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STATE OF MICHIGAN
IN THE SUPREME COURT

IN RE DVL, MINOR.
_____/

Supreme Court No. 166509

Court of Appeals No. 362365

Wayne Circuit Court No. 21-000658

DEPARTMENT OF HEALTH AND HUMAN SERVICES' BRIEF IN OPPOSITION TO KATHLEEN LANGE'S APPLICATION FOR LEAVE TO APPEAL

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COUNTER-STATEMENT OF JURISDICTION

The mother, Kathleen Lange, seeks leave to appeal to the Court of Appeals' unpublished, per curiam November 2, 2023 Majority Opinion (Appendix A), which reversed the trial court's order denying jurisdiction. The majority concluded that the trial court should have asserted jurisdiction because the mother was unwilling to manage or care for DVL's mental health needs. The dissent (Appendix B) concluded there was no reversible error even though Lange left DVL at a hospital. Lange's application fails to meet any of the standards for granting leave to appeal as set out in MCR 7.305(B); this issue is rather a matter appropriate for the Legislature to address. Accordingly, the Department of Health and Human Services respectfully requests that this Court summarily deny Lange's application for leave to appeal.

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COUNTER-STATEMENT OF QUESTION PRESENTED

1. Was there a preponderance of the evidence to take jurisdiction over DVL when his mother refused to pick him up from the hospital and refused to have him in her home?

Appellant's answer:	Yes.
Appellee's answer:	No.
Trial court's answer:	No.
Court of Appeals' answer:	Yes.

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STATUTE INVOLVED

712A.2 Authority and jurisdiction of court.

Sec. 2. The court has the following authority and jurisdiction:

(a) Exclusive original jurisdiction superior to and regardless of the jurisdiction of another court in proceedings concerning a juvenile under 18 years of age who is found within the county if 1 or more of the following apply:

***

(b) Jurisdiction in proceedings concerning a juvenile under 18 years of age found within the county:

(1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. As used in this sub-subdivision:

***

(B) "Neglect" means that term as defined in section 2 of the child abuse and neglect prevention act, 1982 PA 250, MCL 722.602.

(2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in. As used in this sub-subdivision, "neglect" means that term as defined in section 2 of the child abuse and neglect prevention act, 1982 PA 250, MCL 722.602.

(3) If the juvenile is dependent and is in danger of substantial physical or psychological harm. The juvenile may be found to be dependent when any of the following occurs:

(A) The juvenile is homeless or not domiciled with a parent or other legally responsible person.

(B) The juvenile has repeatedly run away from home and is beyond the control of a parent or other legally responsible person.

(C) The juvenile is alleged to have committed a commercial sexual activity as that term is defined in section 462a of the Michigan penal code, 1931 PA 328, MCL 750.462a or a delinquent act that is the result of force, fraud, coercion, or manipulation exercised by a parent or other adult.

(D) The juvenile's custodial parent or legally responsible person has died or has become permanently incapacitated and no appropriate parent or legally responsible person is willing and able to provide care for the juvenile.

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INTRODUCTION

DVL's mother, Kathleen Lange, refused to pick him up from the hospital when he was medically ready for discharge in July 2021 when he was 13 years old because she did not believe that she could keep him and the other children in the home safe from him. Prior to filing its petition, the Department of Health and Human Services gave Lange options to keep DVL in the home and get him services to address his mental health issues. Lange refused. She continued to refuse having him in her home while the petition was pending and at the trial in mid-2022.

Despite Lange's refusal and the clear language of the jurisdictional statute in the Juvenile Code, the trial court did not assert jurisdiction. DHHS filed a claim of appeal in the Michigan Court of Appeals and a majority found that the trial court clearly erred, reversed the trial court's decision, and remanded to the trial court. Lange filed an application with this Court.

This was the correct outcome. In the end, regardless of whether Lange's conduct was blameworthy or otherwise reflected poor parenting, there was no place to house DVL after Lange refused to take him home. For that reason, after the trial court refused to grant jurisdiction in 2022, the Department sought a *second* petition for jurisdiction and during the pendency of that petition, DVL was placed in a residential home. The Department must have jurisdiction to take the appropriate steps to protect DVL's welfare in this circumstance.

Lange's application fails to meet any of the standards for granting leave to appeal as set out in MCR 7.305(B). Accordingly, the DHHS requests that this Court summarily deny Lange's application for leave to appeal.

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COUNTER-STATEMENT OF FACTS AND PROCEEDINGS

DHHS filed a petition seeking the trial court's jurisdiction over all three of Kathleen Lange's children when she refused to pick up her middle son, DVL, from the hospital. (7/22/21 DHHS Pet; 5/4/22 Tr. p 22.)

Lange has three children. They are JJL (age 17), DVL (age 16), and CRL (age 10).[1] Lange adopted DVL when he was five years old. (5/4/22 Tr. p 15.) Lange and her now former wife were married when DVL's adoption was final, but they could not both adopt him because same sex marriage was not yet legal; Lange is DVL's only legal parent. (*Id.* at 13.) Lange and her former wife adopted JJL and CRL together and they share custody of those children. (*Id.* at 14.)

