STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of MICHAEL CHURCH, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ANGELA CHURCH,

Respondent-Appellant.

UNPUBLISHED
December 4, 2007

No. 276508
St. Joseph Circuit Court
Family Division
LC No. 05-000209-NA

Before: Donofrio, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

In this child protective proceeding, respondent appeals as of right from the trial court's order, following a jury trial, assuming jurisdiction over the minor child, Michael Church, pursuant to MCL 712A.2(b)(1) and (2). We affirm.

I

The trial court originally assumed jurisdiction over Michael and two of respondent's other children pursuant to a plea of admission entered by respondent's then husband, Donald Church. Later, while presiding over Donald's and respondent's divorce action, the circuit court entered an order declaring that Donald was not Michael's father and that Michael was not a child of the marriage. Thereafter, in a prior appeal, this Court reversed the jurisdictional decision with respect to Michael, concluding that Donald's admissions could not serve as a basis for establishing jurisdiction over Michael because Donald was not Michael's parent. *In re Church*, unpublished opinion per curiam of the Court of Appeals, issued April 11, 2006 (Docket Nos. 263541 & 265112), lv den 475 Mich 899 (2006) ("*Church I*"). Petitioner subsequently filed a new petition requesting that the trial court exercise jurisdiction over Michael. After a period of delay due to an interlocutory application for leave to appeal and several pretrial motions filed by respondent, a jury trial was conducted in January 2007, following which the jury determined that a statutory basis existed for exercising jurisdiction over Michael.

II

Respondent first argues that petitioner's renewed petition, after this Court's reversal in *Church I*, was barred by res judicata. The application of a legal doctrine, such as res judicata,

presents a question of law that we review de novo. *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412, 417; 733 NW2d 755 (2007).

The doctrine of res judicata bars a second, subsequent action when (1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first. *Adair v Michigan*, 470 Mich 105, 121; 680 NW2d 386 (2004).

Clearly, res judicata does not apply here because the prior action was not decided on the merits. The trial court never previously adjudicated the question whether the allegations involving respondent were factually sufficient to establish a statutory basis for jurisdiction over Michael, nor was that issue decided in *Church I*. Rather, this Court only determined that Donald's plea of admission was not legally sufficient to confer jurisdiction with respect to Michael because Donald was not Michael's parent. Accordingly, petitioner was free to reassert its allegations against respondent in a new petition. Furthermore, as respondent concedes, the new petition alleged additional circumstances as supportive of a finding of jurisdiction. Therefore, there is no merit to respondent's argument that the second petition was barred by res judicata.

III

Next, respondent argues that the trial court's failure to hold the adjudication trial until approximately two years after Michael was initially removed from her care violated her right to due process and to a speedy trial under MCR 3.972(A). We conclude that respondent waived any claim of error by expressly consenting to a stay of proceedings pending resolution of a prior interlocutory application for leave to appeal to this Court, and by filing an express waiver of her rights for a 60-day period pending resolution of various pretrial motions. The trial was held two weeks after the 60-day period expired. Because respondent expressly consented to the delay, we conclude that she waived any claim of error based on the delay. *People v Carter*, 462 Mich 206, 215-216; 612 NW2d 144 (2000).

Furthermore, because MCR 3.972(A) does not provide any sanction for failure to comply with the time requirements of the rule, there is no basis for disturbing the trial court's jurisdictional order on this basis. Cf. *In re TC*, 251 Mich App 368, 370-371; 650 NW2d 698 (2002); *In re Jackson*, 199 Mich App 22, 28-29; 501 NW2d 182 (1993); *In re Kirkwood*, 187 Mich App 542, 545-546; 468 NW2d 280 (1991).

IV

Respondent next argues that the original and amended petitions were legally insufficient on their face to invoke the trial court's subject-matter jurisdiction because a parent's mental illness, by itself, is insufficient to establish a statutory basis for the court's jurisdiction.

Whether a court has subject-matter jurisdiction over a claim presents a question of law that is reviewed de novo. *Ryan v Ryan*, 260 Mich App 315, 331; 677 NW2d 899 (2004). A court's jurisdiction in child protective proceedings is governed by MCL 712A.2(b). The valid exercise of jurisdiction is established by the contents of the petition after the court conducts a

probable cause hearing on the allegations. *In re Hatcher*, 443 Mich 426, 437-438; 505 NW2d 834 (1993).

A child protective proceeding is initiated by filing a petition that sets forth "[t]he essential facts that constitute an offense against the child under the Juvenile Code." MCR 3.961(B)(3). Subject-matter jurisdiction is established when the action is of a class the court is authorized to adjudicate. *Hatcher*, *supra* at 437.

