

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
October 20, 2011

In the Matter of S. R. SCHWARZ, Minor.

No. 302750
Oakland Circuit Court
Family Division
LC No. 10-773706-NA

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

PER CURIAM.

Petitioner, the guardian ad litem for the minor child under a probate court guardianship, appeals as of right from a circuit court order dismissing her petition to terminate the parental rights of respondent, the child's natural father, for lack of jurisdiction. We reverse and remand.

The child's mother is deceased. Following the mother's death, the child went to live with his maternal grandparents, who were thereafter appointed his legal guardians by the Oakland County Probate Court. Petitioner was appointed as the child's guardian ad litem. Petitioner subsequently filed a petition in the Oakland Circuit Court to terminate respondent's parental rights. The petition alleged that the court had jurisdiction under MCL 712A.2(b)(4). During trial, after testimony established that the child had been living with his grandparents in South Carolina when the petition was filed, the circuit court concluded that it did not have jurisdiction because the child was not "found within the county" as provided by § 2(b). Accordingly, the court dismissed the case. Petitioner appeals that decision.

"A trial court's determination regarding the existence of subject-matter jurisdiction is a question of law that this Court reviews de novo." *In re Martin*, 237 Mich App 253, 255; 602 NW2d 630 (1999). The trial court's decision to exercise jurisdiction is reviewed for clear error in light of the court's findings of fact. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). Statutory interpretation is a question of law that is reviewed de novo on appeal. *Van Reken v Darden, Neef & Heitsch*, 259 Mich App 454, 456; 674 NW2d 731 (2003). Matters involving the construction, interpretation, and application of court rules are also reviewed de novo on appeal as questions of law. *ISB Sales Co v Dave's Cakes*, 258 Mich App 520, 526; 672 NW2d 181 (2003); *Kernan v Homestead Dev Co*, 252 Mich App 689, 692; 653 NW2d 634 (2002).

Petitioner filed the instant petition to terminate respondent's parental rights under MCL 712A.19b(3)(e), (g), (h), and (j). The court cannot terminate parental rights under § 19b(3) unless it has jurisdiction over the child as provided by § 2(b). *In re SR*, 229 Mich App 310, 314; 581 NW2d 291 (1998). For purposes of child protective proceedings, the court has jurisdiction

over “a juvenile under 18 years of age found within the county” if certain circumstances exist, one of which is: “Whose parent has substantially failed, without good cause, to comply with a court-structured plan described in section 5207 or 5209 of the estates and protected individuals code, . . . MCL 700.5207 and 700.5209, regarding the juvenile.” MCL 712A.2(b)(4). Whether the court has subject-matter jurisdiction depends upon the nature of the allegations, not their truth or falsity. *In re AMB*, 248 Mich App 144, 168; 640 NW2d 262 (2001); *Trost v Buckstop Lure Co, Inc*, 249 Mich App 580, 587; 644 NW2d 54 (2002).

The phrase “found within the county” is not limited to the child’s physical presence within the county at the time the petition is filed. “As used in MCL 712A.2, a child is ‘found within the county’ in which the offense against the child occurred, in which the offense committed by the juvenile occurred, or in which the minor is physically present.” MCR 3.926(A). Thus, a child can be “found within [Oakland] county” for purposes of § 2(b) even if he is not physically located there if the offense against the child occurred in Oakland County as provided by MCR 3.926(A). *In re BZ*, 264 Mich App at 292. The “offense against the child” is the “act or omission by a parent . . . asserted as grounds for bringing the child within the jurisdiction of the court pursuant to the Juvenile Code.” MCR 3.903(C)(7). The offense against the child alleged in the petition was respondent’s failure to comply with a court-structured plan adopted by the Oakland County Probate Court in the guardianship proceeding. Therefore, if the Oakland County Probate Court adopted a court-structured plan described in MCL 700.5207 and MCL 700.5209, and respondent resided in Oakland County during the time he was required to comply with the court-structured plan, and respondent failed to comply with the plan without good cause, the child would be “found within the county” for purposes of § 2(b), even though he was not physically present there. Accordingly, the trial court erred in dismissing the petition based solely on the child’s absence from the county at the time the petition was filed.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ Kathleen Jansen
/s/ Peter D. O’Connell