STATE OF MICHIGAN

COURT OF APPEALS

	UNPUBLISHED July 17, 2012
In the Matter of A. GODBOLDO-HAKIM, Minor.	No. 305858 Wayne Circuit Court Family Division LC No. 11-499774
In the Matter of A. GODBOLDO-HAKIM, Minor.	No. 308040 Wayne Circuit Court Family Division LC No. 11-499774

Before: O'CONNELL, P.J., and JANSEN and RIORDAN, JJ.

PER CURIAM.

These consolidated appeals involve child protective proceedings. In Docket No. 305858, respondent mother M. Godboldo and respondent father M. Hakim appeal as of right from an August 2011 order adjudicating the involved child as coming within the court's jurisdiction pursuant to MCL 712A.2(b). Respondents' arguments on appeal challenge only the procedure by which the circuit court entered a March 2011 order to take the child into protective custody. In Docket No. 308040, petitioner, the Department of Human Services (DHS), appeals as of right from a December 12, 2011, order that terminated the circuit court's jurisdiction over the child. In Docket No. 305858, we affirm the trial court's initial exercise of jurisdiction over the child. In Docket No. 308040, we affirm the court's subsequent termination of jurisdiction.

I. DOCKET NO. 305858

Respondents theorize that procedural defects in the March 2011 order to remove the child from parental custody "preclude[d] the [c]ourt from obtaining jurisdiction" over the child protective proceedings. Whether a family court possesses subject-matter jurisdiction requires consideration of constitutional and statutory provisions, which this Court reviews de novo. *In re MU*, 264 Mich App 270, 276-277; 690 NW2d 495 (2004).

"Michigan's Constitution vests probate courts with original subject matter jurisdiction over juvenile dependents, except as otherwise provided by law. Const 1963, art 6, § 15." *In re Hatcher*, 443 Mich 426, 433; 505 NW2d 834 (1993).

> The family division of each circuit court has replaced the probate court in proceedings concerning custody of juveniles. The Juvenile Code, MCL 712A.2(b), specifically grants the family courts in this state subject-matter jurisdiction of cases concerning children under eighteen years of age if, among other factors, the child's parents or guardians are neglectful as defined in subsection 1 or have failed to provide a fit home as defined in subsection 2. . . . [*In re AMB*, 248 Mich App 144, 167; 640 NW2d 262 (2001) (citations omitted).]

With respect to when precisely a family court acquires subject-matter jurisdiction over a child, this Court in *In re AMB*, 248 Mich App at 167-168, elaborated as follows:

> In *In re Hatcher*, [443 Mich 426,] the Michigan Supreme Court interpreted a family court's subject-matter jurisdiction, holding that it "is established when the action is of a class that the court is authorized to adjudicate, and the claim stated in the complaint is not clearly frivolous." [*Id*. at 437.] Accordingly, a family court has subject-matter jurisdiction when the allegations in the petition provide probable cause to believe that it has statutory authority to act because the child's parent or guardian neglected the child, failed to provide a fit home, or committed any of the other conduct described in the statute. [*Id*. at 433-435.] Whether the allegations are later proved true is irrelevant to whether the family court has subject-matter jurisdiction. [*Id*. at 437-438.]

We conclude that, irrespective of any procedural invalidity pertaining to the March 2011 order to remove the child from her home, the circuit court possessed subject-matter jurisdiction over the child because (1) the petition and amended petition filed in this case raised allegations that respondents had educationally and medically neglected the child, MCL 712A.2(b)(1), and (2) after a lengthy probable cause hearing on April 6, 2011, a circuit court referee found probable cause that respondents had neglected the child under MCL 712A.2(b)(1). The occurrence of these events vested the circuit court with subject-matter jurisdiction over the proceedings notwithstanding any arguable defects in the March 2011 order to remove the child. *In re AMB*, 248 Mich App at 167-168.

Furthermore, we need not address the merits of respondents' challenges to the March 2011 order of removal, which at this point are moot with regard to this appeal. "Whether a case is moot is a threshold issue that a court addresses before it reaches the substantive issues of the case itself." *People v Richmond*, 486 Mich 29, 35; 782 NW2d 187 (2010), amended on another issue in 486 Mich 1041 (2010). A "moot case is one which seeks to get a judgment on a pretended controversy, when in reality there is none, . . . or a judgment upon some matter which, when rendered, for any reason, cannot have any practical legal effect upon a then existing controversy." *Id.* at 34-35 (internal quotation and citation omitted). "Accordingly, a case is moot when it presents nothing but abstract questions of law which do not rest upon existing facts or rights." *Id.* at 35 (internal quotation and citation omitted). "The principal duty of this Court is to decide actual cases and controversies. To that end, this Court does not reach moot questions or declare principles or rules of law that have no practical legal effect in the case before us unless the issue is one of public significance that is likely to recur, yet evade judicial review." *Federated Publications, Inc v City of Lansing*, 467 Mich 98, 112; 649 NW2d 383 (2002),

abrogated on other grounds in *Herald Co, Inc v Eastern Mich Univ Bd of Regents*, 475 Mich 463; 719 NW2d (2006).

