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STATE OF MICHIGAN
IN THE SUPREME COURT
FROM THE COURT OF APPEALS

IN RE D V LANGE MINOR

Supreme Court Case No. 166509

Court of Appeals Case No. 362365

Wayne County Circuit Court, Juvenile Division Case No. 2021-000658-NA

_____/

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APPELLANT-MOTHER'S SUPPLEMENTAL BRIEF

ORAL ARGUMENT REQUESTED

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INTRODUCTION

In a split opinion, the Court of Appeals held that jurisdiction is proper under MCL 712A.2(b)(1) and (b)(2) when an adoptive parent of a child experiencing a mental health crisis cannot bring them home from the hospital because of the child's immense needs, in this case, reactive attachment disorder. *In re Lange*, unpublished per curiam opinion of the Court of Appeals, issued November 2, 2023 (Docket No. 362365). The respondent-mother, Ms. Lange, respectfully asks this Court to use her case as an opportunity to clarify that jurisdiction is improper under Subsections (b)(1) and (b)(2) when a parent, through no fault of their own, "is unable to manage their child's mental health crisis" despite their best efforts. *In re Holbrook*, ___ Mich ___; 997 NW2d 28 (2023) (CAVANAGH, J., concurring), p 1.

Rather, Subsection (b)(3)(A) provides an appropriate basis for jurisdiction when a child is rendered temporarily "homeless" because the child's mental health crisis transforms their home into an environment that is unsafe for the child due to their needs. MCL 712A.2(b)(3)(A). Everyone involved in the proceedings below agreed that if Ms. Lange had brought DVL home, she could not guarantee his safety, her safety, or the safety of her other children. 14a; *Lange*, unpub op at 5 ("Here, evidence presented at adjudication established that . . . it was still unsafe for him to return home."). Therefore, he was "dependent" and "in danger of substantial physical or psychological harm." MCL 712A.2(b)(3)(A).

Ordinarily, when a court takes jurisdiction, it "divests the parent of her constitutional right to parent her child and gives the state that authority instead."

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In re Ferranti, 504 Mich 1, 16; 934 NW2d 610 (2019). But stripping a parent of their constitutional right to parent should only be done when a parent is found to be unfit. See *In re Sanders*, 495 Mich 394; 852 NW2d 524 (2014). Consequently, since under Subsection (b)(3)(A), there is no finding of parental unfitness, the parent's constitutional right to direct the custody, care, and control of their child must remain intact during the course of the court's exercise of jurisdiction. *Id*.

In reaching its clearly erroneous decision finding jurisdiction under Subsections (b)(1) and (b)(2), the Court of Appeals majority, much like the Court of Appeals in *Holbrook*, relied on *In re Hockett*. *In re Hockett*, 339 Mich App 250; 981 NW2d 534 (2021); *In re Holbrook*, unpublished per curiam opinion of the Court of Appeals, issued May 19, 2022 (Docket No. 359504), p 4; *Lange*, unpub op at 4. *Hockett* has caused confusion because of its failure to articulate the statutory basis for jurisdiction it applied and its failure to analyze the facts under the actual statutory text of Subsections (b)(1) and (b)(2). This Court should take this opportunity to overrule *Hockett*, an erroneous and perplexing decision.

This is not the first family to experience a mental health emergency in Michigan and they won't be the last. While DHHS often can and should provide families with necessary services without judicial involvement, where a child's home is unsafe due to the child's needs, and a parent cannot secure an appropriate inpatient option on their own, judicial intervention under Subsection (b)(3)(A) may be appropriate to provide oversight of DHHS's administration of services without depriving a parent of a fundamental right.

The Appellant respectfully asks this Court to reverse the Court of Appeals' decision conferring jurisdiction over DVL under MCL 712A.2(b)(1) and (b)(2) and hold that jurisdiction may be proper under MCL 712A.2(b)(3) in cases where a child is homeless because their home is rendered unsafe due to their immense mental health needs, despite the best efforts of their parent.

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STATEMENT OF THE BASIS OF JURISDICTION

This is an application for leave to appeal after a decision by the Michigan Court of Appeals.

This Court has jurisdiction pursuant to Const 1963, art 6, § 4; MCL 600.212; MCL 600.215(3); and MCR 7.303(B)(1) to review by appeal a case after a decision by the Court of Appeals.

On November 2, 2023, the Court of Appeals reversed the trial court's decision declining to exercise jurisdiction. *Lange*, unpub op. Ms. Lange filed a motion to reconsider, which was denied on December 7, 2023. She filed a timely application within 42 days of the denial of the motion to reconsider. MCR 7.305(C)(2)(c).

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STATEMENT OF QUESTIONS PRESENTED

Did the Court of Appeals err when it concluded the trial court must exercise jurisdiction over DVL under MCL 712A.2(b)(1) and (b)(2)?

Appellant says yes.
Court of Appeals majority says no.
Court of Appeals dissent says yes.
Trial court says yes.

Did the Court of Appeals reach the correct decision in *In re Hockett*, 339 Mich App 250, when it held the trial court properly took jurisdiction under MCL 712A.2(b)(1) or (b)(2) over a child whose non-neglectful parent was unable to provide proper care?

Appellant says no.
Court of Appeals majority says yes.
Court of Appeals dissent did not address this issue.
Trial court did not address this issue.

Would DVL qualify as a dependent child under MCL 712A.2(b)(3)(A) because he was homeless at the time the petition was filed and was in danger of physical and psychological harm?

Appellant says yes.
Court of Appeals majority did not address this issue.
Court of Appeals dissent did not address this issue.
Trial court did not address this issue.

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STATEMENT OF FACTS

When the hospital abruptly discharged her son DVL without treating him, Ms. Lange was a parent placed in an impossible position. She knew that DVL's significant mental health challenges, when left untreated, threatened his life, her life, and the safety of her other two sons. While the hospital wanted him out, she knew it would be unsafe to bring him home, even with outpatient services in place. And so, she chose to do what was best for DVL—keep him in the hospital while searching for a suitable placement. That choice led to her being adjudged unfit and losing her constitutional right to parent DVL, a loss she continues to experience to this day.

