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STATE OF MICHIGAN

IN THE SUPREME COURT

In the Matter of the D.V. LANGE, a Minor	SC No. 166509 COA No. 362365 Circuit Ct No. 2021-000658 NA

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MINOR CHILD'S BRIEF ON APPEAL
ORAL ARGUMENT REQUESTED

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STATEMENT OF QUESTIONS PRESENTED

I. WHETHER THE COURT OF APPEALS ERRED IN REVERSING THE TRIAL COURT AND DIRECTING A FINDING OF JURISDICTION. PURSUANT TO MCL 712A.2(b)(1) AND (2) WHERE RESPONDENT MOTHER WAS NOT NEGLIGENT, AND HER HOME WAS NOT UNFIT?

The Minor Child answers "Yes."
The Petitioner-Appellee will answer "No."
The Respondent-appellant will answer “Yes.”

II. WHETHER THE EVIDENCE WAS SUFFICIENT TO ESTABLISH JURISDICTION PURSUANT TO MCL 712A.2(b)(3)(A) WHERE THE CHILD WAS HOMELESS OR NOT DOMICILED WITH A PARENT BECAUSE HE WAS UNABLE TO SAFELY RETURN TO RESPONDEN’MOTHER’S HOME DUE TO HIS MENTAL HEALTH CONDITION, NOT BECAUSE THE HOME WAS UNFIT?

The Minor Child answers "Yes."
The Petitioner-Appellee will answer "No."
The Respondent-appellant will answer “Yes.”

III. WHETHER THE COURT OF APPEALS ERRED IN DECIDING, *IN RE HOCKETT,* 339 MICH APP 250 (2021) WHERE THE COURT BASED JURISDICTION ON MCL 712A.2(b)(2) FINDING MOTHER’S HOME UNFIT WHEN MOTHER AND CHILD WER HOMELESS AND JURISDICTION SHOULD HAVE BEEN ESTALISHED. PURSUANT TO MCL 712A.2(b)(3)(A)?

The Minor Child answers "Yes."
The Petitioner-Appellee will answer "No."
The Respondent-appellant will answer “Yes.”

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JURISDICTIONAL STATEMENT

The Minor Child accepts the Appellant's Statement of Jurisdiction as complete and factual. (Appellant-Mother's Application for Leave to Appeal, p 8).

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COUNTER STATEMENT OF FACTS

On June 4, 2021, respondent-appellant mother, Kathleen Lange, took her teenage son, DVL, to St. John's hospital because he was threatening to kill himself and, "he had attempted to set fire" to their home. (Tr 7/28/21, p 14, and Tr 5/4/22, p 20). He was admitted to St John's while a mental health inpatient treatment facility was sought. (Tr 7/28/21, p 13). On July 8th, 2021, the hospital, and the Michigan Department of Health and Human Services (hereinafter, "DHHS") having been unsuccessful in locating an inpatient psychiatric facility to take DVL, informed Ms. Lange that DVL was ready for release and recommended "intensive out-patient treatment". (Tr 7/28/21, pp 15, 21). St. John's hospital does not provide psychiatric services to children, and DVL received no treatment for his mental health during the month he was housed at St. John's. *Id,* p 13. Respondent-mother refused to take DVL home indicating that he still needed inpatient treatment, later stating her belief in court that, "it wasn't safe for him to be in my care." (Tr 5/4/22, p 22).

Kathleen Lange adopted DVL as a single parent when he was five years old. (Tr 5/4/22, p 15). Respondent-mother later married and adopted two younger sons with her spouse. Her spouse never adopted DVL. (Tr 5/4/22, p 14).

