

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
September 28, 2010

In the Matter of BRAKE, Minors.

No. 297357
Newaygo Circuit Court
Family Division
LC No. 10-007700-NA

Before: MURPHY, C.J., and HOEKSTRA and STEPHENS, JJ.

PER CURIAM.

Respondent, the father of the minor children, appeals as of right the trial court's order terminating his parental rights to the minor children at the initial dispositional hearing pursuant to MCL 712A.19b(3)(h). Because the trial court failed to conduct a trial or plea proceedings to obtain jurisdiction over the minor children, we vacate the order terminating respondent's parental rights and remand for further proceedings.

Petitioner and respondent are the divorced parents of the children. They shared joint legal and physical custody of the children until respondent's arrest in October 2008. In 2009, respondent was convicted of several violent criminal offenses, including four counts of first-degree murder for which he received mandatory sentences of life imprisonment. Petitioner, the children's mother, filed a petition to terminate respondent's parental rights to protect the children from any negative effects they might encounter because of their association with respondent. Without conducting a trial or accepting a plea from respondent, the trial court determined that it had jurisdiction over the children because respondent's imprisonment "is essentially an act against the child." The court thereafter conducted a hearing and determined that termination was warranted under § 19b(3)(h).

A trial court may not terminate a respondent's parental rights at the initial dispositional hearing unless, among other requirements, "*at the trial or plea proceedings*, the trier of fact finds by a preponderance of the evidence that one or more of the grounds for assumption of jurisdiction over the child under MCL 712A.2(b) have been established." MCR 3.977(E)(2) (emphasis added); see also *In re Utrera*, 281 Mich App 1, 16-17; 761 NW2d 253 (2008). "In order to find that a child comes within the court's jurisdiction, at least one statutory ground for jurisdiction contained in MCL 712A.2(b) must be proven, *either at trial or by plea*." *In re SLH, AJH, & VAH*, 277 Mich App 662, 669; 747 NW2d 547 (2008) (emphasis added). Here, petitioner did not allege that the children were within the court's jurisdiction under § 2(b), and the trial court never conducted a trial or plea proceedings to establish jurisdiction. See MCR 3.971; MCR 3.972. Although respondent does not directly challenge this procedural defect, we

cannot overlook it. The law clearly mandates that jurisdiction be acquired through a trial or plea proceedings. Accordingly, because no trial or plea proceedings were held, the trial court never obtained jurisdiction over the minor children. *In re SLH*, 277 Mich App at 671. Consequently, the order terminating respondent's parental rights, which states that an adjudication was held and the children were found to come within the court's jurisdiction, is invalid. *Id.* We vacate the order terminating respondent's parental rights and remand for further proceedings.

Vacated and remanded for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ William B. Murphy

/s/ Joel P. Hoekstra

/s/ Cynthia Diane Stephens