Ms. Lange has worked tirelessly to care for DVL and his siblings for years.

Ms. Lange adopted DVL when he was five. 15a-16a. Ever since, she has worked hard to provide him with a safe and loving childhood. DVL suffers from serious mental health challenges—he has been diagnosed with PTSD, Reactive Attachment Disorder, Oppositional Defiance Disorder, and ADHD. 16a-17a. In recent years, Ms. Lange has had to place DVL in inpatient programs for his own safety and the safety of his family. 20a. As the trial court articulated, Ms. Lange has made "Herculean efforts to deal with the mental illness of [he]r son." 9a.

Ms. Lange also shares custody of two other adopted sons with her ex-wife Lisa. 5a. While her other sons spend most of their time with Lisa during the school year, in the summertime, they spend significant time with Ms. Lange. 5a. DVL's mental health challenges have directly impacted the safety and welfare of Ms. Lange's other sons. DVL has a history of violence toward his brothers and has

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attempted to molest one of them. 21a-22a. Ms. Lange has always had to balance the safety needs of all three of her sons.

In 2021, Ms. Lange brought her son to the hospital for his own safety and the safety of their family. Everyone agreed that DVL needed inpatient care.

In Spring 2021, DVL was asked to leave an inpatient program in Montana—that Ms. Lange had paid for—due to serious behavioral problems. 17a. When he returned to Ms. Lange's home, his behavior deteriorated. He threatened to harm himself, his family, and their pets. 2a. These threats fell into a recognizable pattern; he had previously threatened to set fire to Ms. Lange's home or kill pets with household cleaning products. 2a. As Ms. Lange explained, she took him to their local hospital, St. John's, because DVL threatened to kill himself or destroy their home. 18a.

At the hospital, Ms. Lange began working with hospital staff to find suitable inpatient psychiatric care for DVL. 3a. But the treatment team immediately ran into problems. According to DHHS worker Jacquelyne Snarski, "[T]here were no available openings at the time." 6a. And as Ms. Lange testified, there was no program willing to take DVL "because of his level of extreme behaviors." 22a. Everyone agreed that DVL needed inpatient care, it was just a matter of finding it. 23a.[1]

[1] Finding suitable inpatient care for kids in Michigan is no easy task. The number of inpatient beds available for kids and teens in the state has been steadily declining. In 1993, there were 729 beds available; in 2021 that number had plummeted to only 389. Facilities are often completely full when parents need them most. The problem is made even worse by the fact that the number of kids and

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When the hospital abruptly changed its recommendation to outpatient care, Ms. Lange knew it would not be a safe option for DVL nor her family.

After weeks of searching for an inpatient program, the hospital suddenly changed course and recommended DVL go home with Ms. Lange and receive intensive outpatient mental health services. 3a. The shift came without warning or explanation; after all, DVL had not received any treatment while in the hospital, nor had his condition improved.[2] Ms. Lange, DVL's mother and tireless advocate for eight years, knew that bringing him home was not an option. As she testified, when it came to outpatient services, it wasn't "that I wasn't interested. It wasn't safe for him to be in my care." 19a. In fact, as the trial court found, "[N]obody is contesting that [Ms. Lange] told St. John's she couldn't take him home because it wouldn't be safe . . ." 14a.

DHHS worker Jacquelyne Snarski admitted what Ms. Lange knew all too well; outpatient services that kept DVL at home could not guarantee he would not

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teens facing acute mental health crises is rising. See Tianna Jenkins, *A Closer Look: Inpatient Psychiatric Beds for Kids and Teens in Michigan*, Fox 47 News (March 23, 2021) < https://www.fox47news.com/news/local-news/a-closer-look-inpatient-psychiatric-beds-for-kids-and-teens-in-michigan-lacking > (accessed December 16, 2023); Robin Erb, *As Child Mental Health Rates Rise, Michigan Sharply Cuts Residential Beds*, Bridge Michigan (June 15, 2023) < https://www.bridgemi.com/michigan-health-watch/child-mental-health-rates-rise-michigan-sharply-cuts-residential-beds > (accessed December 16, 2023).

[2] The circumstances surrounding the sudden shift from an inpatient to outpatient recommendation make little sense, as nothing meaningfully changed about DVL's condition. The Court of Appeals majority put it well. The majority wondered "[h]ow in the course of one day DVL could go from being nondischargeable to dischargeable from the hospital without receiving treatment casts doubt on whether the hospital chose to wash its hands of this troubled youth rather than keep him in a holding pattern while DHHS tried but failed to find a suitable placement for him . . ." *Lange*, unpub op at 5.

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harm his brothers. 7a. The trial court also agreed that bringing DVL home was not an option for Ms. Lange given her other sons would be home too. The court asked, "[H]ow does she do that, though? I mean, if she's got three children, she's a single parent. How does a single parent keep their three children separate?" 24a. Asking Ms. Lange to pick up DVL without an inpatient program lined up was an impossible recommendation. Therefore, Ms. Lange did not pick him up from the hospital even when he was technically cleared for discharge. 4a. At that time, DVL had nowhere to go.

Because Ms. Lange did not bring DVL home due to his immense needs, DHHS filed a petition asking the court to take jurisdiction over DVL under MCL 712A.2(b)(1) or (b)(2).

DHHS filed a petition accusing Ms. Lange of abandoning DVL and asking the court to exercise jurisdiction over DVL under either MCL 712A.2(b)(1) or MCL 712A.2(b)(2).[3] The trial court agreed to remove DVL from Ms. Lange because it was "clearly contrary to [his] welfare" to go home. 8a. Notably, after DVL was placed in DHHS custody, the agency reached the same conclusion as Ms. Lange: he needed an inpatient program. DHHS immediately placed DVL in Hanley House, an inpatient treatment program. 12a. A few months later, at a pretrial hearing, a DHHS worker checking in regularly with DVL explained that "the needs of the child could not be met in another placement at the current time," ruling out a move to a home-like setting with a foster family. 13a. In short, DHHS agreed with Ms. Lange that

[3] DHHS initially asked the court to exercise jurisdiction over DVL's brothers, but the trial court dismissed the petition with respect to Ms. Lange's other sons at the first hearing. 10a-11a.