At the time of DVL's adoption, at age five, he was already in the care of a therapist and a psychiatrist. (Tr 5/4/22, p 15). According to respondent-mother, DVL, "suffered from post-traumatic stress disorder," and had been, "diagnosed with reactive attachment disorder as well as oppositional defiance disorder." (Tr 5/4/22, pp 15-16). Respondent-mother told the court that, since his adoption, DVL had been admitted to psychiatric facilities, "six or seven times." (Tr 5/4/22, p 24). Mother testified that the hospitalizations began when he was between eight to ten years old. (Tr 5/4/22, p 25). Ms. Lange reported that at age eight DVL attempted to sexually assault his two-year-old sibling (Tr 5/4/22, p 27). Thereafter, she stated that they never left him alone

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with the other boys and they put an alarm on his bedroom door (Tr 5/4/22, p 28). Ms. Lange stated that DVL's prior hospitalizations typically lasted for no more than two weeks at a time, after which he would be released to day-treatment, and he would, "be okay for a while and then it would go right back where it was." (Tr 5/4/22, p 25).

Respondent-mother reported that, at some point, DVL had become physically combative with both her and her spouse, and he had threatened to kill them in their sleep. (Tr 5/4/22, pp 24-25). Respondent-mother was divorced by the time of trial in the circuit court, and she and her ex-wife shared custody of their two younger sons (Tr 5/4/22, p 14). Ms. Lange reported that although her ex-spouse never adopted DVL, it was their practice that they shared custody of DVL, along with the other boys, until the ex-spouse decided that she no longer felt safe with DVL in her home (Tr 5/4/22, p 18). By that time, DVL had a history of suicidal ideation, trying to set fire to the family home, threatening younger siblings, and attempting to poison the family pets with household cleaning supplies. (Tr 7/28/21, p 14).

When he was thirteen, shortly before he was taken to St. John's, respondent-mother found a year-long placement for DVL in Montana, and sent him there at a cost of $2,000.00 a month (Tr 5/4/22, p 26). He returned home after just six months, in April of 2021, after being found during the night in a bathroom with other boys engaging in oral sex (Tr 5/4/22, p 23). Ms. Lange described the program in Montana as, "sort of like a last-ditch effort to get him help." (Tr 5/4/22, p 18).

When respondent-mother decided that she would not take DVL home from St. John's Hospital, DHHS brought a petition to the juvenile court alleging parental neglect. DHHS acknowledged DVL's history of mental health issues, and that he had threatened self-harm and threatened others in his home. (Tr 7/28/21, p 14). DHHS did not dispute the treatments that respondent-mother had obtained for her son in the past. Nor did DHHS dispute that St John's

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changed its recommendation to outpatient treatment only after it was unable to find a placement for DVL. (Tr 7/28/21, pp 15, 17, 21). According to the CPS Supervisor assigned to the case, several out-patient programs were suggested to mother, but she refused to take DVL home to participate in out-patient treatment. (Tr 7/28/21, p 17).

Following a preliminary hearing on a petition alleging neglect and seeking jurisidiction pursuant to MCL 712A.2(b)(1), the lower court removed DVL from mother's care finding that it was contrary to his welfare to remain in mother's custody and placed him in the care of the DHHS. (Tr 7/28/21, p 32). The court rejected DHHS' attempt to include Ms. Lange's two younger children, instead striking them from the petition. The court further granted mother, "regular and frequent," visitation with DVL.

By the time of the next hearing, on August 30, 2021, DHHS had moved DVL to a mental health inpatient treatment facility called Hanley House. (Tr 8/30/21, p 9). DVL resided at Hanley House through the trial and beyond. In February of 2022, DHHS Residential Specialist, Shawn Robinson, told the court that Hanley House was meeting DVL's needs and that it was anticipated that he would be there for another six months. (Tr 2/25/22, pp 8-9). Mr. Robinson told the court that DVL was receiving counseling to address sexually acting out.

The Bench Trial in this matter commenced on May 4, 2022 before Judge Frank Szymanski. Counsel for DHHS called respondent-mother, Kathleen Lange, as a witness. (Tr 5/4/22, p 13). Respondent-mother testified as to the history of DVL's mental health since his adoption at age five (Tr 5/4/22, pp 13-16). She testified regarding the Montana treatment program (Tr 5/4/22, p 15). Mother testified, referring to DVL's Montana placement that, "he was dismissed from the program six months into it," due to his behavior. (Tr 5/4/22, p 16). Ms. Lange reported that she was told

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that he, "was caught sexually acting out with three other boys in the bathroom in the middle of the night." (Tr 5/4/22, p 23).

