

STATE OF MICHIGAN
COURT OF APPEALS

In re JEREMY LEON SCHERMAN.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellant,

v

JEREMY LEON SCHERMAN,

Respondent-Appellee.

UNPUBLISHED

September 15, 2009

No. 289732

Oakland Circuit Court

Family Division

LC No. 2001-647953-DL

Before: Davis, P.J., and Murphy and Fort Hood, JJ.

PER CURIAM.

The prosecution appeals by leave granted from the family court order granting respondent's motion to vacate his plea. We affirm.

Respondent was a minor when he was accused of inappropriate behavior while babysitting a two-year old girl. In 2001, an attorney represented him when he pleaded no contest to second-degree criminal sexual conduct. However, in 2008, after reaching the age of 21, respondent filed a motion to vacate his plea or alternatively for rehearing or a new trial because of deficiencies in the plea procedure and the ineffective representation by counsel. The family court agreed that procedural deficiencies occurred and granted the motion to vacate the plea. The prosecutor appeals by leave granted, alleging that respondent was over 21 years of age when he filed his motion, and therefore, the family court was without jurisdiction. We disagree.

This Court's review of jurisdictional issues is de novo. *Pontiac Food Center v Dep't of Community Health*, 282 Mich App 331, 335; 766 NW 2d 42 (2009). Issues involving the interpretation of statutes or court rules are also reviewed de novo as questions of law. *Id.* "The term jurisdiction refers to the power of a court to act and the authority a court has to hear and determine a case." *Wayne Co Chief Executive v Governor*, 230 Mich App 258, 269; 583 NW2d 512 (1998). "Const 1963, art 6, § 15 grants probate courts 'original jurisdiction in all cases of juvenile delinquents and dependents, except as otherwise provided by law.'" *In re AMB*, 248 Mich App 144, 167; 640 NW2d 262 (2001). The family division of the circuit court (family court) now exercises this jurisdiction. *People v Thenghkam*, 240 Mich App 29, 36; 610 NW2d

571 (2000), overruled in part on other grounds in *People v Petty*, 469 Mich 108; 665 NW2d 443 (2003).¹ “In construing jurisdictional statutes, retention of jurisdiction is presumed, and any intent to divest a court of jurisdiction must be clearly and unambiguously stated.” *In re Waite*, 188 Mich App 189, 202; 468 NW2d 912 (1991).

MCL 712A.2 provides that the family court has the following authority and jurisdiction:

(a) Exclusive original jurisdiction superior to and regardless of the jurisdiction of another court in proceedings concerning a juvenile under 17 years of age who is found within the county if 1 or more of the following applies:

(1) Except as otherwise provided in this sub-subdivision, the juvenile has violated any municipal ordinance or law of the state or of the United States

MCL 712A.2a allows for continuing jurisdiction beyond the maximum age of 17:

(1) Except as otherwise provided in subsection (2), if the court has exercised jurisdiction over a juvenile under section 2(a) or (b) of this chapter, jurisdiction shall continue for a period of 2 years beyond the maximum age of jurisdiction conferred under section 2 of this chapter, unless the juvenile is released sooner by court order.

(2) If the court has exercised jurisdiction over a juvenile under section 2(a)(1) of this chapter for an offense that, if committed by an adult, would be a violation or attempted violation of . . . [MCL] 750.520c. . . jurisdiction may be continued under section 18d of this chapter until the juvenile is 21 years of age.

In this case, respondent filed a motion to vacate his plea or, in the alternative, for rehearing or new trial, on November 4, 2008, seven and a half years after his disposition on May 22, 2001, and nearly seven years after the court terminated jurisdiction on December 20, 2001. Moreover, respondent’s date of birth is April 11, 1987, and therefore, he had reached his 21st birthday nearly seven months before he filed the motion. Nevertheless, respondent brought the motion under MCR 3.992, which states, in relevant part:

(A) Time and Grounds. Except for the case of a juvenile tried as an adult in the family division of the circuit court for a criminal offense, a party may seek a rehearing or new trial by filing a written motion stating the basis for the relief sought within 21 days after the date of the order resulting from the hearing or trial. *The court may entertain an untimely motion for good cause shown.* A motion will not be considered unless it presents a matter not previously presented to the court, or presented, but not previously considered by the court, which, if

¹ See also MCL 600.1009 that provides: “A reference to the former juvenile division of probate court in any statute of this state shall be construed to be a reference to the family division of circuit court.”

true, would cause the court to reconsider the case. [MCR 3.992 (emphasis added).]