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DVL needed inpatient care to address his serious mental health issues. But, because DVL had been removed from Ms. Lange's care, any visits with her son became a matter for the court to decide. She could not make decisions for her son, or bring him home for brief visits or holidays, without judicial permission.

Recognizing Ms. Lange was blameless, the trial court concluded statutory grounds for jurisdiction did not exist and dismissed the petition.

The trial court ultimately declined to exercise jurisdiction over DVL under MCL 712A.2(b)(1) or MCL 712A.2(b)(2). The trial court explained, "I just don't see how I can find that [Ms. Lange has] been neglectful or abusive in terms of her actions to date . . ." 26a. The court noted that Ms. Lange was caught in an impossible situation: "Nobody here has told me what the mother . . . was supposed to do except to say she was supposed to go pick him up at the hospital . . . even if it means that her other children are going to be abused . . ." 25a. The trial court also mentioned that DHHS could consider filing a dependency petition under MCL 712A.2(b)(3). It was Ms. Lange who had the last word, explaining that when she received the news that the hospital was discharging her son, it was a "no win situation." 28a. She elaborated:

> I love [my son] with all my heart. I've done everything I can and the only thing I know is that he's not safe to have in the home and I'm looking to the state that I live in for help and there is no help . . . we need to address our mental care because it's not happening, and I don't want to be another news story. 28a.

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On appeal, the Court of Appeals majority found the trial court clearly erred and mandated that it take jurisdiction over DVL under both MCL 712A.2(b)(1) and MCL 712A.2(b)(2).

After the trial court declined to exercise jurisdiction and dismissed the petition, DHHS appealed. In a split opinion, the Court of Appeals concluded that the trial court clearly erred in dismissing the petition, finding jurisdiction was required under both MCL 712A.2(b)(1) and MCL 712A.2(b)(2). *Lange*, unpub op. The majority concluded that Ms. Lange "refused to provide proper or necessary mental health care to her son" and had an "inability to care for DVL's significant mental health needs," rendering "her home statutorily unfit." *Id.* at 4.

The majority analogized to *In re Hockett*, 339 Mich App at 250, which also involved a child with a history of serious mental health challenges. Like Ms. Lange, the respondent-mother in *Hockett* received a determination from a hospital that her child should be discharged, but she declined to take him home until "he received the help she believed he needed." *Id.* The *Hockett* panel concluded that jurisdiction was appropriate because the respondent-mother's "admitted inability" to care for her child rendered her home "a place of danger for the seriously ill child, and thus, statutorily unfit." *Id.* at 4-5, quoting *Hockett*, 339 Mich App at 255-56.

The majority concluded in this case that the trial court clearly erred when it declined to exercise jurisdiction over DVL under Subsection (b)(2), because "despite her best efforts, respondent admitted that she could not care for DVL's special and significant mental health needs" and therefore her home was a place of danger and "statutorily unfit." *Lange*, unpub op at 5.

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The majority also concluded the trial court clearly erred by declining to exercise jurisdiction under Subsection (b)(1). It found that Ms. Lange "refused to cooperate in obtaining mental health services for her child" because she did not "secure outpatient treatment for DVL." *Id.* Failing to bring him home and secure outpatient care, in the majority's estimation, amounted to a refusal to provide proper or necessary care under Subsection (b)(1). *Id.* at 6-7.

Judge Redford dissented, concluding the trial court's decision was not clearly erroneous. *Id.* (REDFORD, J., dissenting), unpub op at 1. He explained that "[t]here is no indication that DVL's mother did anything other than undertake exhaustive, comprehensive, and costly measures to try to care for DVL." *Id.* at 3. Refusing to bring DVL home "with two other minor children who would be endangered was not an act of neglect," and there was no evidence "that *she was able*, despite her repeated and substantial efforts, to provide DVL with the proper or necessary support in her home." *Id.* (emphasis added).

Following the decision, Ms. Lange filed a motion for reconsideration, which the Court of Appeals denied. Judge Redford would have granted the motion. She then filed an application for leave to appeal, asking this Court to either grant her application for leave or peremptorily reverse the Court of Appeals' clearly erroneous decision. This Court ordered oral argument on the application. *In re DV Lange*, unpublished order of the Michigan Supreme Court, issued March 13, 2024 (Docket No. 166509).

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ARGUMENT

Standard of Review and Issue Preservation

This Court reviews a trial court's decision denying jurisdiction for clear error in light of the court's findings of fact. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). A trial court's decision only rises to the level of clear error when a reviewing court has a "definite and firm conviction that a mistake has been made." *In re LaFrance*, 306 Mich App 713, 723; 858 NW2d 143 (2014).

I. The Court of Appeals majority clearly erred when it concluded that the trial court should have taken jurisdiction over DVL under MCL 712A.2(b)(1) and MCL 712A.2(b)(2).

In a split opinion, the Court of Appeals held that the trial court's decision to decline to take jurisdiction over DVL under MCL 712A.2(b)(1) and (b)(2) was a clear error. The majority's analysis rose to the level of clear, reversible error. The facts of this case—which are not in dispute—do not fall under the plain language of either Subsection (b)(1) or (b)(2). Second, because taking jurisdiction over a child traditionally deprives a parent of their fundamental constitutional right to parent, in cases where the fit between statutory language and the facts of a case is so poor, as it is here, courts must exercise caution.

a. Because the undisputed facts of this case do not fall under plain language of either MCL 712A.2(b)(1) and MCL 712A.2(b)(2), the Court of Appeals majority clearly erred in reversing the trial court.

To take jurisdiction over a child, a court must establish statutory grounds exist by a preponderance of the evidence. *In re SLH*, 277 Mich App 662; 747 NW2d 547 (2008); MCL 712A.2(b). Here, DHHS asked the trial court to take jurisdiction over DVL under either MCL 712A.2(b)(1) or MCL 712A.2(b)(2). The trial court and

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Judge Redford, writing in dissent, correctly concluded that neither Subsection (b)(1) nor Subsection (b)(2) apply to the undisputed facts. By finding that both bases for jurisdiction apply here, the Court of Appeals majority clearly erred.