At the trial before the circuit court, respondent-mother told the court that DVL returned home from the Montana treatment center in April of 2021. (Tr 5/4/22, p 17). She reported that she took him to St. John's hospital around June 4, 2021, because he had threatened to kill himself and, "he had attempted to set fire to the home." (Tr 5/4/22, p 20). She had hoped to get him into an inpatient psychiatric facility (Tr 5/4/22, p 21). She told the court that St. John's had no pediatric psychiatric services but she took him there for a medical clearance so that he could be admitted to a psychiatric facility (Tr 5/4/22, p 29). Mother stated that St. John's agreed that DVL needed psychiatric treatment, but they could not find a facility to take him. (Tr 5/4/22, p 32). Respondent mother testified that prior to St. John's recommendation that DVL be discharged, it was her understanding that St. John's, "had an adult psychiatric physician," consult with DVL, "and based on that said that he could be discharged." (Tr 5/4/22, p 32). It was around July 8, 2021, that St. John's said that DVL was ready for discharge and that they recommended intensive outpatient treatment (Tr 5/4/22, p 22). It was respondent-mother's understanding that pediatric psychiatric placements would not take DVL due to, "the severity of his issues." (Tr 5/4/22, p 35). She testified that she did not agree with St. John's assessment that DVL was ready for discharge, she told the court, "it wasn't safe for him to be in my care." (Tr 5/4/22, p 22). Respondent-mother described feeling, "heartbroken," at hearing there was no inpatient help for DVL (Tr 5/4/22, p 36).

At a continued hearing on June 16, 2022, DHHS acknowledged mother's past efforts at obtaining treatment for DVL, but argued that she had, "abandoned" her son at St. John's, and could no longer care for him. (Tr 6/16/22, p 7). DHHS asked the court to find jurisdiction in the case

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arguing that respondent-mother was neglectful in that she abandoned DVL by refusing to take him home from the hospital.

The trial court declined to find jurisdiction in the case, and Judge Szymanski stated, "I just don't see how I can find that she's been neglectful or abusive in terms of her actions to date." (Tr 6/16/22, pp 18-19). The court after determining that MCL 712A.2(b)(1) and (2) did not apply, suggested that DHHS file a dependency petition under MCL 712A.2(b)(3) because the child, "still needs help." (Tr 6/16/22, p 19).

DHHS appealed the trial court ruling, and the Michigan Court of Appeals reversed the trial court, finding that both MCL 712A.2(b)(1) and (2) applied, *In re DV Lange*, COA Docket No. 362365 Unpublished, p 3 (2023), In so doing, the majority of the appellate court's three justice panel relied on, *In re Hockett*, 339 Mich App 250 (2021), a case with a very similar fact pattern decided in 2021. *In re DV Lange*, COA Dkt No. 362365 Unpublished (2023), at p. 4.

Following the Michigan Court of Appeals decision reversing the trial court, Respondent-appellant mother, Kathleen Lange, filed an application for leave to appeal to the Michigan Supreme Court. The application was granted.

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ARGUMENT

I. THE COURT OF APPEALS ERRED IN REVERSING THE TRIAL COURT AND DIRECTING A FINDING OF JURISDICTION PURSUANT TO MCL 712A.2(b)(1) & (2) WHERE RESPONDENT MOTHER WAS NOT NEGLIGENT, AND HER HOME WAS NOT UNFIT.

Respondent-appellant mother argues that the trial court was correct in its determination that there was no basis for jurisdiction pursuant to MCL 712A.2(b)(1) or (2). Further, she argues that she had done everything that she could to address DVL's needs. She also argues that in refusing to take DVL home from St. John's hospital she was acting in DVL's best interests and was not neglectful. We agree that mother was not neglectful, and that the Court of Appeals erred in finding jurisdiction pursuant to MCL 712A.2(b)(1) and (2). It is our position that when Ms. Lange refused to take DVL home, she was acting in DVL's interest. DVL entered St. John's hospital threatening self-harm, he received no treatment at St. John's and there was every reason to believe that the issues that brought him to St John's continued to exist on the date when St. John's recommended that he return home. A child threatening suicide should not be sent home untreated. DVL posed a threat to himself and to others. If respondent-mother had taken DVL home without treatment, she would have been neglectful, in that it would have exposed him and her two younger children to potentially life-threatening danger.

