STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
July 29, 2010

In the Matter of BRATCHER, Minors.

No. 295727
Allegan Circuit Court
Family Division
LC No. 09-044959-NA

Before: SAWYER, P.J., and BANDSTRA and WHITBECK, JJ.

PER CURIAM.

In this child protective proceeding, respondent mother appeals as of right the trial court's initial dispositional order, entered after the court exercised jurisdiction over the minor children under MCL 712A.2(b)(1) and (2), following respondent father's plea of admission to allegations in an amended petition. We affirm.

On April 30, 2009, petitioner filed a petition arising out of inappropriate sexual activity occurring between the two of the children.[1] This initial petition alleged, in large part: that respondent mother became aware of this activity, in November 2006; that within a year of that disclosure, respondent mother permitted respondents' minor son and minor daughter to be alone together, unsupervised; that in February 2009, respondent mother became aware that inappropriate sexual activity was again occurring between the children; that respondent mother did not report the activity to law enforcement and that she had not been cooperative in scheduling a medical examination or counseling for respondents' minor daughter; and that the minor daughter had indicated on more than one occasion that she could not fully disclose what had transpired or her brother would be "taken away to live with another family."[2] The only mention of respondent father in the initial petition was the assertion that he was "not involved in" the children's lives.[3]

[1] These allegations concern activities between respondents' middle two children, who shall be referred to as the parties' minor son and minor daughter in this opinion.

[2] Respondents' minor son was the subject of delinquency proceedings as a result of the inappropriate conduct underlying this action. Those proceedings are not at issue here.

[3] Respondents are divorced and each has remarried. At the time of the events in question, respondent mother resided in Allegan County, Michigan, while respondent father resided in Indiana.

A preliminary inquiry was held on May 7, 2009, to determine whether there was sufficient information to authorize the filing of the petition.[4] Respondent mother was present and was represented by counsel. Respondent father was also present. At the conclusion of the hearing, the trial court authorized the filing of the petition, left the children in respondent mother's custody, allowed respondent father parenting time consistent with the terms set by the parties' prior divorce proceedings, and ordered that respondents' minor son and minor daughter "shall have no unsupervised contact with each other" and that respondents' minor daughter "shall have a medical examination." The trial court's order authorizing the petition further indicated that appropriate notice of the hearing was provided as required by law and that a probable cause determination was waived by all parties present. Respondent father was granted appointed counsel to represent him in the proceedings, and an attorney/guardian ad litem was appointed for the children. Additionally, on that same date, notice of the instant child protective proceedings was provided to the Ottawa Circuit Court, which had continuing jurisdiction over the child arising from the parties' divorce proceedings.

On June 30, 2009, petitioner filed a motion to review placement, on the basis that respondent-mother was only "minimally cooperative" with services, had prevented case workers from conducting appropriate home visits and interviews of the children and had not yet scheduled a medical examination or counseling services for her daughter. A pretrial conference was held on July 27, 2009, and in lieu of a hearing on that motion, respondents agreed to sign releases relating to privately obtained medical examinations and counseling for the children, and respondent mother agreed to permit petitioner to meet with the children monthly and to allow a CASA volunteer to meet with the children weekly. On that same date, each party was issued a summons for the jury trial scheduled for October 27, 2009.

On September 2, 2009, petitioner filed an emergency motion to remove the children from respondent mother's home after the minor children were observed together unsupervised. Petitioner alleged, additionally, that respondent mother remained "not fully compliant" or cooperative. After hearing testimony, the trial court determined that unsupervised contact had occurred, which placed the children at risk of emotional and physical harm. The trial court noted that respondent mother was not taking the situation as seriously as the children's conduct warranted, and ordered respondents' minor son to be placed in the home of respondent father, with visitation for respondent mother, to prevent further unsupervised contact between the children.

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[4] A preliminary inquiry is an informal review. MCR 3.903(A)(22). Where there is no request for placement of a child and the child is not already in temporary custody, the purpose of a preliminary inquiry is "to determine action to be taken on a petition." MCR 3.962(A). The court may deny the petition, refer the matter for alternative services, or authorize the filing of the petition. MCR 3.962(B)(3). "Granting permission to file the petition is merely a determination that the petition is sufficient to be 'delivered to, and accepted by, the clerk of the court.'" *In re Kyle*, 480 Mich 1151; 746 NW2d 302 (2008), quoting MCR 3.903(A)(20). Here, while a preliminary inquiry was conducted, the hearing also included aspects of a formal preliminary hearing, such as respondent mother's appearance and waiver of a probable cause hearing. See MCR 3.965(B)(11).