Ms. Lange's actions do not fall under Subsection (b)(1) because she was not able to provide proper or necessary care to her son by bringing him home.

Subsection (b)(1) allows a court to take jurisdiction over a child:

> 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. MCL 712A.2(b)(1) (emphasis added).

In this case, the trial court and Court of Appeals asked whether Ms. Lange, "when able to do so, neglect[ed] or refuse[d] to provide proper or necessary support . . . or other care necessary for [DVL's] health." MCL 712A.2(b)(1).

The relevant facts are undisputed and straightforward. While DVL was at the hospital, Ms. Lange was working with hospital staff to find a suitable inpatient placement to address DVL's severe mental health needs. 3a. She was unable to find a program with availability that could properly care for DVL given his extreme needs. 22a. Then, even though DVL did not receive treatment, the hospital abruptly changed its recommendation to outpatient care, meaning DVL was technically dischargeable. 3a. Because his condition had not changed, Ms. Lange knew that bringing him home would not be safe for DVL or his family. 19a.

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Ms. Lange's actions do not fit within the plain language of Subsection (b)(1), as the trial court and Judge Redford correctly concluded. 26a; *Lange* (REDFORD, J., dissenting), unpub op at 3. Critically, Subsection (b)(1) limits jurisdiction to scenarios where a parent fails to provide proper care "*when able to do so*." MCL 712A.2(b)(1) (emphasis added). Ms. Lange was *not* able to provide DVL proper care by bringing him home from the hospital before his condition had improved. As Judge Redford aptly noted, there was *no evidence* presented at the trial court "that she was *able*, despite her repeated and substantial efforts, to provide DVL with the proper or necessary support in her home." *Lange* (REDFORD, J., dissenting), unpub op at 3 (emphasis added). Under the plain language of Subsection (b)(1), when a parent is unable to provide proper care, a court cannot take jurisdiction.

A mere physical ability to pick up a child from the hospital does not mean a parent "was able to" provide "proper or necessary support" for their child. MCL 712A.2(b)(1). In her recent concurrence in *Holbrook*, Justice Cavanagh was correct to conclude that whether a parent has the physical capacity to pick up a child from the hospital "misses the point." *Holbrook*, ___ Mich ___ (CAVANAGH, J., concurring), slip op at 3. Justice Cavanagh concluded that "the phrase should be understood more broadly under a plain-language reading" with an eye toward "other barriers" that prevent a parent from safely retrieving a child in crisis. *Id.*

But here, the Court of Appeals majority ignored those other barriers in its analysis, pointing out that Ms. Lange "although able to do so, refused to pick [DVL] up from the hospital and failed to secure" outpatient treatment for him. *Lange*,

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unpub op at 6. The majority's reasoning is clearly erroneous in implying that ability under Subsection (b)(1) is merely a technical, physical ability to pick up a child.

Moreover, Subsection (b)(1) limits jurisdiction to cases where a parent "neglects" to provide "proper" support. MCL 712A.2(b)(1). But here, there is no indication that Ms. Lange had proper support available to her that she chose to neglect. The Court of Appeals majority concluded that Subsection (b)(1) applied because Ms. Lange "refused to cooperate in obtaining mental health services" for DVL. *Lange*, unpub op at 5. The majority was referring to Ms. Lange's decision not to fill out paperwork for outpatient programming for DVL—outpatient programming that would require him to live at home, where everyone agreed he was not safe. In fact, even the Court of Appeals majority agreed that "it was still unsafe for him to return home." *Id.* Ultimately, the majority concluded that by choosing not to pick DVL up from a safe place, bring him home to an unsafe place, and follow-up on applications for unsuitable treatment, Ms. Lange somehow neglected to provide him with proper care. *Id.* at 5-6.

The majority's reasoning and conclusion is clearly erroneous and must be reversed. To claim that Ms. Lange's refusal to move forward with a plan that was *actively unsafe for her son* amounted to *neglect* is a clear error. Simply put, there is nothing proper about moving forward with a treatment option that is unsafe. The Court should use this opportunity to clarify that Subsection (b)(1) does not apply in cases like this where a parent chooses not to pursue an unsafe treatment option.

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When a non-neglectful parent is unable to provide proper care, Subsection (b)(1) does not apply.

Because Ms. Lange plainly did not neglect her son, this case does not fall under Subsection (b)(2) either.

Subsection (b)(2) allows a court to take jurisdiction over a child:

> 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 . . . MCL 712A.2(b)(2).

Subsection (b)(2) only applies where a home is unfit because of "neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent . . ." MCL 712A.2(b)(2). Neglect is statutorily defined as "harm to a child's health or welfare by a person responsible for the child's health or welfare that occurs through negligent treatment, including failure to provide adequate . . . medical care . . ." MCL 712A.2(b)(2); MCL 722.602(1)(d). The definition requires the parent to fail to take reasonable care to address their child's needs.

As explained above, Ms. Lange did not neglect her child by refusing to move forward with a plan that everyone—DHHS workers, the trial court, the Court of Appeals majority and dissent—agreed was not safe for DVL and his family. As Judge Redford stated, Ms. Lange undertook "exhaustive, comprehensive, and costly measures to try to care for DVL." *Lange*, (REDFORD, J., dissenting), unpub op at 3. "Her refusal to allow DVL to be placed in her home . . . was not an act of neglect." *Id.*

The Court of Appeals majority concluded that Subsection (b)(2) applied because Ms. Lange's "actions rendered the home environment a place of danger for

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DVL," appearing to reference Ms. Lange's decision not to seek outpatient services for her son. *Lange*, unpub op at 5. But of course, such services were unsafe precisely because they would require DVL to be home, a place where, in the majority's own words—"he had threatened to harm his family, the home, his pets and himself." *Id.* What made the home unfit for DVL quite clearly had nothing to do with Ms. Lange's actions. She did not neglect DVL and therefore, this case falls outside the plain language of Subsection (b)(2). The Court of Appeals clearly erred in concluding otherwise.

b. When a parent is found to be unfit and the court takes jurisdiction, it deprives a parent of their constitutional right to parent and it should therefore be reserved for cases where the Legislature has specifically authorized courts to do so.