STANDARD OF REVIEW

The appellate court reviews the trial court's finding of jurisdiction, "for clear error in light of the court's findings of fact," *In re BZ,* 264 Mich App 286, 295 (2004). "A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made," *In re LaFrance*, 306 Mich App 713, 723 (2014).

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To establish jurisdiction a court must find, by a preponderance of the evidence that statutory grounds pursuant to MCL 712A.2(b) exist. *In re SLH,* 277 Mich App 662, 669 (2008). MCL 712A.2(b) provides in pertinent part:

> MCL 712A.2(b)(1):
> (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.
>
> (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.
>
> * * *

The trial court in this case declined jurisdiction pursuant to MCL 712A.2(b)(1) and (2), and suggested that DHHS seek jurisdiction under MCL 712A.2(b)(3). DHHS appealed and the Court of Appeals reversed the trial court, and remanded for a finding that jurisdiction existed under both MCL 712A.2(b)(1) and (2).

In its analysis, the Court of Appeals relied on its earlier decision in a case with a very similar fact pattern, *In re Hockett*, 339 Mich App 252 (2021). In *Hockett,* the appellate court found grounds for jurisdiction under MCL 712A.2(b)(2), where respondent-mother refused to retrieve her son from a hospital because she believed that he needed further mental health

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treatment. *In re Hockett,* 339 Mich App 250, 252 (2021). However, in *Hockett,* unlike this case, respondent-mother was, in fact, homeless. *Id,* pp 252-253. Nevertheless, despite the apparent applicability of MCL 712A.2(3)(A), the Court of Appeals found that mother's home was, "an unfit place for the juvenile to live in," pursuant to MCL 712A.2(b)(2).

Just as the trial court did in this case, the appellate court in *Hockett* expressed reluctance at suggesting that mother was an unfit parent. In finding jurisdiction the *Hockett* appellate court mulled over the concept of, "unfitness," and acknowledged that it tended to connote, "active wrongdoing," which the court admitted it did not see in the facts. *In re Hockett*, 339 Mich App 250, 255 (2021).

MCL 712A.2(b)(1) describes a parent who, "when able to do so," fails to, "provide proper and necessary care and maintenance," for their child. The statute contemplates that a parent may fail through, neglect, outright refusal, or abandonment of their child. In its determination, in the present case, the Court of Appeals found that mother, "refused to provide proper or necessary mental health care to her son," *In re DV Lange*, COA Unpublished Opinion Docket No. 362365, p 4 (2023). DVL was suicidal and posed a threat to others as well in that he had tried to burn the house down. In the month he was maintained at St. John's he received no treatment. Outpatient treatment under those circumstances was clearly inadequate. DVL needed treatment and monitoring that was not available as an outpatient. Further, DVL had received outpatient treatment many times in the past. Even so, the Court of Appeals found the evidence sufficient to establish grounds for jurisdiction pursuant to MCL 712A.2(b)(1).

It is worth noting that despite all the similarities between the instant case and *Hockett*, in *Hockett*, the appellate court decided that MCL 712A.2(b)(1) did not apply. *Id,* p 4. The Court of Appeals reversed the *Hockett* trial court on the MCL 712A.2(b)(1) decision, even while endorsing

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the trial court's determination that, "respondent declined to retrieve her child upon discharge," and that, despite respondent-mother's homelessness, "respondent had the physical capacity to retrieve her minor child and did not do so." *In re Hockett*, 339 Mich App 252, 255 (2021). However, in *Hockett,* unlike the present case, the Court of Appeals appeared to express more sympathy for respondent-mother, sympathy that seemed to form the basis of the Court of Appeals decision that MCL 712A.2(b)(1) should not apply in that case. Of respondent-mother in *Hockett*, the Court of Appeals said:

> Our concern is that this mother, who took desperate action to get care for her child, is now labeled, "unfit," and listed on a registry for persons who acted to harm children when she, in fact, was seeking to protect her child. *In re Hockett*, 339 Mich App 250, 255 (2021).

