

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of C.S., S.S., M.S. and B.S., Minors.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CANDACE LOBLINER,

Respondent-Appellant,

and

BENJAMIN SCHLENKER,

Respondent-Appellee.

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UNPUBLISHED

September 20, 2002

No. 235778

Jackson Circuit Court

Family Division

LC No. 00-001034-NA

Before: Kelly, P.J., Smolenski and Saad, JJ.

PER CURIUM.

Respondent-appellant Candace Lobliner appeals as of right from the trial court's opinion and order assuming jurisdiction over the minor children pursuant to MCL 712A.2(b).<sup>1</sup> We affirm.

To assume jurisdiction, a trial court is required to find, by a preponderance of the evidence, that the children come within the statutory requirements of MCL 712A.2(b). *In re Brock*, 442 Mich 101, 108-109; 499 NW2d 752 (1993). We review the trial court's findings of fact for clear error. *In re S R*, 229 Mich App 310, 314-315; 581 NW2d 291 (1998).

Petitioner, the children, and respondent Benjamin Schlenker all argue that respondent-appellant has waived this issue because her attorney agreed that the court should assume

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<sup>1</sup> Respondent Benjamin Schlenker has not appealed the trial court's decision.

jurisdiction. The “waiver” is based upon the following comments made by respondent-appellant's attorney during closing argument:

MR [sic] ENGLE [respondent-appellant's attorney]: I think -- I think you have to take jurisdiction. I think, based on -- based on Mr. Schlenker's acts -- and I don't know how else to do it and these parties [sic] to afford the necessary counseling that has to be part of this.

I hate to put it in those terms, but I think, if we try to do this through the divorce action, these two parties could not begin to afford what needs to be done.

The foregoing remarks were made in the context of arguing that the factual allegations involving the children's father supported the assumption of jurisdiction. Because the trial court did not rely on those facts as the basis for its determination of jurisdiction, and instead found that jurisdiction was warranted because of factual matters pertaining to respondent-appellant, we conclude that this issue is not waived. Furthermore, it is incumbent upon the court to independently determine whether there is a factual basis for assuming jurisdiction. *In re Toler*, 193 Mich App 474, 476; 484 NW2d 672 (1992).

Turning to the merits of the jurisdictional question, we disagree with respondent-appellant's claim that the court improperly assumed jurisdiction. Respondent-appellant is correct that a petition requesting jurisdiction must set forth the charges against the parent with clarity and specificity. *In re Hatcher*, 443 Mich 426, 434; 505 NW2d 834 (1993); MCR 5.961. The purpose of the petition is to apprise the parent of the facts in support of the petitioner's request for jurisdiction. *In re Hatcher, supra*. Here, a review of the petition reveals that the petition contains factual grounds related to respondent-appellant which were supported by the evidence at trial.

Additionally, we conclude that the court did not clearly err in finding a statutory basis for jurisdiction. MCL 712A.2(b). The evidence showed that respondents' daughter, SS, was suffering from emotional problems that were traced to her home environment. There was sufficient evidence that respondent-appellant's conduct contributed to the child's emotional problems to the point that there was a substantial risk of harm to the child's well-being. For this reason, the home environment was also an unsafe place for the two younger children. The oldest child, CS, was also showing emotional problems that were attributable, in part, to respondent-appellant's home environment. A statutory basis for jurisdiction was established by a preponderance of the evidence. *In re Brock, supra*.

Affirmed.

/s/ Michael R. Smolenski  
/s/ Henry William Saad