Order

Michigan Supreme Court
Lansing, Michigan

November 22, 2023

Elizabeth T. Clement,
Chief Justice

164489 & (61)

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden,
Justices

In re HOLBROOK, Minor.

SC: 164489
COA: 359504
Oakland CC Family Division:
2020-882579-NA

_____/

By order of July 14, 2023 this Court, while retaining jurisdiction, remanded this case to the Oakland Circuit Court Family Division for a hearing to determine whether this case has become moot. The hearing having taken place and the trial court's September 7, 2023 opinion having been received by the Court, the petitioner-appellee Department of Health and Human Services' motion to dismiss the case as moot is again considered, and it is GRANTED, for the reasons stated in the trial court's opinion, which concludes that the case is moot given the termination of jurisdiction.

Moreover, when a case is moot, the normal practice is to vacate the lower court decisions. *League of Women Voters of Mich v Secretary of State*, 506 Mich 561, 588-589 (2020). Whether to vacate those decisions "turns on 'the conditions and circumstances of the particular case.' " *Id.* at 589 (quotation marks and citations omitted). We find that the circumstances of this case warrant vacatur, where the respondent diligently worked to improve her child's condition while protecting other minors in her care and was ultimately successful. We therefore VACATE the November 10, 2021 judgment of the Oakland Circuit Court Family Division and the May 19, 2022 judgment of the Court of Appeals, and we DISMISS the application for leave for the reason that the case is moot.

CAVANAGH, J. (*concurring*).

I concur with this Court's order dismissing the application as moot and vacating the lower court decisions. I write separately to explain why I believe that the available bases for trial courts to take jurisdiction in situations where a parent is unable to manage their child's mental health crisis are inadequate. I urge the Legislature to consider creating an alternative jurisdictional basis that enables the state to provide services without requiring courts to find parental neglect.

This case involves a child protective proceeding initiated because of respondent's alleged failure to provide necessary care for her child, JJH. The record reflects that respondent actively engaged JJH in services to treat his serious mental health issues since 2017. In 2020, respondent took JJH to a local hospital after he attempted suicide. JJH was subsequently transferred to Havenwyck Hospital, a psychiatric hospital, and later to Safehaus, a residential facility for short-term mental health crises. Children's Protective Services (CPS) became involved because of allegations of physical abuse and neglect.

While at the mental health facilities, JJH threatened to harm or kill himself, to kill respondent, and to molest his younger sibling if returned to respondent's home. Nonetheless, CPS worked with respondent to establish a safety plan for JJH to return home and asked respondent to complete Community Mental Health (CMH) paperwork to allow access to additional in-home mental health resources. Respondent, however, did not completely fill out the CMH paperwork and refused in-home services, believing that long-term residential treatment was more appropriate for her son's needs and for the safety of her family.

When the child's self-harming behaviors and aggression became too severe for Safehaus, the facility discharged him. The Department of Health and Human Services (DHHS) threatened to file a neglect petition against respondent if she did not pick up the child. When respondent refused, the DHHS arranged through the Regional Placement Unit to place JJH in an impulse-control residential program at Havenwyck. CPS indicated at trial that JJH would not have qualified for the residential program without the state's intervention because respondent would have needed to exhaust lower-level services first. However, CMH records from May and June of 2020 state that a lower level of care was not feasible and that JJH needed around-the-clock monitoring. CPS asked respondent to transport the child to the placement, which was more than two hours away, but she declined because she felt that JJH was a danger to her family. At trial, CPS caseworkers acknowledged that JJH's history included sexual abuse of a sibling and a half-sibling, self-harm, and violence against respondent, as well as diagnoses for attention-deficit hyperactivity disorder, oppositional defiant disorder, and post-traumatic stress disorder.

The DHHS filed a temporary custody petition alleging that the child had been "abandoned" at the short-term crisis center, that respondent had refused multiple services offered, that respondent would not allow JJH to return home, and that respondent stated that she was unable and unwilling to care for JJH. However, CPS workers recognized at trial that the child needed 24/7 care and supervision by professionals while in the mental health facilities. After the referee entered an interim placement order granting the DHHS custody, CPS transported JJH to the residential program at Havenwyck, where he remained at the time of trial and adjudication months later.