"The right to parent one's children is 'essential to the orderly pursuit of happiness by free men.'" *In re Sanders*, 495 Mich 394, 409; 852 NW2d 524 (2014), quoting *Meyer v Nebraska*, 262 US 390, 399; 43 S Ct 625; 67 L Ed 1042 (1923). It is a right that enshrines and protects "the importance of the familial relationship." *Sanders*, 495 Mich at 409. A parent's liberty interest in the "care, custody, and management" of their children is fundamental and deeply rooted. See *Santosky v Kramer*, 455 US 745, 753; 102 S Ct 1388; 71 L Ed2d 599 (1982). When a parent like Ms. Lange chooses to adopt a child, the right to parent that child—to care for them and make decisions in their best interest—flows to the adoptive parent. MCL 710.60(1) ("The person . . . adopting the adoptee then become[s] the parent . . . of the adoptee under the law as though the adopted person had been born to the adopting parent[] and are . . . entitled to all the rights of parents.").

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When a court takes jurisdiction over a child under MCL 712A.2(b)(1) or (b)(2), it "divests the parent of her constitutional right to parent her child and gives the state that authority instead." *In re Ferranti*, 504 Mich 1, 16; 934 NW2d 610 (2019). Depriving a parent of her constitutional right to parent is *not* something that courts should do lightly; it produces a meaningful and concrete harm for the parent, restricting their ability to make decisions for their child. The trial court appropriately found that jurisdiction was unwarranted under Subsections (b)(1) and (b)(2) because Ms. Lange did nothing but care for her son, doing the best she could in an impossible situation. Simply put, this case is not one where judicial intervention was necessary to protect the child from an unfit parent. Throughout the proceedings, no one disputed that Ms. Lange was doing everything she could for DVL. No one disputed that DVL needed significant support to address his mental health crisis, which threatened to put himself and his family in danger. Both DHHS and Ms. Lange ultimately concluded that DVL needed inpatient support. Because this judicial proceeding found a faultless parent to be unfit and deprived her of a constitutional right, this Court should clarify that mandating jurisdiction under Subsection (b)(1) or (b)(2) was a clear error.

II. *Hockett* must be overruled because it incorrectly held that jurisdiction was appropriate under MCL 712A.2(b)(1) or (b)(2) despite reasoning that the respondent was not able to provide proper care for her son and did not neglect him.

In re Hockett involved similar facts to this case. Like DVL, the respondent-mother's son was hospitalized because he was experiencing a life-threatening mental health crisis. *Hockett*, 339 Mich App at 253. After the hospital decided he

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should be discharged, his mother did not want to bring him home until she could find suitable help. *Id.* at 252-53. The respondent in *Hockett* was also experiencing a housing crisis while her son was in the hospital. *Id.* at 252. Before taking her son to the hospital, she had been evicted and was homeless while searching for care for him. *Id.* at 253. Much as in this case, the respondent "attempted to arrange for the hospital staff to transfer [her son] to a separate children's unit for additional care," but the hospital concluded he should be discharged. *Id.*

Unlike the determination of the trial court here, the trial court in *Hockett* concluded that DHHS had established by a preponderance of the evidence that jurisdiction was warranted under MCL 712A.2(b)(1). *Id.* On appeal, the Court of Appeals affirmed the trial court's decision to take jurisdiction. *Id.* at 252. The panel's analysis of the applicability of MCL 712A.2(b) to the facts was perplexing and erroneous.

a. The *Hockett* panel, while properly analyzing the facts and concluding that the respondent was unable to provide proper care for her son, inexplicably concluded that jurisdiction was proper.

On appeal, the Court of Appeals in *Hockett* noted that the trial court concluded that the respondent "failed to provide proper and necessary support and care for [her son], who was subject to a substantial risk of harm to his mental health and wellbeing." *Id.* at 255. These two findings—that the respondent failed to provide proper and necessary support for her son, and that he was subject to a substantial risk of harm—are certainly relevant to analysis of whether Subsection (b)(1) applied. Afterall, Subsection (b)(1) requires a court to find (1) that a parent "neglects or refuses to provide proper or necessary . . . care" and (2) that the child is

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"subject to a substantial risk of harm." But these two findings alone are insufficient to conclude that Subsection (b)(1) applies. The plain language of the statute requires courts to also find that the parent was "able to do so." MCL 712A.2(b)(1).

The *Hockett* panel noted that the trial court's conclusion that MCL 712A.2(b)(1) applied was "based on a finding that respondent refused to pick up [her son] when the hospital determined that he was ready to be discharged." *Id.* at 255. Then, the panel went on to acknowledge the material challenges that the respondent faced at that moment. As it explained,

> She had no home. She had a child whose mental health issues were significant. She wanted the kind of care for [her son] that he only began to get when the state assumed jurisdiction. While she is not a mental health professional, respondent sensed, and later mental health professionals agreed, that [her son] needed more than respondent could give. *Id.*

The panel went onto explain that Subsection (b)(1) "implies some understanding of the existence of parents who do not have the resources to provide for their children in the phrase 'when able to do so.'" *Id.* And it properly acknowledged that "[t]his mother was *unable to manage the complex mental health needs of her child*." *Id.* (emphasis added). The panel expressed its discomfort with the fact that "scant and costly resources available for mental healthcare for children likely places other parents in the same situation as this respondent." *Id.* at 255-56. In its analysis, the *Hockett* panel appeared to endorse the plain text read that Ms. Lange asks this Court to utilize, in which cases where the facts demonstrate a parent was not "able" to provide proper care do not fall under Subsection (b)(1).

