# STATE OF MICHIGAN

# COURT OF APPEALS

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NORTHPOINTE BEHAVIORAL HEALTH CARE SYSTEMS,

Plaintiff-Appellee,

v

MENOMINEE COUNTY PROBATE JUDGE,

Defendant-Appellant,

and

MICHIGAN DEPARTMENT OF SOCIAL SERVICES and MENOMINEE COUNTY DEPARTMENT OF SOCIAL SERVICES,

Defendants-Appellees.

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UNPUBLISHED
June 26, 1998

No. 197105
Ingham Circuit Court
LC No. 96-082439 CL

Before: Young, Jr., P.J., and Markman and Smolenski, JJ.

PER CURIAM.

Defendant Menominee County Probate Judge appeals as of right a declaratory judgment issued by the Ingham Circuit Court. We reverse.

This case arises out of a Menominee County delinquency proceeding involving a juvenile who admitted to perpetrating second-degree criminal sexual conduct, MCL 750.520c; MSA 28.788(3). On July 5, 1995, the Menominee County Probate Court (hereinafter probate court) entered an order of disposition that committed the juvenile to the Michigan Department of Social Service (MDSS) under the Youth Rehabilitation Services Act (YRSA), MCL 803.301 *et seq.*; MSA 25.399(5) *et seq*. The order also provided that "[o]nce treatment commences [plaintiff Northpointe Behavioral Healthcare Systems][1] to make arrangements for placement and payment as child has mental illness." On August 15, 1995, defendant entered a second amended order of disposition containing the same provisions.

Northpointe has never sought to directly challenge the merits of the payment orders. However, Northpointe has resisted paying for the juvenile's treatment on the ground that such payment is the statutory obligation of the MDSS and the probate court pursuant to § 305 of the YRSA. See MCL 803.305; MSA 25.399(55). Although certain issues involving the probate court and Northpointe's executive director were eventually resolved by this Court,[2] the merits of Northpointe's payment dispute have not been resolved. To this end, Northpointe ultimately filed the instant complaint for declaratory relief in Ingham Circuit Court against MDSS, the Menominee County Department of Social Service (MCDSS), and defendant. In May, 1996, the circuit court entered a declaratory judgment (1) that dismissed the MDSS and MCDSS from this action on the ground that no controversy existed between Northpointe and these parties, and; (2) that declared that defendant "lacks the authority to require [Northpointe] to pay for the mental health treatment of youths committed to the Department of Social Services under the [YRSA] . . . ." In July, 1996, the circuit court denied defendant's motion to set aside the declaratory judgment.

On appeal, defendant first argues that the declaratory judgment constituted an impermissible collateral attack on the probate court orders.

An order entered by a court without jurisdiction of the parties or the subject matter is absolutely void. *In re Hatcher*, 443 Mich 426, 438-439; 505 NW2d 834 (1993); *Heikkinen v Hovinen*, 7 Mich App 541, 545; 152 NW2d 163 (1967). Such an order need not be obeyed and may be challenged collaterally as well as directly. *In The Matter Of Hague*, 412 Mich 532, 544; 315 NW2d 524 (1982); *Heikkinen, supra*. Conversely, an order entered by a court with jurisdiction of the parties and subject matter is not void. *Hatcher, supra* at 439. Such an order is valid and binding for all purposes and may not be collaterally attacked. *Id*.

We first consider the issue whether the probate court acquired personal jurisdiction over Northpointe in the delinquency proceedings. Defendant argues that the probate court had personal jurisdiction over Northpointe by virtue of § 2(a)(1) of the juvenile code,[3] which specifies the probate court's subject matter jurisdiction, § 6 of the juvenile code,[4] which provides for incidental jurisdiction over adults in juvenile proceedings, and § 498d(2)(c) of the mental health code,[5] which defendant contends authorizes the probate court to order the juvenile's hospitalization.[6] On the other hand, while not specifically contending that the probate court did not have personal jurisdiction over it, Northpointe has made much of the fact that it was never served with a summons and complaint in the delinquency proceedings and, therefore, allegedly was never made a "party" to those proceedings.

A court may acquire personal jurisdiction over a party in a variety of ways, including proper issuance and service of process, a waiver of service of process, or a voluntary appearance on the merits and submission to the court's jurisdiction. *Rauch v Day & Night Mfg Corp*, 576 F2d 697, 700 (CA 6, 1978); 20 Am Jur 2d, Courts, § 70, p 384. As explained in *Penny v ABA Pharmaceutical Co (On Remand)*, 203 Mich App 178, 181-182; 511 NW2d 896 (1993) (citations omitted):

> Generally, any action on the part of a defendant that recognizes the pending proceedings, with the exception of objecting to the court's jurisdiction, will constitute a general appearance. Only two requirements must be met to

> render an act adequate to support the inference that there is an appearance: (1) knowledge of the pending proceedings and (2) an intent to appear. . . . A party that submits to the court's jurisdiction may not be dismissed for not having received service of process.

