Court of Appeals, State of Michigan

ORDER

In re AST Minor

Docket No. 362349

LC No. 38482-002914-PW

Michael J. Riordan
Presiding Judge

Christopher M. Murray

Kristina Robinson Garrett
Judges

FOR PUBLICATION

The circuit court's July 25, 2022 order dismissing the petition for lack of jurisdiction is REVERSED, and the matter REMANDED for further proceedings consistent with this order. Petitioner seeks a waiver of parental consent to an abortion under the Parental Rights Restoration Act (PRRA), MCL 722.901 *et seq*. The circuit court concluded that it lacked jurisdiction over the petition because petitioner resides outside of Michigan. That conclusion is incorrect.

This matter ultimately boils down to a question of statutory interpretation. Matters of statutory interpretation are reviewed de novo. *Comerica, Inc v Dep't of Treasury*, 332 Mich App 155, 161; 955 NW2d 593 (2020), aff'd ___ Mich ___; ___ NW2d ___ (June 7, 2022). "The primary goal in statutory interpretation is to ascertain and give effect to the Legislature's intent." *Bronson Methodist Hosp v Allstate Ins Co*, 286 Mich App 219, 223; 779 NW2d 304 (2009). This Court should first look to the language of the statute, as it is presumed that the plain language of the statute expresses the Legislature's intent. *Id*. If the language of the statute is unambiguous, the Legislature's intent is clear, and judicial construction is not necessary or permitted. *Id*. "Because the role of the judiciary is to interpret rather than write the law, courts lack authority to venture beyond a statute's unambiguous text." *Id*. Generally, undefined words are given their plain and ordinary meanings. *Id*. "Where words have acquired a peculiar and appropriate meaning in the law, they should be construed according to that meaning." *Id*. (quotation marks and citation omitted). And where the Legislature has defined a term in a statute, that definition controls. *People v Lewis*, 302 Mich App 338, 342; 839 NW2d 37 (2013).

As the circuit court noted, as a general premise, petitioner filed her petition in a court with authority to hear such matters. See MCL 722.904(1) (vesting jurisdiction over such proceedings with the probate court); MCL 600.1001 and MCL 600.1003 (establishing the family division of each circuit court); MCL 600.1021(1)(*i*) (stating that, after January 1, 1998, the family division has exclusive jurisdiction over "[c]ases involving parental consent for abortions performed on unemancipated minors under the parental rights restoration act, 1990 PA 211, MCL 722.901 to 722.908.").

The issue in this case concerns MCL 722.904(2)(b), which states: "A minor may file a petition for waiver of parental consent in the probate court of the county *in which the minor resides*. For purposes of this act, the county in which the minor resides means the county in which the minor's residence is located *or the county in which the minor is found*." (Emphasis added).

This Court must follow the Legislature's definition of the phrase "in which the minor resides." *Lewis*, 302 Mich App at 342. Thus, the question is whether petitioner is either a resident of the county in which she filed her petition, or if she "is found" in that county. The word "or" is disjunctive, and generally connotates separation or alternatives. *People v Allen*, 507 Mich 597, 607 n 16; 968 NW2d 532 (2021). It is clear in context that that the Legislature envisioned two circumstances where a minor could seek a waiver of parental consent in a particular county: (1) where the minor resides in that county, or (2) where the minor "is found" in that county. MCL 722.904(2)(b). Further, this Court is "require[d] . . . to give every word in a statute meaning and to avoid a construction that would render any part of the statute surplusage or nugatory." *Comerica, Inc*, 332 Mich App at 164. The language "is found" must mean something different than residence or else it would be mere surplusage.

In *In re Mathers*, 371 Mich 516; 124 NW2d 878 (1963), the Supreme Court interpreted another statute using the phrase "found within the county." *Id*. at 525-526. The Court held that such language describes one "who is physically present in the county." *Id*. at 526. The Court went on to explain that had the Legislature meant "residence," it could have said so. *Id*. The Court also explicitly held that "when the legislature used the word 'found', it did not mean 'resides', or its equivalent." *Id*. at 527 (footnote omitted). Here, too, it is clear that in MCL 722.904(2)(b), the Legislature did not mean "residence" when it stated "is found." The circuit court erred by grafting a residency requirement into this portion of the statute where none exists. *Charboneau v Beverly Enterprises, Inc*, 244 Mich App 33, 43; 625 NW2d 75 (2000).

And, if there were any doubt that the Legislature contemplated out-of-state residents being able to seek a waiver of parental consent under the PRRA, it is resolved by MCL 722.906. Pursuant to MCL 722.906: "The requirements of this act apply regardless of whether the minor is a resident of this state." The Legislature clearly contemplated that out-of-state residents could seek a waiver in Michigan. Had it intended otherwise, the Legislature would have no occasion to include MCL 722.906 in the PRRA. MCL 722.906 simply cannot be squared with the circuit court's holding that it lacked jurisdiction because petitioner resides in a different state.

