

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BRIANA CHURCH and
KEELEY CHURCH, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ANGELA CHURCH,

Respondent-Appellant,

and

DONALD RAY CHURCH, JR.,

Respondent.

In the Matter of MICHAEL CHURCH, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ANGELA CHURCH,

Respondent-Appellant,

and

DONALD CHURCH,

Respondent.

UNPUBLISHED
March 11, 2008

No. 279652
St. Joseph Circuit Court
Family Division
LC No. 05-000209-NA

No. 280318
St. Joseph Circuit Court
Family Division
LC No. 05-000209-NA

Before: Fitzgerald, P.J., and Smolenski and Beckering, JJ.

PER CURIAM.

In Docket No. 279652, respondent-appellant Angela Church (hereafter “respondent”) appeals as of right from the trial court’s order terminating her parental rights to her daughters, Briana and Keeley, pursuant to MCL 712A.19b(3)(j). In Docket No. 280318, respondent appeals by leave granted from the trial court’s order, following a dispositional review hearing for her son Michael, requiring respondent’s attorney, mental health professionals, and various other agencies to provide notice of respondent’s “hospitalizations,” as defined in the order. We affirm.

In a prior appeal, this Court affirmed the trial court’s exercise of jurisdiction over Briana and Keeley. *In re Church*, unpublished opinion per curiam of the Court of Appeals, issued April 11, 2006 (Docket Nos. 263541 & 265112) (“*Church I*”). In another prior appeal, this Court affirmed the exercise of jurisdiction over Michael. *In re Church*, unpublished opinion per curiam of the Court of Appeals, issued December 4, 2007 (Docket No. 276508) (“*Church II*”).

I. Docket No. 279652

We first consider respondent’s claim that she did not receive sufficient notice that termination of her parental rights under MCL 712A.19b(3)(j) would be sought on the basis of circumstances related to her mental health. Questions implicating constitutional due process concerns are reviewed de novo. *In re CR*, 250 Mich App 185, 203; 646 NW2d 506 (2002); *In re PAP*, 247 Mich App 148, 152; 640 NW2d 880 (2001). In general, procedural due process requires fundamental fairness. *In re Brock*, 442 Mich 101, 111; 499 NW2d 752 (1993). A parent in a child protection proceeding has a due process right to notice of the nature of the proceeding and an opportunity to be heard. *In re Nunn*, 168 Mich App 203, 208-209; 423 NW2d 619 (1988).

A parent is entitled to written notice of a hearing to terminate parental rights. MCL 712A.19b(2)(c). A petitioner may request termination in a supplemental, amended, or original petition. MCR 3.977(A)(2). A petition may be amended at any time, as the ends of justice require. MCL 712A.11(6). Even if there is some deficiency in a termination petition, a harmless error analysis can be applied, without violating due process, if the respondent received adequate notice of the proofs that she will have to present to overcome termination. *In re Perry*, 193 Mich App 648, 651; 484 NW2d 768 (1992); see also MCR 3.901(B) and 3.902(A) (the harmless error standard in MCR 2.613(A) applies to child protection proceedings).

Considering the record as a whole, we find no basis for respondent’s claim that she did not receive adequate notice to satisfy due process concerns. Child protection proceedings are considered continuous proceedings, and evidence admitted at one hearing may generally be considered at all subsequent hearings. *In re LaFlure*, 48 Mich App 377, 391; 210 NW2d 482 (1973). It is clear from the record that respondent had notice since the beginning of this case in 2005 that her mental instability was the reason the trial court ordered her to participate in services, despite the fact that jurisdiction was based on a plea tendered by the girls’ father. Indeed, in *Church I*, *supra*, slip op at 4, this Court specifically referred to respondent’s “continued mental instability” as a basis for upholding the trial court’s authority to enter orders with respect to respondent under MCL 712A.6. The subsequent petition, dated September 18,

2006, also referred to respondent's continuing mental instability as a basis for the request for termination under MCL 712A.19b(3)(g) and (j). The allegations regarding respondent's lack of cooperation with petitioner's attempts to provide services were relevant to this condition and an appropriate means to evaluate respondent's parental fitness. See *In re Sours*, 459 Mich 624, 637-638; 593 NW2d 520 (1999) (where parent lacks custody of a child, parental fitness could only be judged in other ways, such as work on a court-ordered treatment plan); see also *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003); *In re Trejo*, 462 Mich 341, 346 n 3; 612 NW2d 407 (2000).

By the time petitioner filed its amended petition in March 2007, the adjudicative trial for Michael had been conducted, and it was based on the same mental instability issues that were the basis for the court-ordered services for respondent's two daughters. The evidence at that trial was also relevant to the girls' circumstances. A parent's treatment of one child is probative of how that parent may treat other children. *In re Jackson*, 199 Mich App 22, 26; 501 NW2d 182 (1993). Any deficiency arising from petitioner's failure to refer to, or repeat, the specific mental health allegations in the amended petition was harmless, because respondent could not have been surprised that her pattern of mental instability continued to be the focus of the court-ordered service plan. Indeed, respondent herself introduced evidence at the termination hearing regarding her mental health history during earlier child protection and guardianship proceedings involving the girls, which had not been brought out at Michael's adjudicative trial.

Any technical deficiency in the manner in which petitioner presented the allegations through the September 18, 2006, supplemental petition and the March 16, 2007, amended petition could have been remedied by amending the latter petition. MCL 712A.11(6). Respondent was not deprived of due process.

Turning to respondent's claim that the evidence was insufficient to satisfy constitutional standards for termination, we agree that such evidence must comport with a clear and convincing standard of proof. *Santosky v Kramer*, 455 US 745, 769; 102 S Ct 1388; 71 L Ed 2d 599 (1982). The pertinent inquiry is whether the specific statutory ground for termination was supported by clear and convincing evidence. *In re JK*, *supra* at 210. Therefore, under MCL 712A.19b(3)(j), it was necessary that petitioner prove "a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent." Because termination of respondent's parental rights with respect to her daughters was based on new or different circumstance from the offense that led to the taking of jurisdiction, legally admissible evidence was required. MCR 3.977(F). We review the trial court's factual findings under the clearly erroneous standard. MCR 3.977(J); *In re JK*, *supra* at 209.

In reviewing the trial court's findings, we recognize that respondent raises various claims concerning the evidence introduced at the termination hearing, as well as the trial court's decision to take judicial notice of records from the same mental health file maintained by Community Mental Health (CMH), which was disclosed by court order to petitioner before Michael's adjudicative trial. However, respondent has failed to sufficiently brief her claims of evidentiary error, with citation to authority. *Blackburne & Brown Mortgage Co v Ziomek*, 264 Mich App 615, 619; 692 NW2d 388 (2004). Moreover, we are not persuaded that legally inadmissible evidence permeated the trial court's finding that § 19b(3)(j) was proven. *In re CR*, *supra* at 207.

We also reject respondent's argument that she was justified in refusing to participate in services while appealing the trial court's jurisdictional decision. A person may not disregard a court order based on a subjective belief that it is wrong or will be declared invalid on appeal. *Johnson v White*, 261 Mich App 332, 346; 682 NW2d 505 (2004). Further, respondent's own testimony indicated that her lack of cooperation and failure to comply with the service plan, especially the trial court's continuing order that she execute releases, was not based solely on the appeal, but also on her desire to hide a sexual relationship with a therapist.

Regardless of the reasons for respondent's action, a necessary and inherent component of a parent's compliance with a service plan is that the parent benefit sufficiently to enable the trial court to determine that she can provide a fit home for the children. *In re Gazella*, 264 Mich App 668, 677; 692 NW2d 708 (2005). Here, respondent's participation in the court-ordered service plan, with the required releases, was necessary to enable her to show that she could effectively manage her mental health to provide a stable home environment for the girls and continue to visit them. *In re Sours*, *supra* at 637-638. Her lack of participation was evidence that the children would be at substantial risk of harm to their mental well being if returned home. *In re Trejo*, *supra* at 346 n 3. And while respondent later requested an updated service plan, the request did not excuse her from taking the steps necessary to comply with the court's earlier orders. Therefore, respondent has not demonstrated anything about the efforts made by caseworkers toward reunification that would preclude the trial court from finding the statutory ground for termination. *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (1995).

Ultimately, the evidence, including that from Michael's adjudicative trial that was considered by the trial court, overwhelmingly showed that respondent had serious and longstanding mental health issues that would continue into the future. The most that could be reasonably expected was that respondent would be able to manage her mental health through therapy, support services, and medication, but respondent had not shown an ability to do this on a long-term basis. She failed to show that she could maintain a home environment where her daughters would be able to consistently look to her for security and emotional support. In fact, her daughters had been in her full-time care for only approximately seven months during the six years preceding the termination hearing. Considering the evidence of respondent's continuing mental instability and lack of compliance with the court-ordered service plan, which clearly at least placed the girls at risk of harm to their mental well being, the trial court did not clearly err in finding that § 19b(3)(j) was proven by clear and convincing evidence.

II. Docket No. 280318

Respondent argues that the trial court lacked subject-matter jurisdiction to order, as part of a dispositional order for Michael, that her attorney and mental health professionals, including individual counselors and CMH agencies, report respondent's future hospitalizations to the court. We review questions of law de novo. *In re CR*, *supra* at 200.

Initially, we reject respondent's argument that the trial court's decision implicates its subject-matter jurisdiction. In general, subject-matter jurisdiction is the right of a court to exercise judicial power over a class of cases. *People v Goecke*, 457 Mich 442, 458; 579 NW2d 868 (1998). In a child protection case, jurisdiction is tied to the child. *In re CR*, *supra* at 205. Respondent does not argue that the trial court lacked jurisdiction to issue orders affecting her son. Instead, the issue raised here involves an alleged error in the exercise of the court's

jurisdiction; its subject-matter jurisdiction is not implicated. *In re Hatcher*, 443 Mich 426, 438-439; 505 NW2d 834 (1993).

We disagree with respondent that the trial court lacked the authority to enter an order requiring mental health professionals, including individual counselors and CMH, to report respondent's future hospitalizations. As this Court previously determined in *Church I, supra*, the trial court was authorized to issue orders involving respondent that were incidental to its jurisdiction over the children. MCL 712A.6 provides clear authority for a trial court to make orders necessary to a child's well being. *In re Macomber*, 436 Mich 386, 391; 461 NW2d 671 (1990).

Although the Health Insurance Portability and Accountability Act (HIPAA), 42 USC 1320d *et seq.*, regulates patient information retained, used, and transferred by health care providers, *In re Petition of Attorney Gen for Investigative Subpoenas*, 274 Mich App 696, 699; 736 NW2d 594 (2007), respondent has failed to identify any federal regulation that would preclude the trial court's order. Further, respondent has not established any state statutory privilege that precludes the order.

Contrary to what respondent argues, there is no distinction between adjudicative and dispositional stages in the Child Protection Law, MCL 722.631, that abrogates the privilege of mental health and other health care professionals. "Nothing should be read into a statute that is not within the manifest intention of the Legislature as derived from the language expressed in the statute." *People v Hock Shop, Inc*, 261 Mich App 521, 528; 681 NW2d 669 (2004). We will enforce an unambiguous statute according to its plainly expressed meaning. *Hinkle v Wayne Co Clerk*, 467 Mich 337, 340; 654 NW2d 315 (2002). The statute is broad enough to apply to the type of information sought in the order concerning respondent's mental well being. *In re Brock, supra* at 117. The statute abrogates the physician-patient privilege where the child protection proceeding resulted from a report under the act. *Id.* at 119. We decline to read the phrase "civil child protective proceeding" in MCL 722.631 as limiting the abrogation solely to one stage of the proceeding. Indeed, as respondent points out, MCR 3.973(E)(1) recognizes the applicability of MCL 722.631. We find no merit to respondent's argument that MCR 3.973(E)(1) limited the trial court's authority to enter the reporting order. For these reasons, we find no error with respect to the court's reporting requirements for mental health professionals, including individual counselors and CMH.

Additionally, while the trial court's order was not dependent on respondent executing a release, we reject respondent's argument that any release that she executed in connection with the dispositional proceedings for Michael should be deemed void for purposes of determining whether she waived disclosure of her hospitalizations. Respondent's reliance on *In re Van Zant*, 126 Mich App 732; 338 NW2d 1 (1983), is misplaced because that case involved whether a respondent voluntarily waived the right to a jury trial for an involuntary commitment hearing under the Mental Health Code, MCL 330.1458. Here, respondent's obligation to execute releases became part of the parent-agency agreement adopted by the trial court at the same time that it ordered various individuals and entities to report respondent's hospitalizations. And while there may be some coercive effect of a court order requiring a parent to participate in a service plan or execute a release before visitation with a child will be allowed, the parent's privacy interest in avoiding disclosure of personal matters must be balanced against the state's interest in

discovering enough information to make intelligent decisions regarding the appropriate placement and disposition of a child. See *In re TR*, 557 Pa 99; 731 A2d 1276 (1999).

Examined in this context, respondent has not established any basis for declaring any release void. Without an appropriate release, the trial court could not make an intelligent decision regarding whether reunification efforts should continue. The ultimate decision whether respondent was willing to take the steps necessary to determine if she could be entrusted with parenting her son rested with respondent.

Turning to respondent's claim that the trial court's order violates the attorney-client privilege by imposing a reporting duty on her attorney, it has been said that the scope of the privilege is narrow. *Krug v Ingham Co Sheriff's Office*, 264 Mich App 475, 484; 691 NW2d 50 (2004). It only applies to confidential communications made by the client to the attorney for the purpose of obtaining legal advice. *Id.* at 484-485. The privilege allows a client to confide in the attorney, knowing that the communication is safe from disclosure. *Leibel v Gen Motors Corp*, 250 Mich App 229, 236-237; 646 NW2d 179 (2002).

The order here is distinguishable from the investigative order in *People v Johnson*, 203 Mich App 579, 582-585, 513 NW2d 824 (1994), which was found to violate the attorney-client privilege. The order in *Johnson* required the attorney to inquire of a criminal defendant regarding prior convictions so that their validity could be determined. *Id.* at 582. Conversely, the order here does not require any inquiry or investigation. Respondent's attorney could comply with the order by supplying any petition, police report, or medical notes that satisfied the trial court's definition of "hospitalization" and was obtainable in the course of her representation of respondent. Because the order can be satisfied without violating the attorney-client privilege, we deny respondent's request to vacate the reporting obligation imposed on her attorney.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Michael R. Smolenski
/s/ Jane M. Beckering