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But then, while acknowledging the facts demonstrated the "[r]espondent's admitted *inability*, not her *unwillingness*, to care for [her son]'s special needs with the level of assistance she was receiving," the panel concluded that her home had been rendered unfit. *Id.* at 256. The *Hockett* panel's conclusion here is perplexing. First, despite stating that the panel was simply affirming the decision of the trial court, the panel introduced a reference to the idea of a statutorily unfit home, which appears to be a reference to Subsection (b)(2), a jurisdictional base not relied on in the trial court. It is ambiguous at best as to whether the *Hockett* panel was intending to switch the base for jurisdiction on appeal.

Either way, the *Hockett* panel's analysis did not fit with the statutory language of either Subsection (b)(1) or (b)(2). If it was simply affirming the trial court's decision under Subsection (b)(1)—as it claimed to be doing at the beginning of the opinion—the panel clearly erred by correctly finding that the respondent was unable to provide proper care and custody for her son, yet nevertheless affirming the trial court's decision to take jurisdiction under MCL 712A.2(b)(1). If the *Hockett* panel did indeed intend to affirm under Subsection (b)(2) alone, it *still* clearly erred. There was no evidence that the home was rendered unfit because of the respondent's "neglect." Much as in this case, what rendered the home unfit for the child was his immense, specialized needs, not the respondent-mother's behavior.

The mismatch between the *Hockett* analysis and conclusion represents a clear error that must be overruled. A court cannot pick and choose the pieces of statutory language that apply and do not apply to the facts of a case, particularly when a

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statute is designed to constrain its own jurisdiction. That's exactly what the *Hockett* panel did when it acknowledged the material constraints on the respondent-mother's ability to care for her child but then still somehow affirmed the trial court's decision to take jurisdiction—and perhaps on different grounds without any clear analysis of why.

b. The published *Hockett* decision must be reversed because it has caused significant confusion.

The *Hockett* panel's analysis is internally inconsistent, confusing, and erroneous. As a published decision, it has been cited by similar cases—like this one and *Holbrook*—and it will undoubtedly be cited again in the future.[4] The critical error that *Hockett* perpetuates is divorcing the factual scenario of a high-needs child whose parents cannot safely bring them home from the *actual statutory requirements* of Subsection (b)(1) and (b)(2).

[4] To date, two other unpublished Court of Appeals decisions cite *Hockett* favorably. The first, *In re Lard*, cites *Hockett* for the uncontroversial rule that "[j]urisdiction must be demonstrated by a preponderance of the evidence." *In re Lard*, unpublished per curiam opinion of the Court of Appeals, issued August 10, 2023 (Docket Nos. 364489 and 364490), p 7. The other, *In re JM*, relied on *Hockett* more substantively. *In re JM*, unpublished per curiam opinion of the Court of Appeals, issued January 13, 2022 (Docket No. 356510). In *JM*, the respondent-mother had three children—AM, JM, and MM. *Id.* at 1. When DHHS discovered that AM had sexually abused the other children, it filed a neglect petition. *Id.* The *JM* panel relied on *Hockett* for the erroneous idea that "respondent's admitted inability, not her unwillingness, to manage and care for JM's special mental-healthcare needs rendered her home statutorily unfit." *Id.* at 14. JM, the child at issue in the appeal, had sexually abused their sibling MM, and the respondent-mother testified that if JM "were sent home" from an inpatient program, "and received in-home services, she was 'really scared' about what would happen at night after the in-home workers left." *Id.* at 13.

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Here, the Court of Appeals majority relied on *Hockett* to conclude that Subsection (b)(2) applied.[5] *Lange*, unpub op at 4-5. The majority concluded that *Hockett* supported a finding that "respondent's actions rendered the home environment a place of danger for DVL, as well as respondent's other two children and, thus, statutorily unfit." *Id.* at 5. The majority's use of *Hockett*'s unclear analysis here presents a problem because it is completely unmoored from the actual statutory text of Subsection (b)(2), which requires courts to show that a home is rendered statutorily unfit "by reason of neglect." MCL 712A.2(b)(2).

Hockett was also cited favorably by the Court of Appeals in *In re Holbrook*, a case with similar facts. *Holbrook*, unpub op. The *Holbrook* panel used *Hockett* to affirm the trial court's decision to take jurisdiction under Subsection (b)(1), unlike the majority here, which firmly held that *Hockett* was a Subsection (b)(2) case. *Id.* at 9. The *Holbrook* panel concluded that "[t]he evidence revealed that [respondent's son] was *unable* to return to respondent's home" and that "[r]espondent here was similarly unable to manage the complex mental health needs of [her son]." *Id.* at 10. But, pointing to *Hockett*, the *Holbrook* panel nevertheless affirmed the trial court's decision to take jurisdiction. *Id.* at 10-11.

Hockett has become a troubling end run around the actual jurisdictional limits put in place by the Legislature in the text of Subsections (b)(1) and (b)(2). As

[5] To the majority, the *Hockett* panel "affirmed the order of the lower court but determined that jurisdiction was proper under MCL 712A.2(b)(2), not MCL 712A.2(b)(1)." *Lange*, unpub op at 4. This is a possible read of the *Hockett* decision, but as described above, the decision is ambiguous.

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a published decision of the Court of Appeals, it will undoubtedly continue to be cited in cases like this one moving forward. This Court should use this opportunity to overrule *Hockett* and reassert the importance of the plain text jurisdictional limits under MCL 712A.2(b)(1) and (b)(2).

III. MCL 712A.2(b)(3)(A) applies in cases where a parent is unable to bring a child home from the hospital safely due to a mental health crisis because such a child is "homeless," warranting jurisdiction to oversee the child's treatment in collaboration with the child's parent, who retains their constitutional right to direct the child's care.

Under MCL 712A.2(b)(3), a court can take jurisdiction over a juvenile who is "dependent and is in danger of substantial physical or psychological harm." MCL 712A.2(b)(3). The statutory section explains that a juvenile may be found to be "dependent" under the following enumerated scenarios:

> (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.

Here, this Court has asked whether DVL would qualify as dependent under Subsection (b)(3)(A)—a juvenile who is "homeless or not domiciled with a parent or other legally responsible person." Critically, unlike Subsection (b)(1) and Subsection (b)(2), Subsection (b)(3)(A) does not require any finding that a parent is unfit in any manner. Rather, there are only two findings required for the court to take jurisdiction—dependency and danger.