Thus, we hold that, so long as petitioner is physically present in the county, the family division of that county's circuit court has jurisdiction to consider the petition. We express no view on the merits of whether petitioner is actually entitled to such a waiver. Rather, on remand, the circuit court shall follow the procedures of the PRRA, see MCL 722.904, to determine whether a waiver is appropriate. We further express no view on the legality of abortions in Michigan. See, e.g., MCL 750.14; *Dobbs v Jackson Women's Health Org*, ___ US ___; 142 S Ct 2228; ___ L Ed 2d ___ (2022); *Planned Parenthood of Mich v Attorney General*, unpublished opinion of the Court of Claims, issued May 17, 2022 (Case No. 22-000044-MM). Any consideration of such issues would be premature in this case, given that (1) the question has not been briefed; (2) the question has not been addressed or decided below; (3) the circuit court has not decided whether petitioner is actually entitled to the waiver she seeks on the merits; and (4) even if the waiver is granted, that does not confer on petitioner a right to an abortion or deem the procedure legal. See MCL 722.908(1) ("This act does not create a right to an abortion"); MCL 722.908(2) ("Notwithstanding any other provision of this act, a person shall not perform an abortion that is prohibited by law").

Ultimately, our decision is limited to a conclusion that, so long as a minor is physically present in a particular county, and regardless of her place of residence, the circuit court has jurisdiction to consider a petition brought under the PRRA. MCL 722.904(2)(b); *Mathers*, 371 Mich at 526-527. That

holding is compelled by the plain language of the PRRA and binding precedent of the Supreme Court. Neither this Court nor the circuit court has authority to alter or amend the statutes enacted by the Legislature. *Charboneau*, 244 Mich App at 43. The matter is remanded for further proceedings consistent with this order.

This order is to have immediate effect. MCR 7.215(F)(2). This is our final judgment in this matter, see MCR 7.215(E)(1), and this Court retains no further jurisdiction.

Presiding Judge

RIORDAN, P.J. (*concurring*). I agree with this Court's order that "the county in which the minor is found" for the purposes of MCL 722.904(2)(b) of the Parental Rights Restoration Act (PRRA), MCL 722.901 *et seq*., refers to the county in which the minor is physically present. In other words, I agree with the Court's "limited . . . conclusion that, so long as a minor is physically present in a particular county, and regardless of her place of residence, the circuit court has jurisdiction to consider a petition brought under the PRRA. MCL 722.904(2)(b); *Mathers*, 371 Mich at 526-527." In addition, because the circuit court dismissed the petition for lack of jurisdiction in the first instance, and because no other question is currently before this Court, I agree that a remand to that court is warranted for further proceedings. I write separately to explain that the circuit court would have correctly denied the petition on the merits.

In *Planned Parenthood of Mich v Attorney General*, unpublished opinion of the Court of Claims, issued May 17, 2022 (Case No. 22-000044-MM), the Court of Claims issued a preliminary injunction against MCL 750.14, the statute generally prohibiting abortion in Michigan "unless the same shall have been necessary to preserve the life of such woman." The Court of Claims stated in its opinion that "[t]he Court finds a strong likelihood that plaintiffs will prevail on the merits of their constitutional challenge," and "the Court finds a substantial likelihood that MCL 750.14 violates the Due Process Clause of Michigan's Constitution." Plainly, the Court of Claims did not find that MCL 750.14 actually is unconstitutional or otherwise invalid. Nor would such a finding even be appropriate in the context of a preliminary injunction, which is not a resolution of a case on the merits. *Mich Coalition of State Employee Unions v Mich Civil Serv Comm*, 465 Mich 212, 219-220; 634 NW2d 692 (2001). See also *United States v Arizona*, 703 F Supp 2d 980, 986 (D Ariz, 2010); *Virginia Soc for Human Life, Inc v Caldwell*, 26 F Supp 2d 868, 872 (WD Va, 1998). Therefore, MCL 750.14 remains valid law in Michigan. It merely is enjoined from being enforced on a temporary basis by the public officials identified in the preliminary injunction.

The preliminary injunction states that "[o]ther laws in effect regulating abortion in this State shall remain in full effect." As we have explained, the PRRA is one such law "regulating the performance of abortions." *People v Higuera*, 244 Mich App 429, 435-436; 625 NW2d 444 (2001). As

a result, the PRRA's limitation that "a person shall not perform an abortion on a minor without first obtaining the written consent of the minor and 1 of the parents or the legal guardian of the minor," MCL 722.903(1), remains in force.

