STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of TIMOTHY RUPERT and VICTORIA RUPERT, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LEROY RUPERT,

Respondent-Appellant,

and

VALARIE RUPERT,

Respondent.

UNPUBLISHED
May 13, 2010

No. 294873
Jackson Circuit Court
Family Division
LC No. 03-002089-NA

Before: BANDSTRA, P.J., and FORT HOOD and DAVIS, JJ.

PER CURIAM.

Respondent-appellant father, Leroy Rupert, appeals as of right the trial court's initial dispositional order, contesting the trial court's assumption of jurisdiction over the minor children under MCL 712A.2(b)(2). We affirm.

The trial court did not clearly err in finding a preponderance of the evidence established a statutory ground for jurisdiction under MCL 712A.2(b)(2). MCR 3.972(C)(1); *In re Brock*, 442 Mich 101, 108-109; 499 NW2d 752 (1993). The trial court assumed jurisdiction over the minor children pursuant to MCL 712A.2(b)(2), which provides for its jurisdiction over juveniles within the county under the following circumstances:

> 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.

The trial court made a finding of fact at the adjudication trial that respondent father's grabbing, pushing, and slapping his sixteen-year-old child was not discipline, but constituted intimidation, threat, and interrogation. The trial court then made the legal finding that a

preponderance of evidence showed respondent father's home was unfit due to criminality and depravity. Some evidence of respondent father's past child protective proceeding in 2003 was admitted at the trial.

Respondent father first argues the trial court legally erred in basing jurisdiction on criminality and depravity because slapping a child's face as a form of discipline was not a crime, and even if the slap fell under the purview of a criminal statute, the privilege of reasonable parental discipline applied. He adds that reasonable corporal punishment is widely accepted as a form of discipline, and something as minor as a face slap was not depravity.

The trial court described its view of discipline as follows:

> So I see discipline as being something that occurs after a situation, that actually is non-threatening. It's actually a punishment. It's not grabbing the child by the throat and saying, what do you know, and I expect you to tell me that. That's not punishment. That doesn't mean go to your room. That doesn't mean you're grounded for a week. That doesn't mean that you can't have friends over, or any of these other things.

Respondent father argues the trial court's definition of discipline was too narrow. This Court reviews the trial court's factual finding regarding whether respondent father's actions constituted discipline under the clearly erroneous standard. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A finding is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake has been made. *Id*.

The noun "discipline" is not a statutory term but an ordinary word, and the common dictionary definition includes "punishment inflicted by way of correction and training." *Random House Webster's College Dictionary* (2000), p 377. One of its definitions is punishment, which is commonly defined as the act of punishing, which includes subjecting to pain as a penalty. *Random House Webster's College Dictionary* (2000), p 1074. And, we note that common sense dictates that proper parental discipline can be meted out in a threatening manner, sometimes to emphasize its importance; discipline is not necessarily unreasonable because it is threatening. Each case must be considered in context. Therefore, a trial court must appraise itself of all relevant circumstances when evaluating conditions leading to a minor child's adjudication. *In re Jackson,* 199 Mich App 22, 26; 501 NW2d 182 (1993). In this case the relevant circumstances include evidence of the 2003 child protective proceeding. While respondent father argues that evidence was inadmissible as irrelevant to the current condition of the home and on several additional grounds, we disagree. The trial court could properly take judicial notice of the adjudicative facts in its 2003 file under MRE 201(b). Respondent father, while acknowledging the well–established principle that child protective proceedings are one continuous proceeding, argues that "one continuous proceeding" must be on the same petition. We disagree. For example, often a later-born child is adjudicated a temporary court ward on a new petition as a result of evidence stemming from a sibling's wardship on a past petition. In this case, the trial court limited its consideration of the 2003 proceeding to legally admissible evidence.

The evidence presented at the adjudication trial showed respondent father usually disciplined the children by removing privileges. His actions in this case were clearly something

other than discipline, and he admitted that his actions went "too far." Respondent father had a history of spousal domestic violence six years previously, this was the children's third removal in six years, the fourteen-year-old so upset by the incident she telephoned another sister for help and was distraught for quite some time afterward, and the sixteen-year-old had formed a plan for emancipation before the incident. While, considered in isolation, respondent father's actions may not have formed a basis for jurisdiction, on the record as a whole, we do not have a firm and definite conviction that the trial court made a mistake in finding respondent father's conduct was not disciplinary, i.e. an act of punishing, correcting or molding his child, but his actions constituted threats, intimidation and interrogation. *Miller*, 433 Mich at 337.

Whether the trial court legally erred in assuming jurisdiction on these facts presents a question this Court reviews de novo. *Atchison v Atchison*, 256 Mich App 531, 534; 664 NW2d 249 (2003). The trial court admitted it wavered over whether petitioner had met its burden of proof to establish jurisdiction, but noted the standard of proof was the relatively low "preponderance of the evidence" standard. A preponderance of the evidence is "sufficient to incline a fair and impartial mind to one side of the issue rather than the other." Black's Law Dictionary, (8th ed). Or, stated differently, meaning more likely than not. Respondent father arguably violated the statute criminalizing an individual's assault and battery on a resident of his household, see MCL 750.81, and since the trial court did not err in finding he was not engaged in discipline, no exception for reasonable parental discipline applied. Therefore, the trial court did not err in finding respondent father's home unfit due to criminality.

Alternatively, "[d]epravity" is a statutory term. The goal of statutory interpretation is to affect the intent of the Legislature from the statute's plain language, and undefined terms must be given their plain and ordinary meanings; it is also proper to consult a dictionary to define statutory terms. *Priority Health v Comm'r of Office of Financial and Ins Services*, 284 Mich App 40, 43-44; 770 NW2d 457 (2009). "Depravity" is "the state of being depraved," which means "morally corrupt or perverted." *Random House Webster's College Dictionary* (2000), p 357. "Corrupt" means "debased in character," infected; tainted." *Random House Webster's College Dictionary* (2000), p 301. The evidence showed that there was improper conduct in respondent's home that tainted the home. The fourteen-year-old was unusually distraught by the incident, and the sixteen-year-old had already devised a plan for emancipation. This does not occur as a result of one altercation, but evidenced something substantially amiss in the home causing the children ongoing, significant emotional distress. Given that child protective proceedings are intended by the Legislature to protect children, *Brock*, 442 Mich at 107, the burden of proof was very low, and depravity encompasses the acts at issue, respondent father's home fell under the broad definition of depravity. Therefore, although a second ground for jurisdiction was unnecessary, the trial court did not err in finding a preponderance of evidence that respondent father's home was also unfit due to depravity.

Affirmed.

/s/ Richard A. Bandstra
/s/ Karen M. Fort Hood
/s/ Alton T. Davis