



Michigan Supreme Court

State Court Administrative Office

Child Welfare Services

Michigan Hall of Justice

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Kelly Howard
Director

MEMORANDUM

DATE: April 17, 2015

TO: Chief Circuit Court Judges
cc: Family Division Judges
Family Division Administrators
Circuit Court Administrators

FROM: Kelly Howard

RE: Child Protective Proceedings: *In re Kanjia's* Findings of the *In re Sanders*
Challenge on Appeal Not Constituting Collateral Attack and the Retroactivity of
In re Sanders

On June 2, 2014, the Michigan Supreme Court ruled in *In re Sanders*,¹ that the “one-parent doctrine” impermissibly infringes the fundamental rights of unadjudicated parents by “allow[ing] the court to deprive a parent of th[e] fundamental right [to the care, custody, and control of his or her children] without any finding that he or she [was] unfit,” and deemed the doctrine unconstitutional under the Due Process Clause of the Fourteenth Amendment.² This memorandum is a summary of recent case law addressing whether a *Sanders* challenge can be raised for the first time on direct appeal from an order of termination and the retroactive application of the court’s holding in *In re Sanders* to child protective proceedings.

If you have any questions, please contact me at (517) 373-8671 or HowardK@courts.mi.gov, or Noah Bradow, CWS Management Analyst, at (517) 373-2621 or BradownN@courts.mi.gov.

¹ 495 Mich 394; 853 NW2d 524 (2014).

² For more discussion on a parent’s due process rights following the court’s assumption of jurisdiction over a child, see the Michigan Judicial Institute’s [Child Protective Proceedings Benchbook](#), Section 4.3(E).

Background

On December 30, 2014, the Michigan Court of Appeals (COA) ruled in *In re Kanjia*³ that a respondent's challenge to a trial court's jurisdiction under the Juvenile Code⁴ based on *In re Sanders* does not constitute an impermissible collateral attack on the court's jurisdiction,⁵ and that the ruling in *Sanders* should be given **full** retroactivity.⁶

I. *Sanders* Challenge on Appeal is Not a Collateral Attack on Court's Jurisdiction

In *Sanders*, the Michigan Supreme Court held that, although the trial court may obtain jurisdiction over a child where only one parent has been adjudicated, due process precludes the trial court from exercising dispositional authority over the unadjudicated parent. The COA in *In re Kanjia* clarified that a *Sanders* appeal is a challenge to the court's dispositional authority not jurisdiction.⁷ Accordingly, because a respondent's attack on the trial court's adjudication based on *Sanders* constitutes a challenge to the trial court's dispositional authority as to the parent, and not its jurisdictional finding over the child, the issue may be raised for the first time on direct appeal from an order terminating parental rights.⁸

II. Full Retroactivity of *Sanders*

Given full retroactivity by the COA in *Kanjia*, the ruling in *Sanders* applies to all child protection cases pending on direct appeal at the time *Sanders* was decided without regard to whether the respondent ever appealed the initial order of adjudication.⁹ The holding in *Sanders* does not apply to those child protective cases where a trial or appellate court issued a final ruling and the time for appeal from the ruling expired at the time *Sanders* was decided.¹⁰

III. Impact to the Court

While the impact of *Kanjia* is not expected to be overwhelming, the trial courts may see additional cases currently pending on appeal remanded to the court for proceedings consistent with *Sanders*. Trial courts should identify and closely track the status of cases in their county with potential *Sanders* issues pending on appeal. In the event that the cases are remanded for adjudication, those hearings should be scheduled promptly.

³ *In re Kanjia* __ Mich App __; __ NW2d __ (Dec 30, 2014) (Docket No. 320055).

⁴ MCL 712A.2b.

⁵ “[W]e conclude that a *Sanders* challenge, raised for the first time on direct appeal from an order of termination, does not constitute a collateral attack on jurisdiction, but rather a direct attack on the trial court's exercise of its dispositional authority.” *In re Kanjia*, __ Mich App __; __ NW2d __ (Dec 30, 2014) (Docket No. 320055) slip op at 7.

⁶ Following a motion for reconsideration, the December 30, 2014, opinion of the Court of Appeals vacated its October 21, 2014 opinion in *In re Kanjia* holding *In re Sanders* was to be given limited retroactivity.

⁷ *In re Kanjia*, __ Mich App __; __ NW2d __ (Dec 30, 2014) (Docket No. 320055) slip op at 6.

⁸ For more discussion on challenging a court's exercise of jurisdiction in Child Protective Proceedings, see the Michigan Judicial Institute's [Child Protective Proceedings Benchbook](#), Section 4.3(G).

⁹ *Kanjia*, at 7.

¹⁰ See *McNeel v Farm Bureau General Ins Co of Michigan*, 289 Mich App 76, 94-95, 795 NW2d 205, 216 (2010) (stating “[r]ules determined in opinions that apply retroactively apply to all cases still open on direct review and as to all events, regardless of whether such events predate or postdate our announcement of the rule.”)

As a reminder, all respondent parents must be adjudicated under the Juvenile Code before being subject to the dispositional authority of the court and subsequent termination of their parental rights. For further guidance on court procedures, please review the *In re Sanders* memorandum issued by the State Court Administrative Office, Child Welfare Services Division on August 07, 2014. You can access the memorandum at the following link:

<http://courts.mi.gov/Administration/SCAO/OfficesPrograms/CWS/Documents/InReSanders08-07-14.pdf>.