Any procedural defects in the order to remove the child are moot for purposes of this appeal, given that the circuit court has terminated its jurisdiction over the child. Our consideration of the question whether the March 2011 order to remove the child contained procedural defects would have no practical legal effect in this case. *Federated Publications, Inc*, 467 Mich at 112. No indication exists that this issue will likely recur yet evade judicial review. *Id*. Respondents seem to suggest that absent an expungement, this case will continue to affect them in a collateral manner. However, apart from this conclusory declaration, respondents offer on appeal no explanation of why they are entitled to the expungement of DHS central registry records concerning this case. We therefore decline to address respondents' argument. See *State Treasurer v Sprague*, 284 Mich App 235, 243; 772 NW2d 452 (2009) (an appellant may not merely "announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate . . . his arguments, and then search for authority either to sustain or reject his position") (internal quotation and citation omitted).

II. DOCKET NO. 308040

A. EDUCATIONAL NEGLECT

Petitioner first maintains that the circuit court erred in dismissing its jurisdiction over the child on the issue of educational neglect, in part because the court failed to recognize that educational neglect is a basis for jurisdiction under MCL 712A.2(b)(1). The circuit court's decision whether circumstances exist to justify maintaining jurisdiction over a child under MCL 712A.2(b) embodies factual determinations, which we review for clear error. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004); *In re SR*, 229 Mich App 310, 314; 581 NW2d 291 (1998). "A finding is clearly erroneous if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989) (internal quotation and citation omitted).

Although petitioner argues that the circuit court misstated that educational neglect is not a basis for jurisdiction under MCL 712A.2(b), our review of the circuit court's remarks at the dispositional review hearing, taken as a whole, plainly reflect only that the court opted against continuing jurisdiction on the basis of educational neglect under the circumstances of this case. Notably, the court concluded its findings with the statement, "[S]o there may be some more evaluating that needs to be done for [the child] regarding her education plan but I don't believe it's something that this Court needs to continue to supervise and on that basis today the Court terminates wardship." In any event, any mischaracterization by the circuit court of the propriety of educational neglect-based jurisdiction did not affect the outcome of the proceedings because there was no clear error in the court's determination regarding educational neglect.

With respect to the December 2011 psychoeducational report prepared by school psychologist K. Johnson Carter, an employee of GPS Educational Services, the report explains at the outset that it intended "to determine [the home-schooled child's] current cognitive and academic abilities for educational programming and services." The report identified the five tests that Carter attempted to administer: the "Woodcock[-]Johnson Test of Cognitive Abilities

Third Edition," the "Woodcock-Johnson III, Tests of Achievement," the "Adaptive Behavior Assessment System Second Edition Parent Report Form Ages 5-21," the "Behavior Assessment System for Children, Second Edition," and the "Bender-Gestalt Test of Visual Motor Ability." The report then recounted detailed observations of the child's behavior and her test results before offering the following summary and recommendations:

> [The child] is a thirteen-year-eleven-month-old . . . female student who is currently homeschooled by her parent in Detroit, Michigan. Reportedly, [the child] has sustained a severe and adverse reaction to medication which led to her deteriorated cognitive and academic achievement abilities. At the request of her district [sic] court in Detroit, Michigan she was referred to GPS Educational Services to assess her current cognitive and academic abilities to assist in educational programming and services. *Based on evaluation results, clinical impression, parent interviews, adaptive ratings, [the child]'s ability appears to be within the Cognitive Impaired range of functioning per rule 340.1705. [The child]'s mental age and significantly limited intellectual functioning should be kept in mind when developing educational interventions and/or plans. For optimal effectiveness, interventions/programming should be geared to the level of a child in the first semester of the Kindergarten. To continue to assist [the child] and build upon deficit areas (weaknesses), [respondent mother] is encourage [sic] to structure support and facilitation through the following avenues: Pre-Vocational Skills, Early Communication Skills, Augmentative Communication, Reading and Math Readiness Skills, Daily Living Skills, Leasure [sic] and Recreation, Fine Motor and Gross Motor Skills. Other objectives should focus on the development of Daily Living Skills, community Survival skills and Adaptive Functioning Skills. [The child] should gradually be given more responsibility, but only as she is able. When appropriate, adult assistance for these activities can be gradually faded out. Optimal progress is contingent upon consistent home follow through of educational interventions (daily reading, basic math, etc).* [Emphasis added.]

