STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of JACOB EDWARD BOURGEOIS,
Minor.

EDWARD COLLING and MARIANNE COLLING,

Petitioners-Appellees,

v

WADE BOURGEOIS,

Respondent-Appellant.

UNPUBLISHED
December 1, 1998

No. 210216
Oakland Family Court
LC No. 97-063217 NA

Before: Smolenski, P.J., and McDonald and Doctoroff, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating his parental rights to the minor child under MCL 712A.19b(3)(h); MSA 27.3178(598.19b)(3)(h). We reverse.

Respondent, who was serving a prison sentence in Louisiana, consented to the appointment of petitioners as his son's legal guardians after his wife died. Petitioners subsequently sought to terminate respondent's parental rights.

Although not specifically alleged in the petition, the trial court found that it had jurisdiction over the minor child pursuant to MCL 712A.2(b)(2); MSA 27.3178(598.2)(b)(2), which provides that jurisdiction exists over any juvenile under the age of eighteen found within the county "[w]hose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, or other custodian, is an unfit place for the juvenile to live in." If that finding "is to be upheld, the record must contain sufficient evidence, admissible under the ordinary rules of evidence, to support the [trial] court's finding." *People v Brown*, 49 Mich App 358, 363; 212 NW2d 55 (1973).

Section 2(b)(2) requires a showing "that the home in which the children were living was unfit because of the criminality" or other shortcomings of the parent or parents, *In re Curry*, 113 Mich App 821, 829; 318 NW2d 567 (1982), see also *In re Miller*, 182 Mich App 70, 80; 451 NW2d 576

(1990), or "that the home is uninhabitable." *In re Youmans*, 156 Mich App 679, 685; 401 NW2d 905 (1986). A parent's criminal status alone is an insufficient basis for the court's assumption of jurisdiction; it is the effect of the parent's criminality on the child that is at issue and thus "[s]ome showing of unfitness of the custodial environment" is also necessary. *Curry*, *supra* at 829-830.

Petitioners failed to establish that the child's home was unfit due to the criminality of the respondent because the child was not living in respondent's home and thus respondent's criminality had not adversely affected the child. At best, petitioners showed that if the child were living with respondent, the home would be unfit, but potential unfitness of a potential home is not a basis for jurisdiction. Therefore, the trial court erred in finding that it had jurisdiction over the child under § 2(b)(2).[1] Because the trial court did not have jurisdiction over the child, it is unnecessary to determine whether the statutory ground for termination was properly established.

Reversed.

/s/ Michael R. Smolenski
/s/ Gary R. McDonald
/s/ Martin M. Doctoroff

[1] We note that petitioners cited MCL 712A.19b(3)(f); MSA 27.3178(598.19b)(3)(f) as a basis for jurisdiction in their petition. Section 19b(3)(f) is a ground for termination of parental rights, not a statutory basis for assuming jurisdiction over a child, although it is virtually identical to MCL 712A.2(b)(5); MSA 27.3178(598.2)(b)(5), which is a statutory basis for assuming jurisdiction. Even assuming that petitioners meant to cite § 2(b)(5), the trial court specifically found that the necessary criteria for establishing jurisdiction under that subsection had not been proven and that finding has not been appealed.