by MCR 3.962(B)(2) regarding alternative services, which lacks a probable cause requirement, respondents were still protected by the fact that a neutral judge, magistrate, or referee was acting on the petition.⁷ Moreover, when weighing the substantial interest of the state in protecting children against the interests of parents, the failure to act and possibly uncover sexual abuse is substantially more detrimental and damaging than an unnecessary medical examination being performed.

Affirmed.

/s/ Peter D. O'Connell
/s/ William B. Murphy

⁷ If there existed exigent circumstances or the child's health was seriously endangered, petitioner could forgo obtaining an order before taking the child for medical care, MCL 722.626(3), or seek an order without the formal process of a petition and hearing, MCR 3.961(A); MCR 3.923(B).