We conclude that the circuit court did not commit clear error in finding that the child currently faced no educational neglect, in light of (1) the clearly stated educational objectives in the psychoeducational report; (2) trial testimony by respondent mother and her sister, Penelope Godboldo-Brooks, that respondent mother home schooled the child during the three most recent school years; (3) Godboldo-Brooks's testimony that she had taught college dance courses, possessed a certification from Wayne State University to teach children between kindergarten and eighth grade educational levels, and supervised respondent mother's good education of the child; and (4) Godboldo-Brooks's additional testimony that she and respondent mother attended annual educational seminars in Lansing and ordered new course materials each year. Concerning respondent father, respondents' testimony reflected that he visited the child several times a week, often helped her with school work, and spoke regularly to respondent mother about the child's education, which he felt comfortable leaving in respondent mother's control. Godboldo-Brooks also testified that respondent father frequently visited the child, shared a loving bond with the child, and behaved like a "very well informed," "very involved," and "very supportive" father. Accordingly, we find no clear error in the circuit court's determination that educational neglect was no longer a continuing concern.

B. REQUEST FOR AN ADJOURNMENT

Petitioner next argues that the circuit court improperly denied its request for an adjournment of the December 2011 dispositional review hearing. "Generally, this Court reviews a ruling on a motion for a continuance for an abuse of discretion." *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). To the extent that "[t]his issue also involves the interpretation of a court rule," this Court considers de novo this question of law. *Id*. at 9.

MCR 3.923(G) provides that "[a]djournments of trials or hearings in child protective proceedings should be granted *only* (1) for good cause, (2) after taking into consideration the best interests of the child, and (3) for as short a period of time as necessary." (Emphasis added.) "Good cause" means "a legally sufficient or substantial reason." *In re Utrera*, 281 Mich App at 11 (internal quotation omitted). For purposes of this analysis, we will assume that petitioner's request for an adjournment to review and respond to the psychoeducational report and to subpoena the report's author and the child's treating doctor constituted legally sufficient or substantial reasons.

However, petitioner provided no basis for the second adjournment element, i.e., the best interest of the child. When petitioner requested the adjournment, respondent father's counsel responded by stating, "I think to prolong this hearing any longer is agony to the family," a sentiment in which respondent mother's attorney concurred. Absent some indication by petitioner that an adjournment would have been in the child's best interest, we cannot characterize the circuit court's denial of an adjournment as an abuse of discretion. MCR 3.923(G)(2); see *In re Utrera*, 281 Mich App at 8. Although the circuit court did not explain the basis for its rejection of petitioner's adjournment request, but merely declared that "we will proceed with the hearing," the court reached a correct result when it denied the adjournment request. *Spohn v Van Dyke Pub Sch*, ___ Mich App ___; ___ NW2d ___ (Docket No. 301196, issued May 8, 2012), slip op at 5 ("the Court will not reverse a trial court's order if it attained the correct result, albeit for the wrong reason").

C. MEDICAL NEGLECT

Lastly, petitioner contends that the circuit court erred in dismissing its jurisdiction on the issue of medical neglect. We again review for clear error the circuit court's factual determinations. *In re BZ*, 264 Mich App at 295; *In re SR*, 229 Mich App at 314.

Dr. Margaret Betts, the child's treating doctor, authored a one-page, December 2011 summary of the child's medical condition. The summary opened with the declaration that the child "has been seen on several occasions by the respected consultants and has made marked improvement since May, 2011." Under the heading "Diagnosis," Betts wrote "Adjustment Disorder with mixed emotions and conduct," "Post Traumatic Stress Syndrome," and "Healthy Adolescent Female." For "Prognosis," Betts stated, "Fair with close monitoring and supportive care." Under the heading "Treatment Plan," Betts listed "[n]utritional supplements," "[d]ietary purging," "[o]ngoing individual therapy," "[t]reatment as needed at the University of Michigan Depression Center," "[m]edical evaluations every three months and as needed," and "[r]eferrals and consultations as necessary." Betts concluded, "Mainstream education is not recommended at

this time. However, as her condition continues to improve, additional homeschooling subjects will be added."

We detect no clear error in the circuit court's assessment that the child faced no current risk of medical neglect, in light of (1) the treatment summary reflecting that respondents were seriously pursuing their obligations to provide the child medical care; (2) the observations of record from a Clinic for Child Study evaluation of the child in September 2011 regarding her bonds with respondents, the study author's lack of "any concerns regarding [the child's] safety," and the study author's opinion that the child "is relaxed, calm, appears happy and . . . well cared for"; and (3) the guardian ad litem's reports of very significant improvements in the child's general condition and interaction with him at the time of the dispositional hearing and, even more so, the dispositional review hearing, which reports the circuit court specifically mentioned when finding no ongoing risk of medical neglect.

Affirmed.

/s/ Peter D. O'Connell
/s/ Kathleen Jansen
/s/ Michael J. Riordan