

STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

IN RE CONTEMPT OF KELLY MICHELLE DORSEY

PEOPLE OF THE STATE OF MICHIGAN

Petitioner/Appellee

v.

TYLER MICHAEL DORSEY,

Respondent,

and

KELLY MICHELLE DORSEY,

Respondent/Appellant.

SC: 150298

COA: 309269

Livingston CC Family Division:

08-012596-DL

WILLIAM J. VAILLIENCOURT, JR. (P39115)
LIVINGSTON COUNTY PROSECUTING ATTORNEY

210 S. Highlander Way

Howell, Michigan 48843

(517) 546-1850

KURT T. KOHLER (P70122)

THE LAW OFFICE OF KURT T. KOEHLER

Attorney for Respondent/Appellant

145 Acklins Cir Apt 109

Daytona Beach, FL 32119-9774

(734) 262-2441

kkoehler@koehlerlegal.com

**PETITIONER/APPELLEE'S SECOND
SUPPLEMENTAL BRIEF ON APPEAL**

WILLIAM J. VAILLIENCOURT, JR.

LIVINGSTON COUNTY PROSECUTING ATTORNEY

WILLIAM M. WORDEN (P39158)

Assistant Prosecuting Attorney

210 S. Highlander Way

Howell, Michigan 48843

(517) 546-1850

Table of Contents

Index of Authorities.....ii-iv

Counter-Statement of Basis of Jurisdiction..... v

Counter-Statement of Questions Presented..... v-vi

Introduction 1

Counter-Statement of Facts..... 7

Second Supplemental Argument:

I. Whether the family court lacked subject matter jurisdiction to issue the order compelling the appellant to submit to random drug testing as part of her son’s juvenile delinquency proceeding..... 7

II. Michigan recognizes an “exception” to the collateral bar rule..... 16

II.-A. Appellant Had an Opportunity for Meaningful Appellate Review..... 20

II.-B. Appellant irretrievably surrendered constitutional guarantees by complying with the drug testing order. 23

III. Appellant failed to properly preserve Issue II for appellate review..... 26

Conclusion and Request for Relief..... 31

Exhibit A.....Supplemental Order of Disposition

Exhibit B *In re Collier*

Exhibit C *In re Deng*

Index of Authorities

Cases:

<i>Ex parte Crouse</i> , 4 Wharton 9 (Pa, 1839); 1839 WL 3700	1
<i>Howat v Kansas</i> , 258 US 181; 42 S Ct 277; 66 L Ed 550 (1922)	3
<i>In re AMB</i> , 248 Mich App 144; 640 NW2d 262 (2001)	8
<i>In re J.A.M. Collier</i> , published per curiam opinion of the Court of Appeals issued March 15, 2016 (Docket No. 328172).....	18-20
<i>In re Complaint of Knox</i> , 255 Mich App 454; 660 NW2d 777 (2003)	7-8
<i>In re Contempt of Dorsey</i> , 306 Mich App 571; 858 NW2d 84 (2014)	2-3, 11, 25
<i>In re Deng</i> , 2016 WL 1123132 (Docket No. 328826, issued March 22, 2016).....	21-23
<i>In re Hatcher</i> , 443 Mich 426; 505 NW2d 834 (1993)	6
<i>In re Huisman</i> , 230 Mich App 372; 584 NW2d 349 (1998)	9
<i>In re S. Kanjia</i> , 308 Mich App 660; 866 NW2d 862 (2014)	16-18, 20
<i>In re Macomber</i> , 436 Mich 386; 461 NW2d 671 (1990)	2, 8, 10
<i>In re Reiswitz</i> , 236 Mich App 158; 600 NW2d 135 (1999)	15, 31-33
<i>In re Sanders</i> , 495 Mich 394, 406; 852 NW2d 524 (2014)	2, 16
<i>In re Trejo</i> , 462 Mich 341; 612 NW2d 407 (2000)	16
<i>Jackson City Bank & Trust Co v Fredrick</i> , 271 Mich 538; 260 NW 908 (1935).....	11-12, 14
<i>Lapeer Co Clerk v Lapeer Circuit Judges</i> , 465 Mich 559; 640 NW2d 567 (2002)	7
<i>Lehman v Lehman</i> , 312 Mich 102; 19 NW2d 502 (1945)	7
<i>Maness v Meyers</i> , 419 US 449; 95 S Ct 584; 42 L Ed 2d 574 (1975)	23-25
<i>Oriel v Russell</i> , 278 US 358; 49 S Ct 173; 73 L Ed 419 (1929).....	6

People v Matteson, 280 Mich 218; 273 NW 454 (1937)..... 26

People v Norman, 183 Mich App 203; 454 NW2d 393 (1989)..... 32

People v Spann, 3 Mich App 444, 456; 142 NW2d 887 (1966) 27

People v Willis, 1 Mich App 428; 136 NW2d 723 (1965)..... 26

Traveler’s Ins Co v Detroit Edison, 465 Mich 185; 631 NW2d 733 (2001)..... 7

United States v Blue, 384 US 251; 86 S Ct 1416; 16 L Ed 2d 510 (1966)..... 25

United States v Cutler, 58 F 3d 825 (1995)..... 3

United States v Hendrickson, 822 F 3d 812 (2016) 3-4, 6

United States v United Mine Workers, 330 US 258;
67 S Ct 677; 91 L Ed 884 (1947)..... 3, 6