DVL's mental health

DVL has been diagnosed with reactive attachment disorder (RAD), oppositional defiant disorder (ODD), post-traumatic stress disorder (PTSD), and attention deficit hyperactivity disorder (ADHD). (*Id.* at 15–16.) Lange was aware of DVL's mental health diagnoses and needs when she adopted him. (*Id.* at 15.) In late 2020, Lange decided to send DVL to a year-long program in Montana to address his mental health needs. (*Id.*) Deante was terminated from the program after six months because of his behavior. (*Id.* at 16.) He returned to Lange's home in April 2021, and she took him to St. John Hospital on June 4, 2021, for a psychiatric admission. (*Id.* at 19, 21.

[1] The children were 15, 13, and 8 years old when DHHS filed its petition in 2021.

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Lange refusal to take DVL home

When medical personnel at St. John Hospital determined DVL was medically ready for discharge in July 2021, Lange refused to pick up DVL. (*Id.* at 22.) DHHS gave Lange options to have DVL in an outpatient program, but Lange refused. (*Id.*) Between July 2021 and the trial in May 2022, Lange did not make any effort to have DVL return to her home. (*Id.* at 23.) Lange made clear she did not want him in her home. (*Id.*)

The trial court's findings

The trial court denied jurisdiction and said Lange's efforts to get DVL help were sufficient. (6/16/22 Tr. pp 18–20; 7/19/22 Order of Adjudication.)

The Department files a second petition

Because the court dismissed DHHS' 2021 petition in June 2022 and Lange still refused to get DVL from placement, DHHS filed a second petition in July 2022. (8/2022 DHHS Am Pet.) The petition alleged that DVL still suffered from the same diagnoses, that Lange still refused to bring him home, and DVL had nowhere to go. (*Id.*)

The Court of Appeals' opinion

DHHS filed a claim as of right in the Court of Appeals on July 29, 2022, and filed its brief on January 3, 2023. The Court of Appeals released its unpublished majority and dissenting opinions on November 2, 2023. (Appendices A and B.) The majority opinion followed the analysis in *In re Hockett*, 339 Mich App 250 (2021)

and found the trial court clearly erred in not taking jurisdiction under MCL 712A.2(b). (Appendix A.) The dissenting opinion disagreed. (Appendix B.)

Lange has now filed an application for leave to appeal in this Court.

STANDARD OF REVIEW

This Court reviews "the trial court's decision to exercise jurisdiction for clear error in light of the court's findings of fact." *In re BZ,* 263 Mich App 286, 295 (2004). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. MCR 2.613(C).

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ARGUMENT

I. There was a preponderance of the evidence to take jurisdiction over DVL under MCL 712A.2(b)(1) and (2).

The purpose of child protective proceedings is the protection of the child. *In re Brock*, 442 Mich 101, 107 (1993). "Child protective proceedings are generally divided into two phases: the adjudicative and the dispositional." *Id*. at 108. The adjudicative phase determines whether the trial court may exercise jurisdiction over the child. *Id*. To establish jurisdiction, the petitioner must prove by a preponderance of the evidence that a statutory ground exists under MCL 712A.2(b). *In re SLH*, 277 Mich App 662, 669 (2008). A "preponderance of the evidence" means evidence of a proposition that when weighed against the evidence opposed to the proposition "has more convincing force and the greater probability of truth." *People v Cross*, 281 Mich App 737, 740 (2008).

MCL 712A.2(b)(1) says a court has jurisdiction over a child "[w]hose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects *or refuses* to provide proper or necessary support, education, medical, surgical, or *other care necessary* for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being." (Emphasis added.) Subsection (b)(2) allows a court jurisdiction over a child when a parent's "home or environment, by reason of neglect, is an unfit place" for the child to live.

Contrary to Lange's argument that "everyone" agreed that DVL could not return to Lange's home, see Lange's Br, pp 3, 18, 22, DHHS filed a petition seeking the trial court's jurisdiction because Lange refused to provide proper or necessary

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support, other care necessary for DVL's health, when he is subject to a substantial risk of harm to his mental well-being and because Lange's home was unfit for DVL. Specifically, Lange refused to pick up DVL when he was medically ready for discharge in July 2021 because *she* decided DVL would not be safe in her home. (5/4/22 Tr. p 22.) Lange then refused to enroll him in an outpatient program even though DHHS was ready to facilitate those services. (*Id.*) Between July 2021, when DHHS filed its petition, and the trial in May 2022, Lange did not make any effort to have DVL return to her home. (*Id.* at 23.) And Lange made clear she did not want him in her home. (*Id.*).

Lange's behavior met the requirements in MCL 712A.2(b)(1) and (2) for the court to take jurisdiction.

