

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of PHILICIA BUTLER,
MACHIEVILLE ANTHONY BUTLER, MARCUS
ANTHONY BUTLER, MONEISHA ANN
BUTLER and MARY ANN CLAXTON, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

STEVEN CLAXTON,

Respondent-Appellant,

and

VICKY BUTLER and JOHNNIE BRAXWELL,

Respondents.

UNPUBLISHED
July 27, 2001

No. 229073
Wayne Circuit Court
Family Division
LC No. 99-383421

Before: Wilder, P.J., and Hood and Griffin, JJ.

PER CURIAM.

Respondent-appellant Steven Claxton (hereinafter “respondent”) appeals as of right from the family court’s dispositional order placing his children in the temporary custody of the court. Respondent contends that the family court erred in taking jurisdiction where the petition against him was dismissed, and the finding of jurisdiction was based solely on the admissions of the children’s mother, respondent Vicky Butler. Respondent asserts that the family court should not have placed the children outside his home without first determining whether he was the custodial parent. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

I

The family court has jurisdiction over a child in the following circumstances:

(1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, 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, who is subject to a substantial risk of harm to his or her mental well-being . . .

* * *

(2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in. [MCL 712A.2(b).]

To acquire jurisdiction, the factfinder must determine by a preponderance of the evidence that the child comes within the statutory requirements of this section. *In re Ramsey*, 229 Mich App 310, 314; 581 NW2d 291 (1998). The family court can assert jurisdiction based on a respondent's plea of admission or no contest or the findings at a jury trial. MCR 5.911(A), MCR 5.971, MCR 5.972.

Nothing in § 2(b)(1) or (2) requires a finding that both parents are responsible for the circumstances that require the court's intervention. In both provisions, the singular term "parent" is used. Accordingly, the family court appropriately took jurisdiction of the children based on respondent Butler's admissions that the home was unfit, even though respondent Claxton made no admissions, there were no jury findings against him, and petitioner ultimately dismissed the petition against respondent.

Furthermore, it is well established that petitioner may proceed against only one parent in child protective proceedings. *In re Ramsey, supra* at 317; *In re Marin*, 198 Mich App 560, 566; 499 NW2d 400 (1993). Thus, the statute permits petitioner to seek jurisdiction where only one parent comes under § 2(b)(1) or (2), and the family court is authorized to take jurisdiction over the child based on facts pertaining to that parent alone.

II

Respondent next argues that the family court erroneously assumed that he was not the custodial parent, and that the court violated his due process rights by denying him custody. As a matter of law, respondent did not have legal custody of the children. MCL 722.2 provides:

Unless otherwise ordered by a court order, the parents of an unemancipated minor are equally entitled to the custody, control, services and earnings of the minor, but if 1 parent provides, to the exclusion of the other parent, for the maintenance and support of the minor, that parent has the paramount right to control the services and earnings of the minor.

However, the statute defines "parents" as "natural parents, if married prior or subsequent to the minor's birth; adopting parents, if the minor has been legally adopted; *or the mother, if the minor is illegitimate.*" MCL 722.1(b) (emphasis added); see also *People v Reynolds*, 171 Mich App 349; 429 NW2d 662 (1988). Respondent was not the children's custodian merely by virtue of living in the same house with them. Respondent has not shown the existence of any court order awarding him custody or joint custody of the children; hence, respondent Butler alone had legal

custody. Therefore, the family court did not deprive respondent of custody, because he did not have legal custody in the first instance.

We are mindful that MCL 712A.18f(1) imposes certain requirements on petitioner when it advises against placing the children with a parent. Petitioner must explain to the family court what efforts were made to prevent the removal and to rectify the conditions that necessitated the removal. Respondent does not contend that petitioner or the family court violated this statute when it placed the children in foster care or with relatives. Accordingly, we are satisfied that the family court did not violate respondent's rights when it placed the children outside his home, notwithstanding the dismissal of the petition against him.

Affirmed.

/s/ Kurtis T. Wilder

/s/ Harold Hood

/s/ Richard Allen Griffin