The Court of Appeals did not appear to extend the same level of sympathy to respondent-mother in this case, Ms. Lange. Unlike the mother in *Hockett*, respondent-mother, Ms. Lange had financial resources, and had been able to place her child in a facility at a cost of $2,000.00 per month. Apart from that, Ms. Lange could also be described as a parent who went to great lengths seeking help for her child. Further, Ms. Lange clearly does not belong a list of parents who, "acted to harm children," any more than the mother in *Hockett* did. *Hockett*, p 255. However, the Court of Appeals in this case found that Ms. Lange's, refusal to accept, "DHHS's assistance in obtaining outpatient treatment," amounted to a refusal to provide care for her child.

The court seemed to make this decision to find jurisdiction under MCL 712A.2(b)(1), even while acknowledging that taking DHHS assistance to obtain outpatient treatment would have required taking DVL home, without prior treatment when he was potentially still suicidal and where he had attempted to set fire to the home. *In re DV Lange*, COA Unpublished Opinion Docket No. 362365, p 5 (2023). The court even appeared to question the facts it was relying on

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for finding against mother, after first saying that the hospital and DHHS determined that DVL was, "safe to go home," the court in a footnote stated:

> How 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." *In re DV Lange*, COA Unpub Opinion Docket No. 362365, p 5 (2023).

Clearly the appellate court had doubts about the basis for the hospital's and DHHS's determination that DVL was ready for release, and outpatient treatment on July 8, 2021. Nevertheless, the court held that mother's refusal to retrieve DVL from the hospital and to take him home untreated to participate in outpatient treatment established grounds for jurisdiction pursuant to MCL 712A.2(b)(1).

The Court of Appeals also found grounds for jurisdiction pursuant to MCL 712A.2(b)(2), finding that mother's home was unfit. MCL 712A.2(b)(2) describes a home as being unfit, "by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian," MCL 712A.2(b)(2). That description plainly did not depict respondent-mother's home in this case.

Again, the Court of Appeals looked to its decision in *Hockett*, in which it found mother's home unfit. The appellate court reasoned that like the mother in that case, respondent-mother in this case, "admitted that she could not care for DVL's special and significant needs." *In re DV Lange*, COA Unpublished Opinion Docket No. 362365, p 5 (2023). The court acknowledged respondent-mother's attempts at addressing DVL's needs through, "years of outpatient therapy," while noting that DVL's behavior, "continued to escalate." *Id,* p 5. The court also acknowledged the year-long program in Montana that mother sought out in an attempt to address DVL's needs.

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Id, p 5. The court noted the DHHS and hospital decisions that it was safe for DVL to return home without prior treatment. The appellate court then reached the conclusion that, "respondent's actions rendered the home an unsafe place," not just for DVL but for Ms. Lange's other two children as well. *Id,* p 5. In fact, the appellate court pronounced the home to be, "statutorily unfit." *Id*, p 5. It is unclear how mother's actions in refusing to bring home a suicidal teen who has tried to set the house on fire makes her home unfit. Within the plain language of the statute, there was little to no evidence that mother had been neglectful regarding DVL, and there certainly was no evidence of, "cruelty, drunkenness, criminality, or depravity on the part of a parent," that would have made her home unfit for her children. MCL 712A.2(b)(2). By mother's own testimony, she brought DVL to the hospital so that he could get psychiatric treatment, and she described herself as, "heartbroken," when after the hospital pronounced him ready for discharge, and she realized that he was not being offered adequate help.