On October 27, 2009, petitioner filed an amended petition that added an allegation that respondent father failed to take appropriate action to safeguard the children after he was made aware of inappropriate sexual behavior between them. At a hearing that same day, respondent father tendered a plea, by telephone, to the added allegation. As support for the plea, respondent father admitted that he was made aware by petitioner of inappropriate sexual behavior between the children, but took no action to safeguard the children. After additional briefing and an additional hearing, the trial court concluded that respondent father's plea was sufficient to establish jurisdiction over the children.

On appeal, respondent mother challenges the court's assertion of personal jurisdiction over respondent father, the legal sufficiency of the petitions, certain procedural steps taken, or not taken, in the trial court, and the trial court's assertion of jurisdiction over the children on the basis of respondent father's plea to the allegations in the amended petition.[5] Respondent mother's issues on appeal largely present legal questions, which we review de novo. *In re LE*, 278 Mich App 1, 17; 747 NW2d 883 (2008); *In re AMB*, 248 Mich App 144, 165; 640 NW2d 262 (2001). Any factual findings made by the trial court are reviewed for clear error. *In re LE*, 278 Mich App at 17.

Addressing first, respondent mother's claim that the trial court did not have in personam jurisdiction over respondent father, we note that any challenge that respondent father may have had to the trial court's exercise of such jurisdiction over him was waived by respondent father's voluntary and continuous participation in the substance of these proceedings.[6] *In re Slis*, 144 Mich App 678, 683; 375 NW2d 788 (1985) ("A party who enters a general appearance and contests a cause of action on the merits submits to the jurisdiction of the court and waives service of process objections."). MCL 600.701(3) specifically provides that a Michigan court may exercise general personal jurisdiction over a party who consents thereto. A party's consent to the exercise of general personal jurisdiction under MCL 600.701(3) need not be express, but may be implied. *Unistrut Corp v Baldwin*, 815 F Supp 1025, 1027 (ED Mich, 1993); see also *Burger King Corp v Rudzewicz*, 471 US 462, 472 n 14; 105 S Ct 2174; 85 L Ed 2d 528 (1985).

[5] As a preliminary matter, we note that although respondent mother's brief on appeal lists 16 issues in its statement of questions involved, the body of her brief consists of only six enumerated argument sections. The statement of questions involved, which is required by MCR 7.212(C)(5), generally governs the scope of the issues reviewed on appeal. *Williams v City of Cadillac*, 148 Mich App 786, 790; 384 NW2d 792 (1985). To the extent that respondent mother's statement of questions involved raises matters that are not addressed in the body of her brief, we consider those matters to be abandoned. "It is axiomatic that where a party fails to brief the merits of an allegation of error, the issue is deemed abandoned by this Court." *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999); see also *Williams*, 148 Mich App at 790.

[6] We express no opinion as to whether respondent father could have successfully challenged the trial court's personal jurisdiction over him, or whether respondent mother has standing to challenge that jurisdiction, because as noted above, respondent father plainly and affirmatively waived any challenge by his participation in the proceedings.

That said, however, essentially, respondent mother's argument is not really one of a lack of personal jurisdiction, but instead is directed at whether respondent father received proper notice of the proceedings. That is, respondent mother argues that respondents were to be served with a summons before the preliminary inquiry, that such summons were not served upon them and that service of a summons was not waived, and further, that respondent father received only a "letter" advising him of the proceedings, as would any interested party not a respondent, and that he was not advised at the May 7, 2009, preliminary inquiry that his appearance would waive any notice defects. Although defective notice may void an action in a child protective proceeding, notice is a personal right. *In re Terry*, 240 Mich App 14, 21; 610 NW2d 563 (2000). Therefore, respondent mother lacks standing to argue that alleged notice deficiencies relating to respondent father deprived the trial court of personal jurisdiction over respondent father. *Id.*; see also, *In re EP*, 234 Mich App 582, 598; 595 NW2d 167 (1999) ("A plaintiff must assert his own legal rights and interests and cannot rest his claim to relief on the legal rights or interests of third parties."). We again note that respondent father does not allege that he did not receive appropriate notice or service of process in this action, that the record reflects that respondent father was personally served with a summons, that he received actual notice of various hearings, and that he was present continually throughout the proceedings.