The PRRA, however, "does not create a right to an abortion." MCL 722.908(1). More importantly, the PRRA prohibits any abortion that is otherwise "prohibited by law." MCL 722.908(2). Consequently, because MCL 750.14 remains valid law in Michigan, the PRRA prohibits any abortion that is prohibited by MCL 750.14. If the circuit court issues a waiver of parental consent pursuant to MCL 722.903(2) in this case—or any other case—in which the abortion is not "necessary to preserve the life of such woman," MCL 750.14, the circuit court will have violated MCL 722.908(2) by permitting an abortion that is otherwise prohibited by MCL 750.14. This, the circuit court cannot do, as courts cannot aid a violation of the law. *Swing v Cameron*, 145 Mich 175, 181-182; 108 NW 506 (1906).

Accordingly, while the circuit court had jurisdiction to entertain the petitioner's request for a waiver in this case, granting the waiver would be a violation of MCL 722.908(2) unless the abortion would be permitted by MCL 750.14. Because there is nothing in the petition to suggest that the abortion would be permitted by MCL 750.14, the circuit court would properly deny the petition on remand.

MURRAY, J. (*concurring*): I concur that the circuit court erred in holding that the minor was not eligible to seek a parental waiver. All the statute requires is that a minor be "found" in the county, and she was physically present in the county in which she sought an abortion when the petition was filed. Thus, a remand for a determination on the merits is appropriate. However, as Judge Riordan notes, even if the waiver is granted, that does not confer on the minor a right to an abortion or deem the procedure legal to perform. See both MCL 722.908(1) ("This act does not create a right to an abortion") and MCL 722.908(2) ("Notwithstanding any other provision of this act, a person shall not perform an abortion that is prohibited by law"). Those issues, if they arise on remand, would be issues to address in a subsequent appeal or other proceeding.

GARRETT, J. (*concurring in judgment only*): I agree that the circuit court erred when it concluded that it lacked jurisdiction to consider petitioner's petition for a waiver of parental consent to an abortion under the Parental Rights Restoration Act (PRRA), MCL 722.901 *et seq*.

I write separately for two reasons. First, although the Court's order ultimately "express[es] no view on the legality of abortions in Michigan," the mere discussion of why it would be premature to address the issue is unnecessary and unrelated to the jurisdictional question before this Court. I do not join in this portion of the Court's order.

Second, fundamental principles of judicial restraint counsel that judges should refrain from addressing issues that neither the circuit court nor the parties have raised. See *Clohset v No Name Corp (On Remand)*, 302 Mich App 550, 560; 840 NW2d 375 (2013). See also *Dobbs v Jackson Women's Health Org*, ___ US ___; 142 S Ct 2228, 2311; ___ L Ed 2d ___ (2022) (ROBERTS, C.J., concurring in judgment). Yet, the Presiding Judge's concurrence expresses a view on the legality of abortions in Michigan, an issue not before this Court. Under this concurrence's view, MCL 750.14 remains valid law

in Michigan. But the effect of MCL 750.14 has been enjoined and may not be enforced while the injunction remains in effect. *Planned Parenthood of Mich v Attorney General*, unpublished opinion of the Court of Claims, issued May 17, 2022 (Case No. 22-000044-MM). A preliminary injunction "maintain[s] the status quo pending a final hearing concerning the parties' rights." *Slis v State*, 332 Mich App 312, 336; 956 NW2d 569 (2020). Therefore, the injunction issued by the Court of Claims preserved the status quo as it existed in Michigan before the United States Supreme Court's decision in *Dobbs*, meaning that abortions remain legal under Michigan's pre-*Dobbs* regulatory scheme. As the Court of Claims' opinion explains, a preliminary injunction "allow[s] the Court to make a full ruling on the merits of the case without subjecting plaintiffs and their patients to the impact of a total ban of abortion services in this State." In other words, MCL 750.14's ban on abortion may not be enforced in Michigan while the preliminary injunction remains in effect. Furthermore, the Presiding Judge erroneously asserts that "because MCL 750.14 remains valid law in Michigan, the PRRA prohibits any abortion that is prohibited by MCL 750.14." This understanding of the effect of the Court of Claims' preliminary injunction is untenable. The Presiding Judge's concurrence ignores that MCL 750.14 is currently unenforceable based on a binding court order finding that its enforcement violates a woman's fundamental due-process right to bodily integrity.

This Court's current order should not be misunderstood. Under the existing status of the law, the circuit's court review on remand is limited to the statutory factors for deciding a waiver of parental consent. Those two factors focus on the maturity of the minor and the minor's best interests. MCL 722.904(3). The circuit court must also consider the petition with "sufficient expedition" pursuant to MCL 722.904(2). With this clarification, I concur in the portion of the Court's order remanding this matter to the circuit court to consider petitioner's petition for a waiver of parental consent to an abortion.

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

July 29, 2022
Date

Chief Clerk