Moreover, in *Probate Judge v Abbott*, 50 Mich 278, 282; 15 NW 454 (1883), our Supreme Court, in an opinion written by Justice Cooley, held that "[c]onsent to an order . . . stands in the place of process to bring the party before the court . . . ."

In this case, Northpointe alleged in its complaint that on the same day that the probate court issued the July 5, 1995, dispositional order the probate court "also issued an order directing that [the juvenile] proceed to an intake interview with Northpointe for the purpose of determining the appropriate placement," and that "Northpointe generated the court ordered intake report on July 19, 1995." Northpointe also alleged in its complaint that "[r]epresentatives of the Department of Social Services, Northpointe and [defendant] have had informal discussions regarding the payment obligations of the respective parties."

It would appear that these allegations are sufficient to support an inference of a general appearance. *Penny, supra*. In any event, by conducting the court-ordered intake report, Northpointe effectively consented to this order, which stood in the place of process to bring Northpointe before the probate court. *Probate Judge, supra*. We conclude that the probate court acquired personal jurisdiction over Northpointe at least with respect to the August 15, 1995, second amended dispositional order.[7]

We next consider whether the probate court had subject matter jurisdiction in the delinquency proceedings. Defendant contends that the probate court had subject matter jurisdiction because the delinquency proceeding was an action of the class that the probate court is authorized to adjudicate and the complaint stated a claim that was not frivolous. Northpointe contends that the probate court was without subject matter jurisdiction because the court does not have "the substantive authority to reallocate the [YRSA's] allocation of funding responsibility . . . ."

> Jurisdiction over the subject matter
>
> "is the right of the court to exercise judicial power over that class of cases; not the particular case before it, but rather the abstract power to try a case of the kind or character of the one pending; and not whether the particular case is one that presents a cause of action, or under the particular facts is triable, before the court in which it is pending, because of some inherent facts which exist and may be developed during the trial" [*Bowie v Arder*, 441 Mich 23, 39; 490 NW2d 568 (1992) (quoting *Joy v Two-Bit Corp*, 287 Mich 244, 253-254; 283 NW 45 [1938]).]
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> As further explained in *Hatcher, supra* at 439:

> "Want of jurisdiction must be distinguished from error in the exercise of jurisdiction. Where jurisdiction has once attached, mere errors or irregularities in the proceedings, however grave, although they may render the judgment erroneous and subject to be set aside in a proper proceeding for that purpose, will not render the judgment void, and until set aside it is valid and binding for all purposes and cannot be collaterally attacked. Error in the determination of questions of law or fact, upon which the court's jurisdiction in the particular case depends, the court having general jurisdiction of the cause and the person, is error in the exercise of jurisdiction. Jurisdiction to make a determination is not dependent upon the correctness of the determination made." 33 CJ, pp 1078, 1079.

"[T]he probate court's subject matter jurisdiction 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." *Hatcher, supra* at 437.

At the time of the delinquency proceeding in this case, the juvenile was thirteen years old. The petition alleged that the juvenile had violated Michigan law. During this time period, the relevant portion of § 2 of the juvenile code provided as follows:

> The juvenile division of the probate court has the following authority and jurisdiction:
>
> (a) Exclusive original jurisdiction superior to and regardless of the jurisdiction of any other court in proceedings concerning a child under 17 years of age who is found within the county if 1 or more of the following applies:
>
> (1) Except as otherwise provides in the subparagraph, the child has violated any municipal ordinance or law of the state or of the United States. [MCL 712A.2(a)(1); MSA 27.3178(598.2)(a)(1).]

We thus agree with defendant that the probate court had subject matter jurisdiction during the pendency of the delinquency proceedings because the action was of a class that the probate court was authorized to adjudicate and the claim stated in the petition was not clearly frivolous. *Hatcher, supra*.