A. DVL's mental health needs mirror those of the child in *In re Hockett*.

The Court of Appeals considered facts similar to DVL's when it decided *In re Hockett* in 2021. In late 2019, DHHS sought a trial court's jurisdiction because NRH's mother refused to get the child from the hospital. *In re Hockett*, 339 Mich App at 252. Like DVL, NRH's mother claimed his mental health needs were so great that he needed additional hospitalization. *Id.* The trial court heard testimony about NRH's mental health history and treatments and that his mother admittedly refused to bring him home. *Id.* at 253. The trial court concluded NRH's mother was neglectful when she refused to get him from the hospital even though, like with DVL, the court recognized the mother's difficult position. *Id.* at 255. In

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determining the trial court properly took jurisdiction, the Court of Appeals noted that NRH was receiving the kind of treatment his mother wanted for him *only after* the court took jurisdiction. *Id.*

Here, the trial court heard similar testimony. DVL has been diagnosed with reactive attachment disorder (RAD), oppositional defiant disorder (ODD), PTSD, and ADHD. (5/4/22 Tr. pp 15–16.) Lange was aware of DVL's mental health diagnoses and needs when she adopted him at five years old. (*Id.* at 15.)

In late 2020, Lange sent DVL to an out-of-state year-long program to address his mental health needs; however, DVL was terminated from the program after six months because of his behavior. (*Id.* at 15–16.) He returned to Lange's home in April 2021, and she took him to St. John Hospital on June 4, 2021, for a psychiatric admission. (*Id.* at 19, 21.)

She also refused to pick up DVL when medical personnel at St. John Hospital determined DVL was medically ready for discharge in July 2021. (*Id.* at 22.) Even so, DHHS gave Lange options to have DVL in an intensive outpatient program, but Lange refused. (*Id.*) Between July 2021 and the trial in May 2022, Lange did not make any effort to have DVL return to her home. (*Id.* at 23.) Lange made clear she did not want him in her home. (*Id.*)

Unlike the trial court in *Hockett*, the trial court here did not take jurisdiction over DVL, even though Lange said multiple times she did not want him in her home, and she had made little to no effort to visit with him between July 2021 and the trial in May 2022. (*Id.*)

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B. DVL's mental health needs do not fit under MCL 712A.2(b)(3) because he is not dependent, so jurisdiction is essential to enable the Department to take the appropriate steps to protect DVL's welfare.

The court's proposal and Lange's suggestion here that DHHS file a petition under MCL 712A.2(b)(3), see Lange's Br, pp 25–26, is misplaced because DHHS cannot legally file a "dependency" petition with these circumstances. The allegations that brought DVL to DHHS' attention do not fit under any provision of that statute. DVL is not homeless; he has a home, but Lange has refused to allow him there. See MCL 712A.2(b)(3)(A). DVL has not repeatedly run away from home and is not beyond the control of his parent. See MCL 712A.2(b)(3)(B). DVL has not committed a commercial sexual activity, i.e., human trafficking. See MCL 712A.2(b)(3)(C). And, lastly, Lange has not died and is not permanently incapacitated. See MCL 712A.2(b)(3)(D).

Simply put, Lange has refused to have DVL in her home. She refused to pick him up from a hospital when he was medically ready for discharge. Her actions fit the definition of grounds under which a court must take jurisdiction under the Juvenile Code. See MCL 712A.2(b)(1) and (2).

Since there was no place to house DVL, the Department was duty bound to seek jurisdiction. The bottom line is that Lange still does not want DVL in her home regardless of her reasons, and DHHS cannot just leave DVL without assistance and ignore his needs. If this Court determines DHHS should not have filed a petition and the trial court correctly dismissed the matter, the best DHHS can do for DVL and young people like him is to leave them at the nearest homeless

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center and hope for the best. Simply put, DHHS does not have any authority to place children without a trial court's jurisdiction, let alone secure services for them. See MCL 712A.2; MCR 3.961 (initiating child protective proceedings). See also *In re Ferranti,* 504 Mich 1, 14–15 (2019) (describing the initiation process). Without the trial court taking jurisdiction over children, even those with mental health issues, there is no place for them to receive treatment unless their parents can secure treatment privately. Indeed, even MCL 712A.2(b)(3), including (A) ("[t]he juvenile is homeless") – the "dependency" portion of the jurisdictional statute – requires that a trial court have jurisdiction before intervening on behalf of children.

The Legislature can amend MCL 712A.2(b)(3) to include a category giving DHHS the same placement authority it already possesses to place children and service them for severe mental health issues under subsections (1), (2), and (3) without categorizing the parent's actions as neglect. Lange suggests that the Department should have provided services to Lange "without court involvement," see Lange's Br, p 27, but the circumstance here is governed by MCL 712A.2(b)(3)(A), a child who is homeless. Until the Legislature amends the law, the Department is bound to follow the procedures outlined in MCL 712A.2(b).

The Court of Appeals correctly reversed the trial court.

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CONCLUSION AND RELIEF REQUESTED

DHHS asks this Court to deny Lange's application for leave to appeal.

Respectfully submitted,

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WORD COUNT STATEMENT

This **answer in opposition** contains 3,046 words.

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