MCL 712A.2(b) provides, in pertinent part, that a court has jurisdiction over a juvenile under 18 years of age found within the county under 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, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. . . .
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> * * *
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> (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.

The statute does not provide that a parent's mental illness, by itself, is sufficient to establish the court's jurisdiction.

Petitioner's original petition alleged as follows:

> 2. That the mother has a history of mental instability and suicidal ideation. Efforts to provide the mother services have been met with resistance. To place the minor child in the home of the mother is contrary to the child's welfare and well being.

The amended petition included the following allegations:

> 1. That the mother of the above minor child has a long history of mental illness, mental instability and suicidal ideation. She has a long history of noncompliance with her prescribed medication regimen and has often, in the past, self-medicated with illegal drugs. Efforts to stabilize and maintain the mother in the community have been unsuccessful.
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> 2. That on 8/4/06 the mother was found curled up in a fetal position at a Taco Bell. She made threats of running into traffic and that she doesn't care anymore. She was taken to Three Rivers Health hospital where she attempted to flee and had to be physically restrained. She was subsequently hospitalized due to her condition.

These allegations were sufficient to establish the trial court's subject-matter jurisdiction over the case. Although the allegations did not specifically set forth a causal relationship between respondent's history of mental instability, suicidal ideations, and related issues, and her ability to care for her child, they included facts that, if established, supported an inference that respondent is unable to provide a fit and stable home for the child. "It is . . . a deeply entrenched rule of Michigan jurisprudence and basic fairness that all pleadings are sufficient if they communicate to the opposing party the nature of the claims or defenses those pleadings purport to raise." *Boodt v Borgess Medical Ctr*, 272 Mich App 621, 628; 728 NW2d 471 (2006). Accordingly, petitioner's failure to more specifically allege a link between respondent's mental illness and risk of harm to her child did not render the petitions legally insufficient.

Respondent argues that the allegation concerning the Taco Bell incident is merely a single histrionic event that was not relevant to her parental abilities because it occurred long after she lost custody of her children. We disagree. The incident was relevant to respondent's ability to maintain and manage her mental stability, and her propensity to behave self-destructively, factors that were important in deciding whether respondent's behavior and condition posed a substantial risk of harm to her child's well-being, and whether respondent can provide a fit home.

Respondent and the amicus party present strong arguments concerning the rights of mentally ill parents and assert that a state should not interfere with the rights of such parents when there is no risk of harm to a child. Although we do not disagree with these arguments, they are not applicable here. MCL 712A.2(b) does not permit state intervention solely on the basis of a parent's mental illness. Rather, intervention on the basis of a parent's mental illness is permitted only if it poses a substantial risk of harm to a child's well-being or renders the home an unfit place for the child to live. Similarly, the petitions in this case did not seek court intervention solely because of respondent's mental illness, but because of the effects of that illness on respondent's child.

V

Respondent next argues that the evidence at trial was factually insufficient to establish a statutory basis for jurisdiction and, therefore, the trial court erred in denying her motion for a directed verdict. We disagree.

This Court reviews de novo a trial court's decision on a motion for a directed verdict. *Coble v Green*, 271 Mich App 382, 385-386; 722 NW2d 898 (2006). This Court must draw all reasonable inferences in favor of the nonmoving party to determine whether a question of fact existed that would preclude a directed verdict. *Id.* at 386. For the court to properly exercise jurisdiction, the trier of fact must find by a preponderance of the evidence that a statutory basis for jurisdiction exists pursuant to MCL 712A.2. MCR 3.972(C)(1); see also *In re PAP*, 247 Mich App 148, 152-153; 640 NW2d 880 (2001).

Petitioner presented evidence that respondent was prone to episodes of decompensation when she does not take her medication or when she is subject to severe stress. On several occasions, respondent became hysterical and threatened to commit suicide. She threatened to stab herself when she was pregnant, and to run out into traffic. Several of these episodes led to hospitalization. Deana Strudwick and others observed that respondent's parental abilities

declined after hospitalization. Strudwick testified that hospitalizations are usually preceded by a period of decline, and followed by a period of slow or gradual recovery. Although respondent demonstrated parental competency between these episodes, the recurring pattern of hysteria, suicide threats, hospitalization, and recovery was likely to disrupt a child's sense of security. Although there was no evidence of actual harm to Michael, a trier of fact could reasonably infer that there was a substantial risk of harm to his mental well-being because of respondent's decompensation periods.