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When a child is unable to come home because they are experiencing a mental health crisis that renders their home unsafe due to their needs, this Court should hold that they qualify as "homeless" under Subsection (b)(3)(A) and can come under the court's jurisdiction.[6] But, critically, because there is *no finding* that a parent is unfit, the parent's constitutional right to direct the custody, care, and control of their child must be protected throughout the proceeding. The exercise of jurisdiction under Subsection (b)(3)(A) is a tool to monitor DHHS's delivery of services for the child, not to monitor the parent's fitness.

a. While DVL remained domiciled in Ms. Lange's home, his mental health crisis rendered Ms. Lange's home unsafe and inadequate for him, meaning he was temporarily "homeless" under Subsection (b)(3)(A).

To find DVL was "dependent" under Subsection (b)(3)(A), the court would need to find that he was either "homeless" or "not domiciled" with Ms. Lange. To the respondent's knowledge, there is no case law in Michigan interpreting the phrase "homeless or not domiciled" in Subsection (b)(3)(A), nor does the statute define the terms.

Applying this Court's interpretation of the term "domiciled" in the context of other statutes, DVL remained domiciled with Ms. Lange during his hospitalization. See *Grange Ins Co v Lawrence*, 494 Mich 475, 492; 835 NW2d 363 (2013). In

[6] Counsel acknowledges that in their application, they indicated that Subsection (b)(3) might not apply in this case. Upon further reflection, counsel believes that the provision could cover situations in which a child whose home is rendered temporarily unsafe by reason of a mental health crisis can constitute a "homeless" youth under the statutory language.

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Grange Ins Co v Lawrence, this Court considered the proper interpretation of MCL 500.3114(1), a section of the No-Fault Act which states that "a personal protection insurance policy . . . applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either *domiciled* in the same household . . ." (emphasis added).

The *Grange* Court noted that "where the Legislature uses a technical word that has acquired a particular meaning in the law, and absent any contrary legislative indication, we construe it 'according to such peculiar and appropriate meaning.'" *Grange*, 494 Mich at 493, quoting MCL 8.3a. The term "domicile," the Court explained, "is just such a word that has a precise, technical meaning in Michigan's common law and thus must be understood according to that particular meaning." *Id.* As the Court explained, "For over 165 years, Michigan courts have defined 'domicile' to mean 'the place where a person has his true, fixed, permanent home, and principal establishment, and to which, whenever he is absent, he has the intention of returning.'" *Id.*, quoting *In re High*, 2 Doug 515, 523 (Mich, 1847). And, Michigan's "common law has recognized that from the time of a person's birth—from childhood through adulthood—a person can only have a single domicile at any given point in time." *Id.* at 494.

A juvenile is domiciled where they have their "true, fixed, permanent home, and principal establishment" with a parent. *Grange*, 494 Mich at 493, quoting *High*, 2 Doug at 523. Here, although Ms. Lange's home had been rendered an unsafe environment because DVL was experiencing a mental health crisis, he was

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still domiciled with Ms. Lange—her home was still his "true, fixed, permanent home." *Id.* There was no indication in the record that Ms. Lange intended for DVL to move out of her home permanently. Therefore, there is insufficient evidence on this record that DVL was no longer domiciled with Ms. Lange.

However, because Ms. Lange's home was an unsafe environment for DVL, it rendered him temporarily homeless. Under federal law, a "homeless" individual is defined as "an individual . . . who lacks a fixed, regular, and *adequate* nighttime residence." 42 USC 11302(a)(1) (emphasis added). Michigan has incorporated this definition of homeless into its own statutory code. See, e.g., MCL 388.1763a; MCL 28.292(14)(g)(*i*) (incorporating the HUD definition, which is the same definition found in 42 USC 11302(a)(1)); MCL 333.2891(13)(a) (same).

On the day that DVL was discharged from the hospital, he did not have an adequate nighttime residence because being at home was unsafe for him due to his needs. As Ms. Lange explained, DVL threatened to harm himself and his family, prompting her to take him to the emergency room. 18a. When he was discharged, he had not received any treatment to mitigate the mental health crisis that was causing him to threaten harm to himself and others. 3a. Bringing him home was unsafe and therefore "inadequate," rendering him temporarily homeless. He had no home to go to.

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Therefore, DVL qualified as "dependent" under MCL 712A.2(b)(3)(A). And, given his immense needs, he was "in danger of substantial physical or psychological harm" at the moment he was discharged from the hospital. MCL 712A.2(b)(3).[7]

b. Because jurisdiction under MCL 712A.2(b)(3) does not include a finding of parental unfitness, Ms. Lange's fundamental right to custody and control of DVL must be preserved throughout the duration of the court's jurisdiction.

Under MCL 712A.2(b)(3), the court's exercise of jurisdiction includes no finding that a parent is unfit. Therefore, this Court's precedent in *In re Sanders* makes clear that the parent must maintain their fundamental right to direct the care, custody, and control of their children during the duration of the court's jurisdiction. *Sanders*, 495 Mich 394.

In *Sanders*, this Court invalidated the one-parent doctrine, which permitted "courts to obtain jurisdiction over a child on the basis of the adjudication of either parent and then proceed to the dispositional phase with respect to both parents." *Id.* at 408. As this Court explained, the doctrine "thus eliminates the petitioner's obligation to prove that the unadjudicated parent is unfit before the parent is subject to the dispositional authority of the court." *Id.*

The respondent-father in *Sanders* argued that the one-parent doctrine was unconstitutional because "it allows courts to infringe the rights of unadjudicated

[7] DHHS did not file a petition seeking jurisdiction under MCL 712A.b(3)(A) in this case. However, should this Court agree with our analysis, the factual record below is sufficient to support a finding of jurisdiction under Subsection (b)(3)(A) as it is undisputed that DVL's home environment had been rendered unsafe for him and he was in danger of immense psychological and physical harm.