Clearly, respondent sought relief more than 21 days after the date of the order, but he contends that because MCR 3.992(A) does not contain a time or age limit “for good cause shown,” the family court still had jurisdiction. The prosecutor argues on appeal that the good cause exception of MCR 3.992(A) applies only if the family court has jurisdiction in the first place, and because respondent was over 21 years old when he filed his motion, the family court was without jurisdiction. It follows, according to the prosecutor, that the family court judge could not redress errors that occurred while respondent was within the court’s jurisdiction. We disagree.

“The doctrine of prior exclusive jurisdiction has long been recognized in Michigan.” *In re Forfeiture of Certain Personal Property*, 441 Mich 77, 85; 490 NW2d 322 (1992). The doctrine generally provides that once a court has exercised jurisdiction, other courts of “co-ordinate authority” may not interfere with the action taken by the first court. *Id.*

It is a familiar principle that when a court of competent jurisdiction has become possessed of a case, its authority continues, subject only to the appellate authority, until the matter is finally and completely disposed of; and no court of co-ordinate authority is at liberty to interfere with its action. The principle is essential to the proper and orderly administration of the laws; and while its observance might be required on the grounds of judicial comity and courtesy, it does not rest upon such considerations exclusively, but is enforced to prevent unseemly, expensive and dangerous conflicts of jurisdiction and of process. [*Maclean v Wayne Circuit Judge*, 52 Mich 257, 259; 18 NW 396 (1884).]

Additionally, rules governing procedure in juvenile delinquency proceedings “are to be liberally construed to secure fairness, flexibility, and simplicity so that each minor coming with the jurisdiction of the court receives the care, guidance, and control that is conducive to the minor’s welfare and the best interests of the public.” *In re Alton*, 203 Mich App 405, 407; 513 NW2d 162 (1994).

Defects in personal jurisdiction may be waived, but subject matter jurisdiction cannot be waived and may be raised at any time. *People v Richards*, 205 Mich App 438, 444; 517 NW2d 823 (1994). Personal jurisdiction refers to the court’s jurisdiction over a particular individual, and subject matter jurisdiction is the court’s power over a class of cases. *Id.* In this instance, by filing the motion to review the plea procedure and the effective assistance of counsel, petitioner waived personal jurisdiction regardless of his age. The juvenile court clearly possesses subject matter jurisdiction over juvenile cases and is in the best position to evaluate the propriety of handling challenges to juvenile dispositions. The argument and interpretation raised by the prosecution eliminates any individual who has exceeded the statutory age from seeking a remedy

for defects that occurred during the juvenile proceedings. That is simply untenable.² Accordingly, the challenge to jurisdiction is without merit. *Maclean, supra*; *Richards, supra*.

Furthermore, courts of this state have allowed juvenile jurisdiction to continue beyond the statutory age when necessary for continued administration or resolution of the case. See *In re Summerville*, 148 Mich App 334, 339; 384 NW2d 152 (1986) (“[T]he juvenile court has jurisdiction over contempt proceedings involving contempt of juvenile court orders, even where the contemner is over 19 years of age at the time of the hearing.” *Id.* at 340-341); *In re Reiswitz*, 236 Mich App 158, 162; 600 NW2d 135 (1999) (The parent of an adjudicated delinquent cannot “avoid the requirements of a proper reimbursement order, entered by the probate court at a time when it had jurisdiction,” pursuant to MCL 712A.18(2), despite the fact that before the parent “had fully complied with that order, the probate court’s statutory jurisdiction over the parties had ceased.” *Id.* at 163.)

In light of petitioner’s submission to the juvenile court to challenge his juvenile disposition and case law that allows the juvenile court to address matters that previously came within its jurisdiction, we affirm the decision of the juvenile court.³

Affirmed.

/s/ Alton T. Davis
/s/ William B. Murphy
/s/ Karen M. Fort Hood

² We note that the parties did not raise alternatives. There was no positing that the case could be transferred to a court of general jurisdiction, and the prosecution objected to the application of the MCR 6.500 *et seq.* rules because the rules did not apply to juvenile proceedings.

³ We note that the merits of the family court’s decision to grant the motion to vacate the plea was not raised and addressed by the parties, and therefore, we do not address it.