The evidence in this case plainly does not support the Court of Appeals finding that mother was an unfit parent or that her home was unfit for DVL. The appellate court found evidence of unfitness in mother's refusal to take DVL home when DHHS offered to assist in getting him into outpatient services. In so doing, the court had to make two assumptions, that the hospital and DHHS were right when they asserted that DVL was ready for release, and that they were also correct in their determination that outpatient mental health services were sufficient to treat a child who was both suicidal and threatening to burn the house down. Neither of those assumptions was reasonable in light of the fact that DVL had received no psychiatric treatment in the month that he had been in the hospital, and that DVL had a known history that included years of outpatient treatment. Therefore, not even a preponderance of the evidence supported the court's finding of jurisdiction pursuant to MCL 712A.2(b)(1).

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The Appellate court also reasoned that the evidence established 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." *In re DV Lange,* Court of Appeals Docket No. 362365, Unpublished, at p 5. If mother's actions rendered her home unfit, there must necessarily be some action that could make the home fit. Clearly, in this case there was not. Taking DVL home when he was suicidal, and threatening to burn the house down, and to harm its other occupants, and he had received no treatment would not have made the home a safe environment for DVL or his brothers. There was no change to the home, or to respondent-mother herself that could make it safe for DVL to return to the home without treatment. Mother's home was not unfit, although we would agree with respondent-appellant mother that in DVL's condition it was not a safe environment for him, but what made it not safe was DVL's untreated mental health condition, not the home, and not mother.

When Ms. Lange refused to take DVL home, she was acting in DVL's interest. DVL entered St. John's hospital threatening self-harm, he received no treatment at St. John's and there was every reason to believe that the issues that brought him to St John's continued to exist on the date when St. John's recommended that he return home. A child threatening suicide should not be sent home untreated. DVL posed a threat to himself and to others. If respondent-mother had taken DVL home without treatment, she would have been neglectful, in that it would have exposed him and her two younger children to potentially life-threatening danger.

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II. THE EVIDENCE WAS SUFFICIENT TO ESTABLISH JURISDICTION PURSUANT TO MCL 712A.2(b)(3)(A) WHERE THE CHILD WAS HOMELESS OR NOT DOMICILED WITH A PARENT BECAUSE HE WAS UNABLE TO SAFELY RETURN TO RESPONDENT-MOTHER'S HOME DUE TO HIS MENTAL HEALTH CONDITION NOT BECAUSE THE HOME WAS UNFIT.

We believe that jurisdiction should have been sought and found in this case under MCL 712A.2(b)(3)(A), because respondent-mother was not negligent, and her home was not unfit, but DVL was without a home that he could safely return to and was in need of placement for mental health treatment that mother was unable to obtain for him. MCL 712A.2(b)(3)(A) establishes jurisdiction for a "dependent" child who is, "homeless or not domiciled with a parent or other legally responsible person." Although respondent-mother was not negligent in refusing to take DVL home, and her home was also not unfit, DVL still needed help. The court needed to exercise jurisdiction over DVL, because he needed help, mother was not able to have him at home safely and she was unable to obtain appropriate help for him without court intervention. The proper assertion of jurisdiction in this case was pursuant to MCL 712A.2(b)(3)(A).

STANDARD OF REVIEW

The appellate court reviews the trial court's finding of jurisdiction, "for clear error in light of the court's findings of fact," *In re BZ,* 264 Mich App 286, 295 (2004). "A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made," *In re LaFrance*, 306 Mich App 713, 723 (2014).

To establish jurisdiction a court must find, by a preponderance of the evidence that statutory grounds pursuant to MCL 712A.2(b) exist. *In re SLH,* 277 Mich App 662, 669 (2008). MCL 712A.2(b)(3) provides in pertinent part:

> (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:

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

The appellate court in finding jurisdiction pursuant to MCL 712A.2(b)(1) and (2) looked to its own earlier decision in *In re Hockett,* a case with a very similar fact pattern. In *Hockett,* respondent-mother had a son with mental health problems, and she refused to retrieve him from a hospital when told he was ready for release. The biggest difference between the two cases is that the mother in *Hockett* was homeless, whereas in the instant case, mother had a home, but DVL could not be safely managed at home.