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parents to direct the care, custody, and control of their children without an adjudication that those parents are unfit." *Id.* at 413. The respondent-father was "never adjudicated as unfit," the trial court simply used the unfitness of the child's other parent to leapfrog the respondent-father past the adjudication phase and straight to the dispositional phase. *Id.* Because the respondent-father, like Ms. Lange, had a constitutional right to "direct the care, custody, and control of his children," the *Sanders* Court concluded that "due process requires a specific adjudication of a parent's unfitness before the state can infringe on the constitutionally protected parent-child relationship." *Id.* at 422.

Of course, the constitutional error in *Sanders* differs from this case; the problem is not that the court failed to inquire into Ms. Lange's fitness as a parent, it is that the court inquired and found *she was fit*. But the Court of Appeals ordered that it take jurisdiction anyway and strip Ms. Lange of her constitutional right to parent. Still, *Sanders* provides this Court with useful guidance on important constitutional guardrails that are present when a court exercises jurisdiction under MCL 712A.2(b)(3). When a court takes jurisdiction under Subsection 2(b)(3), and there is no finding of parental unfitness, this Court should clarify that the parent's constitutional right to direct the custody, care, and control is preserved. Practically speaking, their input on the appropriate course of action for their child's care must be prioritized first and foremost.

The court's jurisdiction under Subsection 2(b)(3) is not designed to curtail the role of the parent deemed unfit but rather to oversee DHHS's allocation of resources

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to the child. Where a court finds that a child falls under Subsection 2(b)(3), then it may take jurisdiction over the child to work *with* the parent to ensure that DHHS provides the child with the appropriate resources. Counsel strongly encourages this Court to adopt specific court rules that cover situations like this where grounds for jurisdiction under Subsection 2(b)(3) exist without any evidence that a parent is unfit. Adoptive parents like Ms. Lange should not lose their parental rights simply because of their child's immense needs.

c. While jurisdiction is permissible under MCL 712A.2(b)(3), there is nothing stopping DHHS from working with parents outside of the purview of the courts where they can find common ground.

Ms. Lange and her son are not the first family to experience a mental health emergency in Michigan and they won't be the last. This is a scenario destined to repeat itself. Michigan jurists have lamented about the reality faced by blameless parents like Ms. Lange who are trying their best.

Decisions like the one made by the Court of Appeals majority put parents caring for high-needs children in an impossible bind: either bring your child home to a situation that poses risks to the child and their family or lose your constitutional right to your child simply because you want him to receive services. MCL 712A.2(b)(3) provides a solution—it permits courts to oversee the administration of necessary services to high-needs children while eliminating the requirement to find a loving parent "unfit." And when a court exercises jurisdiction under Subsection (b)(3), it must take the parent's constitutional right to direct the care, custody, and control of their children into account.

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Moreover, it is important to remember that judicial intervention and assistance from DHHS are not one in the same. In DHHS's answer, it states that "the Department must have jurisdiction to take the appropriate steps to protect DVL's welfare in this circumstance." Answer at 1. But according to the DHHS Adoption Policy Manual, DHHS has a program expressly designed to help families like Ms. Lange and DVL without the involvement of the courts.[8] The Adoption Medical Subsidy program is designed to assist adoptive parents to pay for "treatment of physical, mental or emotional conditions" including "[t]emporary out-of-home placement." *Id*. at 2. As DHHS explains in the *Adoption Medical Subsidy Program Information Booklet*, when a child needs treatment outside of the family home, DHHS can assist with "[r]esidential treatment services" when "the child's emotional/behavioral needs and treatment goals are unable to be met in the home and community setting."[9] Such services must be approved of ahead of time by the Adoption and Guardianship Assistance Office (AGAO).[10]

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[8] Michigan Department of Health and Human Services, *Adoption Services Manual*, *Post Adoption Services ADM 0990*, ADB 2013-003 (October 10, 2013) <https://dhhs.michigan.gov/olmweb/ex/AD/Public/ADM/0990.pdf >

[9] Michigan Department of Health and Human Services, *Adoption Medical Subsidy Program Information Booklet*, Pub 1511 (June 2022), p 12, <https://www.michigan.gov/mdhhs/-/media/Project/Websites/mdhhs/Adult-and-Childrens-Services/Adoption/MDHHS-Pub-1511.pdf?rev=f562b45412d64da785f724c1dab14775&hash=710B4FB186EF0ADD5DB4F96E126FDCA0>.

[10] Michigan Department of Health and Human Services, *Adoption Assistance Manual 640*, AAB 2023-004 (October 1, 2023) <https://dhhs.michigan.gov/OLMWEB/EX/AA/Public/AAM/640.pdf>.

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There is nothing getting in the way of DHHS supporting a parent in going through this non-adversarial application process to obtain the resources necessary to fund inpatient treatment rather than turning to the courts. DHHS, through the AGAO, maintains the ability to monitor the treatment with the parent—in fact, the AGAO "must monitor the placement of the child outside the family home for continued funding" and retains the right to "discontinue funding."[11]

In this case, Ms. Lange was already receiving help from DHHS before the court got involved here. There was nothing stopping the agency from working with Ms. Lange to find a suitable inpatient program for her son outside of the purview of the courts. When parents like Ms. Lange have the best interests of their children in mind and are working actively to meet the intense needs of those children, DHHS absolutely can offer them appropriate services without court involvement. But if court involvement is sought to access services for the child, DHHS *must* file under MCL 712A.2(b)(3), not MCL 712A.2(b)(1) or (b)(2).[12]

[11] *Id*. at 19.

[12] Of course, there may be a case in the future where a child is at the hospital because of a mental health crisis and the facts of the case also fit within the statutory language of Subsection (b)(1) or (b)(2). DHHS would of course be permitted to file a petition under those statutory grounds then, and the court could determine whether they applied.

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CONCLUSION

For the reasons mentioned above, Ms. Lange respectfully asks this Court to reverse the Court of Appeals decision mandating that the trial court take jurisdiction over DVL under MCL 712A.2(b)(1) and (b)(2) and hold instead that jurisdiction is appropriate under MCL 712A.2(b)(3)(A).

Respectfully submitted,

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