

STATE OF MICHIGAN
COURT OF APPEALS

In re S L SMITH, Minor.

UNPUBLISHED
February 9, 2016

No. 327986
Tuscola Circuit Court
Family Division
LC No. 13-010584-NA

Before: CAVANAGH, P.J., and RIORDAN and GADOLA, JJ.

PER CURIAM.

Respondent-mother (mother) appeals an order of adjudication for respondent-father (father) in this termination of parental rights case. We hold that mother lacks standing to bring this appeal because she cannot show a concrete, particularized injury resulting from the trial court's action. Accordingly, we dismiss the appeal for lack of standing.

I. BACKGROUND FACTS

On September 2, 2013, father shot mother in the head in front of respondents' minor daughter during a parenting exchange. Initially, mother was hospitalized and father was incarcerated, so neither parent could care for the child. Father was subsequently charged with attempted murder, assault with intent to commit murder, and a weapons charge. After the incident, the Department of Health and Human Services (DHHS) filed a petition asking the court to take jurisdiction over the minor child and to terminate father's parental rights. On September 6, 2013, the trial court authorized the petition, concluding that it was contrary to the child's welfare to remain in the home.

On April 8, 2014, mother entered a plea to the allegations in the petition, which allowed the court to take jurisdiction over the child.¹ Specifically, mother admitted that she was the

¹ Mother entered her plea before the Michigan Supreme Court decided *In re Sanders*, 495 Mich 394; 852 NW2d 524 (2014). Before *Sanders*, pursuant to the one-parent doctrine, a trial court could establish jurisdiction over a minor child by adjudicating only one parent, after which it had authority to subject the other unadjudicated parent to its dispositional authority. *Id.* at 407-408. In *Sanders*, our Supreme Court held that the one-parent doctrine violated procedural due process,

child's biological parent, that father was the child's legal father, that father shot her in the child's presence, that she sustained injuries, and that the day after the shooting she was hospitalized and unable to care for the child. On May 9, 2014, DHHS filed an amended petition, asking the court to terminate father's rights pursuant to MCL 712A.19b(3)(j) (reasonable likelihood of harm). The trial court authorized the petition and scheduled trial to begin on July 28, 2014.

On June 2, 2014, the Michigan Supreme Court released its decision in *In re Sanders*, 495 Mich 394, 422; 852 NW2d 524 (2014), which required the trial court to adjudicate father individually before interfering with his parental rights. Accordingly, the trial court adjourned father's termination trial until it could obtain jurisdiction. Before adjudication, however, father's criminal trial occurred and a jury found him not guilty. Father claimed that the jury found him not guilty because he "prove[d] beyond a reasonable doubt that this incident was the direct result of a violent act [mother] perpetrated on him and that he acted in self-defense." Under father's description of events, he shot mother in self-defense after she tried to stab him with a knife.

Mother moved to suppress any evidence of the verdict or outcome of father's criminal trial under MRE 403. At a hearing on the motion to suppress, father made an oral motion to redact the request for termination of his parental rights from the petition based on the result of his criminal case. Father argued that, absent the criminal charges, there was "no specific . . . substantial risk of harm that has been articulated" with respect to the minor child. Mother and DHHS objected to the redaction. Mother argued that the result of father's criminal case had no bearing on the child protective proceeding because a criminal conviction requires a much higher standard of proof. Further, mother argued that the child still faced a substantial risk of harm because, even accepting father's theory of self-defense, the incident giving rise to the child protective proceeding involved father bringing a gun to a parenting exchange.

The trial court granted father's request to redact the termination portion of the petition. Following the redaction, father pleaded no contest to the allegations in the petition regarding the shooting and mother's subsequent injuries and hospitalization. The trial court accepted father's plea, found statutory grounds to take jurisdiction over the child with respect to father, and ordered DHHS to make reasonable reunification efforts. Thereafter, mother filed a motion for reconsideration, which the trial court denied because it concluded that it could authorize or redact any portion of the petition without a hearing. This appeal then followed.

II. ANALYSIS

On appeal, mother argues that the trial court failed to follow appropriate procedure before redacting DHHS's request to terminate father's parental rights at the initial disposition. As a preliminary matter, we agree that the trial court failed to follow proper procedure. A party may petition to terminate parental rights at the initial disposition. MCL 712A.19b(4). The Michigan Court Rules provide that when termination is sought at the initial disposition, the trial court "shall order termination" if (1) the petition contains a request for termination, (2) the trier of fact finds by a preponderance of the evidence that one or more of the grounds for assuming

and held that a parent must individually be adjudicated unfit before a court can interfere with his or her parental rights. *Id.* at 422.

jurisdiction under MCL 712A.2(b) have been established, (3) the court finds on the basis of clear and convincing legally admissible evidence that at least one statutory ground for termination has been proven under MCL 712A.19b(3), and (4) the court finds that termination is in the child's best interests. MCR 3.977(E)(1) through (4).