The Court of Appeals in *Hockett* found grounds for jurisdiction under MCL 712A.2(b)(2), finding mother's home unfit, but rejecting the trial court finding of jurisdiction under subsection (1) and thereby not finding mother unfit. It is not clear, considering that the child in *Hockett* was homeless, why the Court of Appeals did not find jurisdiction more appropriate under MCL 712A.2(b)(3)(A). MCL 712A.2(b)(3)(A) establishes jurisdiction where the child is dependent and, "the juvenile is homeless or not domiciled with a parent or other legally responsible person," MCL 712A.2(b)(3). The youth in *Hockett* was homeless. The court plainly acknowledged that his mother was homeless, from there it must conclude that the youth was homeless. A child who is homeless as the child in *Hockett* was, should be found to be subject to the court's jurisdiction pursuant to MCL 712A.2(b)(3)(A).

This case is just as clear. Although Ms. Lange had a home, it was not a safe home for DVL. However, being unsafe for DVL did not make the home unfit according to the plain language in MCL 712A.2(b)(2), that is, the home was not unfit, "by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian," MCL 712A.2(b)(2). There was nothing that mother had done to make the home unsafe.

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The lack of safety here rested in DVL's untreated and insufficiently managed mental health. DVL would have been unsafe in any environment that did not include adequate psychiatric treatment and monitoring.

DVL was homeless because there was no home for him to go to safely, and not because the home was unsafe but because without psychiatric care and monitoring DVL could not be safe in any ordinary home environment, and others could not be safe living with him. Further, although DVL was not homeless in the same way that the child in *Hockett* was homeless, MCL 712A.2(b)(3)(A) specifies that jurisdiction is appropriate where a child is, "homeless or not domiciled with a parent," which suggests that the parent may have a domicile but that the child does not – or cannot – live there.

Jurisdiction should have been sought and found in this case under MCL 712A.2(b)(3)(A). Respondent-mother was not negligent, and her home was not unfit, but DVL was without a home that he could safely return to and was in need of placement for mental health treatment that mother was unable to obtain for him. MCL 712A.2(b)(3)(A) establishes jurisdiction for a "dependent" child who is, "homeless or not domiciled with a parent or other legally responsible person." The court needed to exercise jurisdiction over DVL, because he continued to need help, and mother appeared to have exhausted her resources to help him without court intervention. The proper assertion of jurisdiction in this case was pursuant to MCL 712A.2(b)(3)(A).

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III. THE COURT OF APPEALS ERRED IN DECIDING, *IN RE HOCKETT,* WHERE THE COURT BASED JURISDICTION ON MCL 712A.2(b)(2) FINDING THE MOTHER'S HOME UNFIT WHEN MOTHER AND CHILD WERE HOMELESS AND JURISDICTION SHOULD HAVE BEEN ESTABLISHED PURSUANT TO MCL 712A.2(b)(3)(A).

In re Hockett, like the instant case, involved a mother and a child with mental health issues. Further *Hockett,* was also case in which mother did not retrieve her child with mental health issues when he was reported ready for discharge from a hospital because she believed that he needed further treatment. *In re Hockett*, 339 Mich App 250 (2021). However, in *Hockett*, the court acknowledged that respondent-mother had an additional burden, she was homeless. *Id.,* p 253.

In, *In re Hockett*, the trial court found grounds for jurisdiction under MCL 712A.2(b)(1). *Id,* p 252. The Court of Appeals noted the trial court finding that respondent-mother, "failed to provide proper and necessary support and care," and that the child was therefore, "subject to substantial risk of harm to his mental health and well-being," but overturned that finding by the lower court, rejecting the idea that mother was an unfit parent. *Id,* p 255. In fact, the Court of Appeals opined that respondent-mother in *Hockett*, "wanted the kind of care for NRH that he only began to get when the state assumed jurisdiction." *Id,* p 255. The appellate court acknowledged that the child in *Hockett,* "needed more than respondent could give." *Id,* P 255.