Following a bench trial before the referee, the trial court exercised jurisdiction over JJH under MCL 712A.2(b)(1), which provides for jurisdiction over a juvenile

> [w]hose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship.

The referee's only factual finding supporting jurisdiction was respondent's failure to complete the CMH documentation. The Court of Appeals affirmed the order finding statutory grounds for jurisdiction, and respondent appealed here. We directed the Clerk to schedule oral argument on the application and requested supplemental briefing. *In re Holbrook*, 510 Mich 1085 (2022). While the application was pending, the trial court terminated jurisdiction and dismissed the child protective proceeding, returning JJH to respondent's care. We thereafter directed supplemental briefing on mootness, *In re Holbrook*, 511 Mich ___ (2023), and remanded to the family division of the circuit court to determine whether collateral consequences rendered the case not moot, *In re Holbrook*, 511 Mich 1097 (2023). We now grant the motion to dismiss for the reasons stated in the trial court's opinion, which concluded that the case is moot.

In the initial MOAA order, we asked the parties to address whether the trial court correctly assumed jurisdiction over the minor child pursuant to MCL 712A.2(b)(1) under the circumstances of this case and whether *In re Hockett*, 339 Mich App 250 (2021), was correctly decided. In affirming, the panel below analogized to *Hockett*, which similarly involved a child in crisis whose parent was unable to manage his complex mental health needs. The respondent-mother in that case refused to pick up her child from the hospital because she believed that he needed more help, and the respondent was homeless after a recent eviction. *Id*. at 253. As in this case, the Court of Appeals affirmed the trial court finding of statutory grounds for jurisdiction under MCL 712A.2(b)(1), for " 'fail[ure] to provide proper and necessary support and care for [the child], who was subject to a substantial risk of harm to his mental health and wellbeing.' " *Id*. at 255.

The critical portion of the statute for our purposes is whether the parent, "when able to do so," neglects or refuses to provide proper care. MCL 712A.2(b)(1). While the Court of Appeals in *Hockett* framed the ability inquiry as the respondent's having the physical capacity to pick up her child, but not doing so, *id*. at 255, I believe that the phrase should be understood more broadly under a plain-language reading. Like the parent in *Hockett*, respondent did not have the resources to care for the child's extensive medical needs. Looking at whether the parent in *Hockett* physically had the capacity to pick up her child, or whether respondent physically had the capacity to complete CMH paperwork, misses the point. Like the parent in *Hockett*, other barriers prevented respondent from being able to take JJH home, notably, the risk of danger to the family and the recommendation by health professionals that appropriate treatment included 24/7 monitoring. How can it be said that respondent was "able to" provide proper care?

In my opinion, MCL 712A.2(b)(1) is a poor fit for parents in respondent's position. Respondent had a suitable home for the child, but at the time the petition was filed, the child could not return home without endangering respondent and her family. And as this Court recognizes, "respondent diligently worked to improve her child's condition while protecting other minors in her care and was ultimately successful." Under these

circumstances, it cannot reasonably be contended that respondent "neglect[ed] or refuse[d] to provide proper or necessary support" to JJH. MCL 712A.2(b)(1).

Nor does it appear that any other statutory provision cleanly applies to circumstances like this.[1] We requested supplemental briefing on the argument raised by JJH's lawyer-guardian ad litem (LGAL) that jurisdiction was instead proper under the dependency provision of MCL 712A.2(b), which states in relevant part that a court has jurisdiction in proceedings concerning a juvenile:

> (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.

I question whether JJH was "homeless or not domiciled with a parent" because respondent refused to pick him up from the treatment facility. But even assuming JJH was homeless and MCL 712A.2(b)(3)(A) applies to this particular case, the provision will likely not be applicable in every case involving a non-neglectful parent who is unable to provide for their child's mental health needs.