However, this Court has held that commitment of a juvenile to a public agency, such as the MDSS, pursuant to § 18(1)(e) of the juvenile code,[8] as occurred in the underlying delinquency proceedings involved in this case, "irrevocably divests the probate court of jurisdiction over the child." *In re Moss*, 180 Mich App 184, 187; 446 NW2d 603 (1989) (citing *In re Jackson*, 163 Mich App 105, 107; 414 NW2d 156 [1987]). The reasoning behind this holding is that although § 5 of the juvenile code[9] specifically provides that "[c]ommitments to a private or incorporated institution or agency shall not divest the juvenile division of the probate court of jurisdiction unless the child is adopted in a manner provided by law," there is no similar provision concerning commitments to a public agency. *Jackson, supra*. However, after *Jackson* was decided in 1987, the Legislature added § 18c and §

18d of the juvenile code.[10] See 1988 PA 54. At the time the probate court committed the juvenile to the MDSS under the YRSA in the delinquency proceedings, § 18c provided in relevant part as follows:

> (1) If a child is committed under section 18(1)(e) of this chapter for an offense which, if committed by an adult, would be punishable by imprisonment for more than 1 year or an offense expressly designated by law to be a felony, the court shall retain jurisdiction over the child.
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> (2) If a child is committed under section 18(1)(e) of this chapter and the child was adjudicated as being in the court's jurisdiction under section 2(a) of this chapter, the court shall retain jurisdiction over the child. This subsection shall take effect June 1, 1991. [MCL 712A.18c(1) and (2); MSA 27.3178(598.18c)(1) and (2).]

Section 18d provided in relevant part as follow:

> (1) If a child is committed under section 18(1)(e) of this chapter for an offense that, if committed by an adult, would be a violation or attempted violation of . . . [MCL 750.520c; MSA 28.788(3)] . . ., the court shall conduct a review hearing to determine whether the child has been rehabilitated and whether the child presents a serious risk to public safety. If the court determines that the child has not been rehabilitated or that the child presents a serious risk to public safety, jurisdiction over the child shall be continued. [MCL 712A.18d(1); MSA 27.3178(598.18d)(1).]

The 1989 decision in *Moss* did not cite or discuss § 18c or § 18d of the juvenile code. However, because both *Moss* and *Jackson* were decided before November 1, 1990, we are not required to follow either decision pursuant to MCR 7.215(H). In the delinquency proceeding underlying this case, the juvenile was committed to the MDSS under § 18(1)(e) of the juvenile code and was adjudicated as being within the probate court's subject matter jurisdiction under § 2(a) of the juvenile code. Thus, under § 18c of the juvenile code, the probate court retained subject matter jurisdiction over the juvenile even after the juvenile was committed to the MDSS under the YRSA.

In summary, we conclude that, at least with respect to the August 15, 1995, second amended dispositional order, the probate court had jurisdiction of both the subject matter and the parties involved, including Northpointe. This order was thus valid and binding for all purposes and cannot be collaterally attacked. Assuming only for the purpose of this analysis that the probate court erred in ordering Northpointe to pay for the juvenile's treatment,[11] this error was an error in the probate court's exercise of its jurisdiction. Although the error may render the order erroneous, it does not render the order void. Northpointe is required to follow the order until the order is set aside in a proper proceeding. This case constitutes an improper collateral attack on a valid and binding probate court order. The circuit court erred in granting a declaratory judgment with respect to defendant and likewise erred in denying defendant's motion to set aside this portion of the declaratory judgment. Accordingly, we reverse the declaratory judgment with respect to defendant and the order denying defendant's motion to set aside the declaratory judgment. In light of this disposition, we decline to consider defendant's remaining issues on appeal.

Reversed.

/s/ Robert P. Young, Jr.
/s/ Stephen J. Markman
/s/ Michael R. Smolenski

[1] Northpointe was created under the Urban Cooperation Act, MCL 124.501 *et seq*.; MSA 5.4088(1) *et seq*., and functions as the community mental health department for the counties of Menominee, Dickinson and Iron.

[2] *In re Northpointe Behavioral Healthcare Systems and James Gaynor*, unpublished order of the Court of Appeals, entered March 27, 1996 (Docket No. 193178).

[3] MCL 712A.2(a)(1); MSA 27.3178(598.2)(a)(1).

[4] MCL 712A.6; MSA 27.3178(598.6).

[5] MCL 330.1498d(2)(c); MSA 14.800(498d)(2)(c).

[6] We express no opinion on whether defendant has properly construed § 498(2)(c) of the mental health code.

[7] To the extent that Northpointe has contended that this Court's March 27, 1996, order in docket number 193178, see note 2, *supra*, indicated that Northpointe was not a "party" to the delinquency proceedings, we note that this Court's order concerned only Northpointe's executive director, not Northpointe.

[8] MCL 712A.18(1)(e); MSA 27.3178(598.18)(1)(e).

[9] MCL 712A.5; MSA 27.3178(598.5).

[10] MCL 712A.18c; MSA 27.3178(598.18c) and MCL 712A.18d; MSA 27.3178(598.18d).

[11] We express no opinion on the merits of the payment dispute.