The Court of Appeals in considering the trial court's finding of jurisdiction pursuant to MCL 712A.2b(1) spent time considering the meaning of the words, "when able to do so," within the statutory provision. A qualifier that suggests undefined circumstances in which a parent might not be able to provide care and maintenance for their children. MCL 712A.2b(1). It is unclear whether the words refer to a parent's financial ability or some other ability to provide necessary care. In *Hockett,* respondent mother was acknowledged to be homeless, so it would follow that

she lacked the financial ability to provide the necessary care for her child. Further, homelessness would also make it impossible for mother to physically provide appropriate care and custody. It seems clear that respondent-mother in *Hockett* lacked the ability or was not able to provide care and we support the appellate court's rejection of jurisdiction pursuant to MCL 712A.2(b)(1) in *Hockett.*

However, the Court of Appeals went on to find jurisdiction established pursuant to MCL 712A.2(b)(2) finding mother's home – or in fact, her lack of a home – unfit. The plain language of MCL 712A.2(b)(2) states that a home is unfit, "by reason of neglect, cruelty, drunkenness, criminality or depravity on the part of a parent, guardian, non-parent adult or other custodian." That section of the statute says nothing about homelessness. Perhaps the appellate court saw neglect in mother's lack of a home, but if so it was not clearly expressed.

The court instead cited, *In re Jacobs,* 433 Mich 24, 41 (1989), "culpability is not a pre-requisite," for court intervention. We would argue that a lack of culpability is further reason to establish jurisdiction based on homelessness pursuant to MCL 712A.2(b)(3)(A).

In re Hockett, like *In re DV Lange*, involved a mother trying to cope with the difficulties of a child with serious mental health issues. The mother in *Hockett,* also chose not to retrieve her child when he was reported ready for discharge from a hospital because she believed that he needed further treatment. *In re Hockett*, 339 Mich App 250 (2021). However, in *Hockett*, the court acknowledged that respondent-mother had the additional burden, she was homeless. *Id.,* p 253. Statutory provision MCL 712A.2(b)(3)(A) would have allowed the court to take jurisdiction based on the mother and child's homelessness, but instead the court chose to find mother's home unfit pursuant to MCL 712A.2(b)(2). We believe that *Hockett* was wrongly decided both in the trial court and on appeal.

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CONCLUSION

This was an application for leave to appeal filed by respondent-appellant mother, Kathleen Lange, challenging the appellate court's finding of jurisdiction by an Unpublished Opinion dated November 2, 2023. The underlying case involved respondent-appellant's teenage son, DVL, who was hospitalized in June of 2021 for mental health treatment. He was held at a non-psychiatric hospital pending placement in a inpatient juvenile psychiatric facility, but after one month the hospital and DHHS changed their recommendation to outpatient treatment and told mother he was ready for release. Respondent-mother declined to pick her son up from the hospital believing that it was unsafe to take him home, as he had no psychiatric treatment and had threatened suicide and to burn the house down prior to entering the hospital.

In taking the application for leave, this Court asked that the parties address whether this case was correctly decided, as well as whether a 2021 case, *In re Hockett,* with a very similar fact pattern was correctly decided, and finally whether MCL 712A.2(b)(3)(A) should have been applied to establish jurisdiction in either or both cases.

We argue that MCL 712A.2(b)(3)(A) should have been the basis for jurisdiction in both cases. Further that MCL 712A.2(b)(2) should not have been applied to establish jurisdiction in, *In re Hockett,* and that MCL 712A.2(b)(1) and (2) should not have been applied to establish jurisdiction here. We believe that in both cases, respondent-mother's who were seeking necessary help for their children were needlessly labeled as unfit parents, or as having homes that were unfit. We argue that this Court should be, "left with a definite and firm conviction that a mistake has been made," in each of these cases, pursuant to *In re LaFrance,* 306 Mich App 713, 723 (2014).

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RELIEF REQUESTED

WHEREFORE, the undersigned counsel on behalf of the minor children respectfully requests that this Honorable Court overturn the Michigan Court of Appeals decision in this case, as well as in *In re Hockett,* 339 Mich App 250 (2021), and find that jurisdiction should be established through MCL 712A.2(b)(3)(A).

Respectfully submitted,

/s/ Patricia A. Patrick

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WORD COUNT STATEMENT

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