We disagree with respondent's argument that a basis for jurisdiction was not shown because there was no evidence that Michael was actually harmed, or that any of her children ever witnesses her histrionic episodes. MCL 712A.2(b)(1) and (2) only require a showing of a "substantial risk of harm" or unfitness of a home or environment; they do not require the state to wait until the risk is actually realized or unfitness causes actual harm.

Although respondent relies on *In re Hulbert*, 186 Mich App 600; 465 NW2d 36 (1990), and *In re Boursaw*, 239 Mich App 161; 607 NW2d 408 (1999), those cases both involve appeals from orders terminating parental rights, in which a higher standard of proof (clear and convincing evidence) applies. Additionally, the cases are factually distinguishable. In *In re Hulbert*, *supra* at 605, this Court reversed the trial court's order because the petitioner's evidence was based primarily on speculative opinions rather than a demonstrable pattern of behavior. In this case, petitioner presented evidence of respondent's actual behavior and conduct to establish the risk of harm to her child. In *In re Boursaw*, *supra* at 174-175, this Court reversed a termination order where the respondent had made notable progress in resolving her emotional problems. Her psychologist testified that he was "cautiously optimistic" that she could begin working on independent child management in four to six months. *Id*. at 170-173. Unlike the termination statute at issue in *In re Boursaw*, however, which required an assessment whether the respondent was likely to be able to provide proper care and custody within a reasonable time, the focus of the jurisdictional statute is on the child's present situation. For these reasons, respondent's reliance on *In re Boursaw* and *In re Hulbert* is misplaced.

Respondent also asserts that a parent's decision to arrange for a relative to care for her children does not constitute neglect or provide grounds for jurisdiction. See *In re Taurus F*, 415 Mich 512, 543; 330 NW2d 33 (1982) (Williams, J.); *In re Curry*, 113 Mich App 821, 826-827; 318 NW2d 567 (1982). Here, however, the evidence did not establish that respondent made arrangements for a suitable relative care for her children.

In sum, because the evidence, viewed in a light most favorable to petitioner, was sufficient to establish a statutory basis for jurisdiction, the trial court did not err in denying respondent's motion for a directed verdict.

VI

Respondent next argues that the trial court erred in admitting evidence of her hospitalizations and mental health issues that arose after her children were removed from her care. We disagree.

A trial court's decision to admit evidence is reviewed for an abuse of discretion. See *In re Hill*, 221 Mich App 683, 696; 562 NW2d 254 (1997). We disagree with respondent's

argument that the evidence was not relevant. Relevant evidence is evidence "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401.

Respondent's ability to maintain her mental stability and avoid episodes of decompensation was relevant to the issues whether her home environment was fit for a child and whether there was a substantial risk of harm to her child's well-being if left in her care. A parent's recurring pattern of suicidal episodes, hysterical behavior, and hospitalizations may create a substantial risk of harm to a child. The fact that these events occurred after respondent's child was removed did not render them irrelevant, because MCL 712A.2(b) does not focus on whether the child was actually harmed, but on whether the child would face a substantial risk of harm. Accordingly, the trial court did not abuse its discretion by admitting this evidence.

VII

Finally, respondent argues that the trial court erred in denying her motion for a mistrial after the guardian ad litem repeatedly threw files on a table during closing argument. We review a trial court's decision to deny a motion for mistrial for an abuse of discretion. See *People v Coy*, 258 Mich App 1, 17; 669 NW2d 831 (2003).

An attorney's improper conduct at trial is not cause for reversal unless it indicates "a deliberate course of conduct aimed at preventing a fair and impartial trial or where counsel's remarks were such as to deflect the jury's attention from the issues involved and had a controlling influence on the verdict." *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 191-192; 600 NW2d 129 (1999). The guardian ad litem did not say anything to imply that the files contained mental health records. Respondent's contention that the jury probably believed that the files contained undisclosed documentary evidence of respondent's mental health history is purely speculative. Furthermore, the trial court instructed the jury that it could "only consider the evidence that has been properly admitted in this case," and explained that evidence included the witnesses' sworn testimony, the admitted exhibits, and anything else they were instructed to consider as evidence. The court explained that "[t]he lawyer's [sic] statements and arguments are not evidence," and also stated that the jury "should only accept the things the lawyers say that are supported by evidence, or by your own common sense and general knowledge." Jurors are presumed to follow their instructions. *People v Bauder*, 269 Mich App 174, 194; 712 NW2d 506 (2005). The trial court did not abuse its discretion in denying respondent's motion for a mistrial.

Affirmed.

/s/ Pat M. Donofrio
/s/ Joel P. Hoekstra
/s/ Jane E. Markey