We next consider respondent mother's arguments concerning the legal sufficiency of the original and amended petitions, which respondent mother argues affected the trial court's subject-matter jurisdiction. Jurisdiction is a court's power to act and authority to hear and determine a case. *In re AMB*, 248 Mich App at 166. In a child protective proceeding, a trial court's subject-matter jurisdiction is determined by whether "the action is of a class that the court is authorized to adjudicate" and the claim stated in the petition is "not clearly frivolous." *In re Hatcher*, 443 Mich 426, 437; 505 NW2d 834 (1993). Accordingly, subject-matter jurisdiction exists where the allegations provide probable cause for the court to believe that there is statutory authority to act. *In re AMB*, 248 Mich App at 168. The trial court thereafter exercises jurisdiction over the children through the process of adjudication. *In re Brock*, 442 Mich 101, 108; 499 NW2d 752 (1993); *In re AP*, 283 Mich App 574, 593; 770 NW2d 403 (2009).

In this case, because the trial court did not exercise jurisdiction over the children based on the allegations pertaining to respondent mother, it is necessary to focus, first, on the allegations relating to respondent father.

Respondent mother has failed to show any impediment to the trial court's decision to exercise jurisdiction over the children. We need not consider whether the original petition was facially deficient because the trial court exercised jurisdiction pursuant to respondent father's plea to an amended petition.[7] MCL 712A.11(6) provides that a petition "may be amended at any stage of the proceedings as the ends of justice require."[8] See also *In re Slis*, 144 Mich App at

[7] We do note, however, that both respondent mother and respondent father waived a probable cause determination as to that initial petition.

[8] Although Issue IX of respondent mother's statement of questions involved questions the validity of the amended petition without the consent of all parties, she does not address this issue in the body of her brief. Therefore, it has been abandoned. *Prince*, 237 Mich App at 197.

684. The record indicates that the amended petition differed from the original petition only to the extent that it added an allegation that respondent father failed to take appropriate action to safeguard the children after he was made aware of inappropriate activity between them. There was no change to the allegation in the original petition that respondent father had not been involved in the children's lives, to the content of the "request form" that accompanied the original petition, or to the allegations concerning respondent mother.

The deficiencies alleged by respondent mother for failure to comply with various requirements in MCR 3.961(B) and MCR 5.113 either lack merit or involve technical matters that may be considered harmless. MCR 3.902(A); MCR 2.613(A). Contrary to respondent mother's argument on appeal, the filed copy of the "request form" contains a petition number and court name. MCR 5.113(A)(1)(b)(i) and (ii). Any deficiency in the case number suffix was harmless. Similarly, while the petition does not refer to the continuing jurisdiction of the Ottawa Circuit Court in the divorce action as required by MCR 3.961(B)(2)(d), this deficiency was also harmless, inasmuch as the record indicates that the Ottawa Circuit Court was given notice of the child protective proceeding at the time of the preliminary inquiry[9] on the original petition. And while there is no statement directly identifying the petitioner, respondents, or the children's domicile, this information could be deduced readily from the allegations in the petition as a whole. *In re AMB*, 248 Mich App at 174.

The material issue raised by respondent mother is whether the amended petition contains the "essential facts that constitute an offense against the child under the Juvenile Code" and "citation to the section of the Juvenile Code relied on for jurisdiction." MCR 3.961(B)(3) and (4). Considering the citation in the petition to MCL 712A.2(b), which was accompanied by language paralleling that contained in subsections (1) and (2) of that statute, together with the allegation referring to respondent father's lack of involvement with the children and the added allegation regarding respondent father's failure to safeguard respondents' minor son and minor daughter, we find no deficiency in the amended petition that would preclude the trial court from taking action based on respondent father's plea. The fact that there was no specific reference in the added allegation to respondents' other two children did not preclude the trial court from taking jurisdiction over all of the children. Under the doctrine of anticipatory neglect, a "child may come within the jurisdiction of the court solely on the basis of the parent's treatment of another child." *In re Gazella*, 264 Mich App 668, 680-681; 692 NW2d 708 (2005).

