

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of KJ WYATT, Minor.

UNPUBLISHED
November 25, 2014

No. 320742
Lapeer Circuit Court
Family Division
LC No. 12-011689-NA

Before: O'CONNELL, P.J., and CAVANAGH and FORT HOOD, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating his parental rights over the minor child pursuant to MCL 712A.19b(3). We affirm.

Respondent first argues that the trial court's order terminating his parental rights should be reversed, given the Supreme Court's recent decision in *In re Sanders*, 495 Mich 394; 852 NW2d 524 (2014), because he was never adjudicated an unfit parent. We disagree. "Whether child protective proceedings complied with a parent's right to procedural due process presents a question of constitutional law, which we review de novo." *Id.* at 403-404, citing *In re Rood*, 483 Mich 73, 91; 763 NW2d 587 (2009). "The retroactivity of a court's ruling presents a question of law that this Court reviews de novo." *People v Maxson*, 482 Mich 385, 387; 759 NW2d 817 (2008).

The one-parent doctrine, established by this Court's decision in *In re CR*, 250 Mich App 185; 646 NW2d 506 (2002), permitted "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." *In re Sanders*, 495 Mich at 408. On June 2, 2014, our Supreme Court issued *In re Sanders*, which concluded that the one-parent doctrine was unconstitutional and overruled this Court's decision in *In re CR*. *Id.* at 422-423. The Supreme Court held that the Due Process Clause of the Fourteenth Amendment "requires that every parent receive an adjudication hearing before the state can interfere with his or her parental rights." *Id.* at 415. In other words, a parent must be adjudicated as unfit before the court can enter any dispositional orders affecting that parent's right "to direct the care, custody, and control" of his children. See *id.* at 422. Because an order terminating parental rights is a dispositional order affecting a parent's right to direct the care, custody, and control of his children, a parent must be adjudicated unfit before the court can enter an order terminating his parental rights. *Id.* In this case, the trial court applied the one-

parent doctrine and did not adjudicate respondent as unfit before it entered dispositional orders against him. Therefore, pursuant to *In re Sanders*, respondent's due process rights were violated.

The *In re Sanders* decision did not expressly state if the holding should be applied retroactively. However, this Court recently issued a published¹ opinion, which held that *In re Sanders* "should be given limited retroactivity." *In re S Kanjia*, ___ Mich App ___; ___ NW2d ___ (2014); slip op at 7. "Where a decision is given limited retroactivity, it applies only to cases then pending where the issue was raised and preserved." *Id.* at ___; slip op at 8. To preserve an issue for appellate review, it must be raised, addressed, and decided in the lower court. *Michigan's Adventure, Inc v Dalton Twp*, 290 Mich App 328, 330 n 1; 802 NW2d 353 (2010). Here, respondent raised the issue on appeal, but did not preserve the issue in the trial court. Respondent did not argue below that his due process rights were violated when the trial court did not adjudicate him an unfit parent, yet still required him to comply with a parent agency treatment plan. In fact, respondent signed the treatment plan and partially complied with it for about one year. Therefore, pursuant to *In re S Kanjia*, *In re Sanders* does not apply retroactively to respondent's case. We also note that the lawyer-guardian ad litem asserts that respondent was prevented from raising this issue because it constituted an impermissible collateral attack. However, this position was expressly rejected by the *In re S Kanjia* Court. "[T]he general rule prohibiting a respondent from collaterally attacking a trial court adjudication on direct appeal from a termination orders does not apply to cases where a respondent raises a *Sanders* challenge to the adjudication." *In re S Kanjia*, ___ Mich App at ___; slip op at 6.²

Respondent also argues that the trial court erred in finding that petitioner, the Department of Human Services (DHS), provided reasonable services to respondent. We disagree. This Court reviews a trial court's findings of fact, including a finding that DHS made reasonable efforts toward reunification, for clear error. *In re Fried*, 266 Mich App 535, 541-544; 702 NW2d 192 (2005). "A trial court's decision is clearly erroneous if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Olive/Metts Minors*, 297 Mich App 35, 41; 823 NW2d 144 (2012) (internal quotation marks and citation omitted).

"In general, when a child is removed from the parents' custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan." *In re Fried*, 266 Mich App at 542; see also MCL 712A.18f(1), (2), and (4). However, DHS is not required to provide a parent with reunification services under certain

¹ A published opinion of the Court of Appeals has precedential effect under the rule of stare decisis. MCR 7.215(C)(1).

² The Supreme Court has recently granted an application for leave to appeal regarding the extent to which the collateral attack doctrine applies to a *Sanders* challenge and "whether the Court's decision in *Sanders* applies retroactively." *In re Farris*, ___ Mich ___; 852 NW2d 900 (2014). However, "The filing of an application for leave to appeal or a Supreme Court order granting leave to appeal does not diminish the precedential effect of a published opinion of the Court of Appeals." MCR 7.215(C)(1).

aggravated circumstances, like when “[t]he parent is required by court order to register under the sex offenders registration act.” MCL 712A.19a(2)(d). Respondent does not dispute that when this case began in August of 2012, he was required to register under the sex offenders registration act. Respondent was removed from the registry in May of 2013, and, thus, DHS was not required to provide him with services until that time.

Despite the fact that DHS was not required to provide services until May of 2013, DHS made efforts toward reunification and provided services to respondent earlier than required. DHS prepared a parent agency treatment plan for respondent in October 2012. Even though the court did not order DHS to provide services, DHS explained to respondent what he could do on his own to move towards reunification with the minor child. In addition, although he was still a registered sex offender, DHS asked the court to order limited services for respondent at the hearing in January of 2013. The court agreed and ordered DHS to provide respondent with parenting classes, a psychological evaluation, and drug screenings. The only reason respondent did not receive those services immediately thereafter was because respondent was in jail from January to April of 2013. Respondent was given supervised parenting time with the minor child as soon as he was released from the sex offender registry. He also worked with a parenting aide who helped him with hands-on parenting during his visits with the minor child, along with other issues like budgeting. Respondent’s parenting time and meetings with the parenting aide stopped in November of 2013 when he went back to jail on other charges.

In conclusion, the evidence shows that DHS provided respondent with services even when it was not required to because he was a registered sex offender. When respondent was removed from the registry, DHS continued to provide services, including parenting time and an individual parenting aide. Respondent’s assertion that “there may have been a different outcome” if he had been given services sooner is speculative and without merit, given that respondent was provided with services and given more than a year to show he could provide a stable home for the minor child.

Affirmed.

/s/ Peter D. O'Connell
/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood