STATE OF MICHIGAN

COURT OF APPEALS

JOHN ENOCH BANNERMAN, Plaintiff-Appellant,	UNPUBLISHED August 6, 2009
v	No. 280358 St. Joseph Circuit Court
ST. JOSEPH JUVENILE JUDGE and ST. JOSEPH DISTRICT JUDGE, Defendants-Appellees.	LC No. 07-000479-CZ

Before: Wilder, P.J., and Meter and Servitto, JJ.

PER CURIAM.

Plaintiff, acting in propria persona, appeals as of right from the trial court's order granting summary disposition to defendants and dismissing plaintiff's action seeking to set aside orders entered in prior proceedings by defendant judges. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff collaterally challenges orders entered in proceedings that culminated in the entry of a June 16, 1999, order terminating his parental rights to his minor children.[1] Defendant St. Joseph Juvenile Judge Thomas E. Schumaker presided over the initial proceedings in the termination case and, following a jury trial, ordered the temporary wardship of the children; defendant Schumaker additionally entered one or more orders requiring plaintiff to obtain a psychiatric evaluation.[2] Plaintiff also seeks to collaterally attack two personal protection orders

[1] Plaintiff's direct appeal from the termination order was dismissed by this Court for want of prosecution. *In re Mensah Minors*, unpublished order of the Court of Appeals, issued June 30, 2000 (Docket No. 221369).

[2] The final termination order that plaintiff ultimately attacks in the instant case was issued by Judge Susan L. Dobrich, who was appointed by the State Court Administrative Office to preside over the termination trial after defendant Schumaker disqualified himself in response to plaintiff's repeated motions for disqualification. Judge Dobrich was not named as a defendant and is not a party to these proceedings. Plaintiff's pleadings and briefs—and, indeed, the trial court's ruling—muddle the distinction between the orders entered by defendant Schumaker in the initial termination proceedings and the final termination order, which was entered by Judge Dobrich and is therefore not subject to review in this case.

(PPOs) that he claims were issued in January 2007 by the additional defendant, District Court Judge Jeffery C. Middleton, to prevent plaintiff from having mail contact with the children.[3]

The trial court granted defendants' motion for summary disposition, holding that it lacked jurisdiction over plaintiff's complaint and that his proper remedy would have been to appeal directly from the orders entered by defendants.[4] The trial court further held that defendants, as judges acting within the scope of their authority, were absolutely immune from liability.

On appeal, plaintiff asserts that the initial petition for temporary custody lacked sufficient factual allegations to establish subject-matter jurisdiction and that the probate court's orders were therefore void ab initio and subject to collateral review. Furthermore, plaintiff contends that the doctrine of absolute immunity does not apply because subject-matter jurisdiction was lacking in the termination proceedings.

A court's subject-matter jurisdiction may be challenged at any time, even collaterally. See *In re Hatcher*, 443 Mich 426, 438; 505 NW2d 834 (1993).[5] Whether a court had subject-matter jurisdiction in a parental termination proceeding is reviewed de novo. *Ryan v Ryan*, 260 Mich App 315, 331; 677 NW2d 899 (2004). Similarly, this Court reviews de novo the grant or denial of a motion for summary disposition. *Devillers v Auto Club Ins Ass'n*, 473 Mich 562, 567; 702 NW2d 539 (2005).

A court's jurisdiction in child protective proceedings is governed by MCL 712A.2(b). Subject-matter jurisdiction is established initially by the pleadings, such as the petition, and exists "when the proceeding is of a class the court is authorized to adjudicate and the claim stated

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[3] The PPOs are not included in the lower court record and have not been provided on appeal. However, plaintiff has submitted defendant Middleton's March 7, 2007, orders denying plaintiff's motions to terminate the PPOs.