The available grounds for jurisdiction are ill-equipped to address situations like this. JJH came to the attention of the court system because he needed intensive mental health treatment, and his parent lacked the resources to provide it. I echo the concerns of the referee: "This mother was fully engaged in her son's mental health treatment. Is she neglectful when she feels she has exhausted all resources and is attempting to protect herself and her family by demanding help from the only professionals who could help?" And respondent is not the only parent in this predicament.[2] Last year the Detroit Free Press

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[1] The panel in *Hockett* suggested that jurisdiction was also appropriate in that case under MCL 712A.2(b)(2), where the child's "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." *Hockett*, 339 Mich App at 254-256. While *culpable* neglect need not be found for jurisdiction under (b)(2), *In re Jacobs*, 433 Mich 24 (1989), I question whether this statutory ground would apply here, where there was no evidence of neglect.

[2] To be sure, our courts continue to encounter similar fact patterns, as shown in a recent split Court of Appeals decision reversing the trial court's refusal to assume jurisdiction under MCL 712A.2(b)(1) and (b)(2) over a child with severe detachment disorder and behavioral issues whose parent refused to pick him up from the hospital. *In re DV Lange*, unpublished per curiam opinion of the Court of Appeals, issued November 2, 2023 (Docket

reported that families with children in mental health crises were reporting themselves to CPS as a last-ditch effort to get help in the face of inaccessible and often unaffordable services.[3] The laws on the books simply do not account for parents who are overwhelmed by their children's mental health crises and need state intervention. It strikes me as fundamentally unfair to deem parents faced with such insurmountable challenges as unfit or neglectful.

Some states provide an alternative process to allow courts to take jurisdiction and place children in state custody without finding neglect. In other words, some states have a "no-fault" dependency avenue. For example, Ohio's "unruly child" statute allows a court to take jurisdiction over "any child who behaves in a manner as to injure or endanger the child's own health or morals or the health or morals of others[.]" Ohio Rev Code Ann 2151.022(C). Any person, which necessarily includes a parent, having knowledge that a child is "unruly" may file a complaint. Ohio Rev Code Ann 2151.27. Notably, the court may hold the "unruly child" complaint in abeyance until the child successfully completes diversionary actions ordered by the court, and if the actions are completed, the court may simply dismiss the complaint. Ohio Rev Code Ann 2151.27(F). This is just one example of a process that allows parents to obtain services for their children without necessitating a neglect petition.

I ask the Legislature to consider creating a no-fault procedure that allows the state to intervene without requiring courts to adjudicate parents as unfit when they are struggling to support children with complex mental health needs. Under the status quo, courts may be understandably tempted to invoke inapplicable statutory provisions to find a parent unfit in order to provide needed services. But as this Court has recognized, doing so may impose

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No. 362365) (REDFORD, J., dissenting), p 3 (concluding that the trial court did not err by declining to assume jurisdiction where, *inter alia*, "[t]here [was] no indication that DVL's mother did anything other than undertake exhaustive, comprehensive, and costly measures to try to care for DVL").

[3] Brookland, *When Giving Up a Child is the Only Way to Get Needed Help*, Detroit Free Press (November 20, 2022), available at <https://www.freep.com/story/news/2022/11/20/parents-child-protective-services-mental-health-help/69656670007/> (accessed October 26, 2023).

legal and collateral consequences on parents. *In re Holbrook*, 511 Mich at ___ (directing supplemental briefing on mootness); *In re Holbrook*, 511 Mich at 1097 (remanding to the trial court).[4] Cases like this, where parents are undeserving of those possible consequences, illustrate why reform is needed. "The scant and costly resources available for mental healthcare for children likely places other parents in the same situation as this respondent. We can only look to our policymakers for a resolution to this conundrum." *Hockett*, 339 Mich App at 255-256.

CLEMENT, C.J., joins the statement of CAVANAGH, J.

[4] Our Legislature has already taken one step in the right direction by lessening the potential collateral consequences of a neglect adjudication. Recent legislation raises the threshold for placement on the Central Registry from any case in which the DHHS determines that there is evidence of child abuse or neglect for which child protective services or a court petition are required, MCL 722.622(d), as amended by 2018 PA 59, to cases where there is "serious" abuse or neglect, MCL 722.622(d), as amended by 2022 PA 67. With this change, parents in respondent's shoes will no longer face the collateral consequence of a Central Registry listing. Indeed, the trial court on remand found that respondent was "listed but expunged" from the registry, likely because of the change in the law.