

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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UNPUBLISHED

March 10, 2011

In the Matter of C. MARTIN, Minor.

No. 298644

Wayne Circuit Court

Family Division

LC No. 09-489941

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Before: MURPHY, C.J., AND STEPHENS AND M. J. KELLY, JJ.

PER CURIAM.

In this child protective proceeding, respondent-mother appeals as of right from the trial court's order placing the minor child with the father and terminating the wardship. We affirm.

The child was born while the parents were living together in Tennessee. Three months later, the father was incarcerated for violating probation, and the mother came to Michigan to live with her mother. Protective Services became involved twice in 2009 when respondent-mother was reported hostile and intoxicated. Respondent mother failed to obtain recommended counseling. A petition was authorized, and the child was removed from the maternal grandmother's home and placed in the home of the maternal great-grandparents. Both parents were ordered to complete parent-agency treatment plans.

By the time of the dispositional review hearing in February 2010, the father had completed his treatment plan, having received courtesy supervision from the state of Tennessee. He was in school, employed, and had successfully completed drug screens and anger management classes. Petitioner recommended that the child be placed with him, with close supervision. The court agreed with the recommendation, stating:

[T]he Court finds at this time that the father is in full compliance with his portion of the treatment plan and that at this time there would be no risk of harm to place the child in the care of the father. At this time, there would be substantial risk of harm to the child if the child was placed with the mother inasmuch as the mother has not addressed the issues that brought the child before the Court and is not in full compliance with her treatment plan.

The father has stepped forward and is ready first and, therefore, the Court is going to place the child with him with continued wardship and continued services, courtesy supervision through the State of Tennessee.

The court further ordered that the mother could have supervised visitation with the child in Tennessee.

On May 14, 2010, the trial court held a “permanency planning hearing.”<sup>1</sup> The case worker testified that the child and father had adjusted well and that everything was progressing satisfactorily in Tennessee. The case worker said, however, that the mother had made poor progress toward completing her treatment plan. Petitioner recommended that the court allow the father to retain custody of the child and dismiss the case. The court agreed, finding that while the father had completed his treatment plan, the mother was not close to doing so. Accordingly, the court placed the child with the father in Tennessee and dismissed the wardship.

On appeal, respondent-mother argues that the trial court erroneously changed the child’s established custodial environment without considering the 12 statutory factors set forth in MCL 722.23. That argument is without merit. This was not an action under the Child Custody Act (CCA), MCL 722.21 *et seq.* Rather, it was a child protective proceeding under the juvenile code. The two are distinct and separate statutory schemes. *In re AP*, 283 Mich App 574, 590-591; 770 NW2d 403 (2009). A conflict may arise if an existing custody order is contrary to an order entered by a court in a protective proceeding; however, “once a juvenile court assumes jurisdiction over a child and the child becomes a ward of the court under the juvenile code, the juvenile court’s orders supersede all previous orders, including custody orders entered by another court, even if inconsistent or contradictory.” *Id.* at 593. In such a case, once the juvenile court dismisses the case, existing custody orders resume their effect and can only be changed by proceeding through the safeguards provided for by the CCA. *Id.* at 592.

However, in the present case, no custody or divorce action had been filed between the mother and father and there were no custody orders in effect at the time the proceedings commenced. This was an action exclusively under the scope of the juvenile code. Orders like this, brought in protective proceedings, are “entered pursuant to a distinct statutory scheme that takes precedence over the CCA.” *Id.* at 594. The court is not required to *also* adhere to the protections of the CCA when no custody action ever existed.

The trial court did not clearly err in awarding custody to the father in this proceeding. The mother had not established a suitable home. In contrast, the court, properly weighing the credibility of the witnesses, determined that the father had completed the requirements of his treatment plan and that his home was suitable.

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<sup>1</sup> A permanency planning hearing is held when the child remains in foster care. MCL 712A.19a. Because the child had been placed in the home of a parent, the hearing was a progress review hearing, or another dispositional review hearing. MCR 3.974(A)(3).

Affirmed.

/s/ William B. Murphy  
/s/ Cynthia Diane Stephens  
/s/ Michael J. Kelly