Plaintiff additionally asserts that defendant Middleton served as an assistant prosecuting attorney at the time of the parental termination proceedings and that he "collaborated with federal perpetrators and Schumaker in October 1997 to bring a bogus neglect petition" against plaintiff. However, there is no evidence in the record supporting plaintiff's assertion that Middleton was involved in any capacity in the termination proceedings. Accordingly, we need not address plaintiff's cryptic, and entirely unsupported, allegations concerning Middleton's conduct in those proceedings.

[4] We note that, in addition to his failed direct appeal from the termination order, the instant action represents plaintiff's second attempt to collaterally attack defendant Schumaker's orders in the termination proceedings. In St. Joseph Circuit Court Docket No. 07-00-47-CZ-1, plaintiff sought ex parte relief from these orders on the ground that Judge Schumaker should have been disqualified. The circuit court in that case dismissed the claim on the ground that plaintiff had failed to state a claim upon which relief could be granted.

[5] Contrarily, to the extent that plaintiff challenges the probate court's *exercise* of jurisdiction, he is precluded from raising such a claim. A trial court's decision to exercise jurisdiction over a particular child can only be challenged on direct appeal, not by collateral attack. *In re Hatcher*, *supra* at 444; *In re Powers*, 208 Mich App 582, 587-588; 528 NW2d 799 (1995).

in the complaint is not clearly frivolous." *In re Hatcher*, *supra* at 444. Pursuant to MCL 712A.2(b), a court has jurisdiction over a juvenile under 18 years of age found within the county:

> (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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> (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.

See also *In re AMB*, 248 Mich App 144, 167; 640 NW2d 262 (2001).

The petition for temporary custody of plaintiff's children, which sought temporary wardship pursuant to MCL 712A.2(b)(1) and (2), raised allegations that (1) the children's mother had died, (2) before the mother's death, she had temporary custody of the children through a pending divorce proceeding in Indiana, (3) in the Indiana proceeding, it was recommended that plaintiff have supervised visits only, due to "delusional thinking" on his part, (4) there was concern that plaintiff might secret the children to his native Ghana, and (5) the children bore a substantial risk of harm if placed with plaintiff before his delusional thinking and behaviors were evaluated and diagnosed by a competent psychiatrist. These factual allegations were sufficient, if proven, to support an inference that the minor children were subject to a substantial risk of harm to their mental well-being, that they were without proper custody or guardianship, and/or that their home or environment was an unfit place for them to live in. See, generally, *In re Hatcher*, *supra*. Accordingly, these allegations were sufficient to establish the probate court's subject-matter jurisdiction over the proceeding. See *Boodt v Borgess Medical Ctr*, 272 Mich App 621, 628; 728 NW2d 471 (2006), reversed in part on other grounds 481 Mich 558 (2008) ("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.").

Moreover, summary disposition was appropriately granted to both defendants on the additional ground that they are absolutely immune from liability. "[J]udges are accorded absolute immunity for acts performed in the exercise of their judicial functions." *Diehl v Danuloff*, 242 Mich App 120, 128; 618 NW2d 83 (2000). Judges, legislators, and highest-level executive officials in this state enjoy absolute immunity from all tort liability when they are acting within the scope of their judicial, legislative, or executive authority. MCL 691.1407(5).[6]

[6] Plaintiff provides no authority for his suggestion that the doctrine of absolute immunity does not apply in an appeal from a "non-monetary official capacity suit to overturn unconstitutional (continued…)

Plaintiff argues for the first time on appeal that defendant Schumaker's wardship order violated the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), MCL 722.1101 *et seq*. However, the UCCJEA is inapplicable because it did not become effective in Michigan until April 1, 2002, well after the conclusion of the termination proceedings. MCL 722.1101; *Atchison v Atchison*, 256 Mich App 531, 536; 664 NW2d 249 (2003).

Affirmed.

/s/ Kurtis T. Wilder
/s/ Patrick M. Meter
/s/ Deborah A. Servitto

(…continued)

actions" of judges, nor will we search for such authority. See *Thompson v Thompson*, 261 Mich App 353, 356; 683 NW2d 250 (2004).