

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of T. EDDINS, JR., Minor.

UNPUBLISHED  
October 26, 2010  
No. 297277  
Wayne Circuit Court  
Family Division  
LC No. 10-491858

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Before: WILDER, P.J., and SERVITTO and SHAPIRO, JJ.

PER CURIAM.

In this child protective proceeding, respondent Jackson appeals as of right from a trial court order placing the minor child in the care and custody of his father, appellee Eddins, and dismissing the petition. We affirm in part and vacate in part.

Respondent argues that the trial court erred by awarding custody of the child to Eddins without first determining whether an established custodial environment existed, see MCL 722.27(1)(c), and without considering the statutory best interest factors set forth in MCL 722.23. Respondent's argument is misplaced because this case did not involve a child custody dispute under the Child Custody Act, MCL 722.21 *et seq.* The trial court was not presented with a custody dispute between the parents, between agencies, between third persons, or between the parents and an agency or a third person. See MCL 722.25(1). Rather, the matter was submitted to the trial court as a child protective proceeding under the Juvenile Code, MCL 712A.1 *et seq.*, to determine whether the child was in need of the trial court's protection because of neglect by a parent or because the child's home was unfit. See MCL 712A.2(b)(1) and (2).

In a child protective proceeding, "[a] petition forms the basis of any preliminary action by the court. It is the initial request for judicial action . . . for the protection of the child." *In re Hatcher*, 443 Mich 426, 433-434; 505 NW2d 834 (1993). The petition may or may not request placement of the child. If the child is not removed from the home and placement is not requested, "the court may conduct a preliminary inquiry to determine the appropriate action to be taken" on the petition. MCR 3.962(A). "The inquiry consists of an informal review of the petition by the juvenile court to determine an appropriate course of action." *In re Hatcher*, 443 Mich at 434. The trial court may authorize the filing of the petition if "there is probable cause to believe that one or more of the allegations is true." MCR 3.962(B)(3). "A preliminary hearing is the formal review of the petition when the judge or referee considers authorizing the petition and placing the case on the formal calendar." *In re Hatcher*, 443 Mich at 434.

If removal of the child is requested and the child has been taken into protective custody, the preliminary hearing must be held within 24 hours. MCR 3.965(A)(1). At the hearing, the

court “shall determine if the petition should be dismissed or the matter referred to alternate services. If the court so determines, the court must release the child. Otherwise, the court must continue with the hearing.” MCR 3.965(B)(5). If the trial court continues with the hearing, it “must decide whether to authorize the filing of the petition and, if authorized, whether the child should remain in the home, be returned home, or be placed in foster care pending trial.” MCR 3.965(11). “The court may authorize the filing of the petition upon a showing of probable cause, unless waived, that one or more of the allegations in the petition are true and fall within MCL 712A.2(b).” *Id.* If the trial court authorizes the petition, it may release the child to a parent and impose any reasonable conditions deemed necessary for the child’s protection or place the child outside the home if remaining in the home is contrary to the child’s welfare. MCR 3.965(B)(12) and (C)(1) and (2).

In this case, despite a request in the petition for removal of the child from the home and entry of an order directing the child’s removal, the child remained in the home he shared with respondent and Eddins. Respondent later vacated the home. At that point, the trial court could have continued to exercise temporary jurisdiction over the child and placed him at home with Eddins, his father. MCR 3.965(B)(12)(a). The trial court purported to do this by ordering that the child remain in the home with Eddins and by granting respondent supervised visitation. At the same time, however, it ordered that the child be “placed in the care and custody” of Eddins “until further order of the court” and dismissed the petition. Apart from the fact that the trial court only had authority to determine the child’s pretrial placement rather than legal custody, if the trial court decided that it did not have or was not going to exercise jurisdiction over the child, it could not enter any order affecting the child. “When a court is without jurisdiction of the subject matter, any action with respect to such a cause, other than to dismiss it, is absolutely void.” *Todd v Dep’t of Corrections*, 232 Mich App 623, 628; 591 NW2d 375 (1998).

Because no party has challenged the trial court’s decision to dismiss the child from the child protective proceeding, we conclude that it is not necessary to disturb that portion of the trial court’s order. Further, because the effect of the dismissal was to restore the child’s home placement with Eddins, with whom the child was already residing before the petition was filed, that placement was not improper. However, to the extent that its order purported to award “custody” of the child to Eddins, the trial court erred. As the trial court observed at the hearing, a separate proceeding would be necessary to settle any disputed issue of custody. Accordingly, we vacate the trial court’s order in part to the extent that it awarded Eddins “custody” of the child. Cf. *In re Zimmerman*, 480 Mich 1143, 1144; 746 NW2d 111 (2008).

Affirmed in part and vacated in part in accordance with this opinion.

/s/ Kurtis T. Wilder  
/s/ Deborah A. Servitto  
/s/ Douglas B. Shapiro