Further, we are not persuaded that respondent father's status as a noncustodial parent precluded the trial court from taking action based on the allegations pertaining to him. Natural parents, not simply custodial parents, have fundamental liberty interests in the care, custody, and management of their children. See *In re Rood*, 483 Mich 73, 120-121; 763 NW2d 587 (2009) (CORRIGAN, J.). "Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life." *Santosky v Kramer*, 455 US 745, 753; 102 S Ct 1388; 71 L Ed 2d 599 (1982). Indeed, if the Department of Human Services

[9] Although a referee conducted the preliminary inquiry, we note that the trial court later entered an order authorizing the petition, consistent with MCR 3.913 and MCL 712A.10(1)(c).

determines that there is an open friend of the court case, MCL 722.628(21), it is required to "provide noncustodial parents of a child who is suspected of being abused or neglected with the form developed by the department that has information on how to change a custody or parenting time court order." See also *In re AP*, 283 Mich App 574, 593 n 15; 770 NW2d 403 (2009).

The allegations in the amended petition, accepted as true, are sufficient to establish that respondent father was a "parent . . . who is alleged to have committed an offense against a child." MCR 3.903(C)(10). Thus, respondent mother has not established any deficiency in the amended petition that precluded the trial court from exercising jurisdiction over the children on the basis of respondent father's plea.

Further, the record does not support respondent mother's contention that the trial court exercised jurisdiction based only on respondent father's consent. Instead, the record reflects that respondent father entered a plea of admission to the allegation against him. Under MCR 3.971(A) a "court has discretion to allow a respondent to enter a plea of admission . . . to an amended petition." The rule requires the trial court to advise a respondent of various rights, MCR 3.971(B), and to determine that the plea was knowingly, understandingly, and accurately made, MCR 3.971(C). An accurate plea of admission is determined by "establishing support for a finding that one or more of the statutory grounds alleged in the petition are true, preferably by questioning the respondent unless the offer is to plead no contest." MCR 3.971(C)(2).

A mere inquiry of a parent regarding whether an allegation in a petition is true is inadequate. *In re SLH, AJH, & VAH*, 277 Mich App 662, 673; 747 NW2d 547 (2008); *In re CR*, 250 Mich App at 202. In this case, however, the record reflects that the trial court and attorneys for both respondent father and respondent mother were permitted to question respondent father regarding the factual basis of his plea. The trial court also took notice of the delinquency case involving respondents' minor son arising from the conduct underlying this action. In accepting respondent father's plea, and in finding support for the pleaded statutory grounds in MCL 712A.2(b)(1) and (2), the trial court considered respondent father's admission regarding his lack of involvement with the children, as demonstrated by his failure to comply with his legal obligation to provide child support, as well as the risks posed by the activities of respondents' minor son and minor daughter to their mental well-being and respondent father's failure to take action to minimize these risks.

A trial court may exercise jurisdiction of children solely on the basis of one parent's plea. *In re LE*, 278 Mich App at 17. Because respondent mother has not shown any deficiency in the factual basis of respondent father's plea for purposes of establishing jurisdiction pursuant to MCL 712A.2(b)(1) and (2), we uphold the trial court's adjudicative decision to exercise jurisdiction over the children.

Finally, we find it unnecessary to consider respondent mother's challenge to the September 10, 2009, order authorizing the removal of respondents' minor son from respondent mother's home. This Court previously dismissed respondent mother's appeal from that order as moot, because the order was superseded by the trial court's December 3, 2009, dispositional order, which is the subject of this appeal. *In re Bratcher*, unpublished order of the Court of

Appeals, entered February 1, 2010 (Docket No. 294414). Under the law of the case doctrine, we decline to revisit that decision. *Webb v Smith (After Second Remand)*, 224 Mich App 203, 209; 568 NW2d 378 (1997).[10]

We affirm.

/s/ David H. Sawyer
/s/ Richard A. Bandstra
/s/ William C. Whitbeck

[10] Although no change was made to the children's placement, we disagree with respondent mother's claim that the dispositional order incorporated the prior order. The purpose of a dispositional hearing is to "determine what measures the court will take with respect to a child properly within its jurisdiction." MCR 3.973(A). This action is taken on behalf of a child after the court determines at the adjudicative stage that there is a statutory basis for exercising jurisdiction over the child. *In re Brock*, 442 Mich at 108.