The trial court failed to follow the required procedure outlined in MCR 3.977(E) after DHHS sought to terminate father's parental rights at the initial disposition. DHHS filed an initial petition and an amended petition specifically requesting termination of father's parental rights, and the trial court authorized both petitions. However, the trial court then failed to follow the remaining three procedural steps of MCR 3.977(E), i.e., determining (1) whether there was sufficient evidence to adjudicate father, (2) whether clear and convincing legally admissible evidence established a statutory ground for termination under MCL 712A.19b(3), and (3) whether termination was in the child's best interests, before granting father's motion to redact DHHS's request to terminate his parental rights at the initial disposition. There is no court rule or other authority that would allow the trial court to simply "redact" DHHS's termination request after having authorized the petition and without first following the procedures outlined in MCR 3.977(E) or obtaining permission from DHHS.

However, we decline to grant the relief mother requests because we are unconvinced that she suffered any individual, particularized injury as a result of the trial court's action, and therefore conclude that she lacks standing to bring this appeal. In order to have appellate standing, an appellant must be "aggrieved" by the lower court's decision. *Spires v Bergman*, 276 Mich App 432, 441; 741 NW2d 523 (2007); MCR 7.203(A). "An aggrieved party is not one who is merely disappointed over a certain result. Rather, to have standing on appeal, a litigant must have suffered a concrete and particularized injury, as would a party plaintiff initially invoking the court's power." *Federated Ins Co v Oakland Co Rd Comm*, 475 Mich 286, 291-292; 715 NW2d 846 (2006). An appellant must demonstrate an injury arising from the actions of the trial court, rather than the underlying facts of a case. *Id.* at 292. If a court concludes that an appellant lacks standing, the court must "recognize its lack of jurisdiction and act accordingly by staying proceedings, dismissing the action, or otherwise disposing thereof, at any stage of the proceeding." *In re Fraser's Estate*, 288 Mich 392, 394; 285 NW 1 (1939).

Mother argues that she was injured when the trial court redacted the portion of the petition seeking termination of father's parental rights because the trial court effectively denied her the opportunity to present evidence and participate in a dispositional hearing. We disagree. Mother's parental rights to the minor child were not dependent on or altered by the trial court's decision not to pursue termination of father's parental rights at the initial disposition. Moreover, DHHS, not mother, filed the petition that the trial court altered without authority or consent.² Because the trial court's decision only implicated parental rights belonging to father, we conclude that mother suffered no individual, particularized injury as a result of the trial court's

² Presumably, DHHS, as the proponent of the petition that was inappropriately altered, could assert a concrete and particularized injury resulting from the trial court's action sufficient to confer it with appellate standing in this case.

action and she therefore lacks appellate standing. See *In re Terry*, 240 Mich App 14, 21; 610 NW2d 563 (2000).

Mother further contends that the trial court's decision was injurious because it prevents her, as a custodian of the child, from filing a future petition to terminate father's parental rights under MCL 712A.19b on the basis of the shooting because such a petition would be barred by MCR 3.977(F) and the doctrine of res judicata. MCR 3.977(F) only allows a court to take action on a supplemental petition that seeks to terminate parental rights "on the basis of one or more circumstances new or different from the offense that led the court to take jurisdiction." However, MCR 3.977(H) states that if parental rights are not terminated pursuant to subrules (E) (termination at the initial disposition) or (F), the trial court "may . . . take action on a supplemental petition that seeks to terminate the parental rights of a respondent over the child on the basis of one or more grounds listed in MCL 712A.19b(3)." Accordingly, the trial court's action would not preclude consideration of the shooting under a future supplemental petition to terminate father's parental rights.

Likewise, res judicata would not prevent the filing of a future petition to terminate father's parental rights on the basis of the shooting because the doctrine only applies where (1) there was a prior decision on the merits, (2) the issue was either actually resolved or could have been resolved with reasonable diligence in a previous case, and (3) both actions were between the same parties or their privies. *Bennett v Mackinac Bridge Auth*, 289 Mich App 616, 630; 808 NW2d 471 (2010). A future petition to terminate father's parental rights is not a separate lawsuit, and the trial court did not decide the issue of whether evidence regarding the shooting was sufficient to terminate father's parental rights on the merits. Rather, the trial court merely set aside the issue for possible determination at a future date. Accordingly, mother has not demonstrated an injury sufficient to provide her with appellate standing.

Dismissed for lack of standing.

/s/ Mark J. Cavanagh
/s/ Michael J. Riordan
/s/ Michael F. Gadola