United States v Shipp, 203 US 563; 27 S Ct 165; 51 L Ed 319 (1906)..... 3

Walker v City of Birmingham, 388 US 307;
87 S Ct 1824; 18 L Ed 2d 1210 (1967)..... 3, 5, 6

Constitution, Court Rules and Statutes:

Const 1963, art 1, § 11..... 6

Const 1963, art 6, § 15..... 8

MCL 600.611..... 1, 32

MCL 600.847..... 8, 32

MCL 600.1009..... 8

MCL 600.1021(1)(e) 8

MCL 600.1060..... 1

MCL 600.1082..... 1

MCL 600.1711 1

MCL 600.1715 1

MCL 712A.1 32

MCL 712A.1(3) 8-9

MCL 712A.2 8

MCL 712A.2(a)(1)..... 32

MCL 712A.6 1-2, 8, 14-15, 32

MCL 712A.18 2, 10

MCL 712A.18(1) 9

MCL 712A.18(1)(b), (g), and (k)..... 9-10, 15

MCL 712A.18(1)(f) 21

MCL 712A.18(2) 15

MCL 722.124a 21

US Const Am IV 6

US Const Am V 25

Counter-Statement of Basis of Jurisdiction

Plaintiff-Appellee accepts Defendant-Appellant's Statement of Basis of Jurisdiction.

Counter-Statement of Questions Presented

I. Did the family court possess subject matter jurisdiction to issue the order compelling the appellant to submit to random drug testing as part of her son's juvenile delinquency proceeding?

Defendant-Appellant Answers: "No."

Plaintiff-Appellee Answers: "Yes."

Court of Appeals Answers: "Yes."

II. Does Michigan recognize an "exception" to the collateral bar rule?

Defendant-Appellant Answers: "No."

Plaintiff-Appellee Answers: "Yes."

Court of Appeals Answers: "Yes."

II.-A. Did Appellant have an opportunity for meaningful appellate review?

Defendant-Appellant Answers: "No."

Plaintiff-Appellee Answers: "Yes."

Court of Appeals Answers: "Yes."

II.-B. Did Appellant irretrievably surrender constitutional guarantees by complying with the drug testing order?

Defendant-Appellant Answers: "No."

Plaintiff-Appellee Answers: "Yes."

Court of Appeals Answers: "Yes."

III. Did Appellant fail to properly preserve Issue II for appellate review?

Defendant-Appellant Answers: "No."

Plaintiff-Appellee Answers: "Yes."

Court of Appeals Answers: "Yes."

Introduction

Under the doctrine of *parens patriae*, a juvenile court judge acts as the “common guardian of the community.”¹ But, how does a family court get parents to do anything if the judge’s contempt power is curtailed? The fact that a child becomes a ward of the court usually indicates problems at home and possibly recalcitrant parents. Without the ability to issue orders affecting parents, a court can accomplish very little with its ward, particularly if the child remains in the parent’s home. In such cases, the children cannot succeed without engaging their parents. Programs and services usually will not work without parental involvement. This is a matter of common sense: the family court needs the tools to have parents involved in the legal process. The contempt power is one of those tools.

Thus, it should come as no surprise that a trial court has inherent and statutory authority to enforce its orders.² A party must obey an order entered by a court with proper jurisdiction, even if the order is clearly incorrect, or the party must face the risk of being held in contempt and possibly being ordered to comply with the order at a later date.

MCL 712A.6 states: “The court has jurisdiction over adults as provided in [the Juvenile Code] and as provided in . . . MCL 600.1060 to [MCL]600.1082, and may make orders affecting adults as in the opinion of the court are necessary for the

¹ *Ex parte Crouse*, 4 Wharton 9 (Pa, 1839); 1839 WL 3700. In *Ex parte Crouse*, the parent of a child committed to a House of Refuge sought her release. The Pennsylvania Supreme Court held that the rights of the parents must give way to the state when the court finds that reformation and treatment is in the child’s and the community’s interest.

² MCL 600.611; MCL 600.1711; MCL 600.1715.

physical, mental, or moral well-being of a particular juvenile or juveniles under its jurisdiction. However, those orders shall be incidental to the jurisdiction of the court over the juvenile or juveniles.”

In fact, the Michigan Supreme Court reaffirmed the juvenile court’s statutory authority and broad discretion in being able to provide services and orders that are in the best interest of the minor child:

Once a court assumes jurisdiction over a child, the parties enter the dispositional phase. Unlike the adjudicative phase, here the rules of evidence do not apply, MCR 3.973(E), and the respondent is not entitled to a jury determination of facts, MCR 3.911(A). The purpose of the dispositional phase is to determine “what measures the court will take with respect to a child properly within its jurisdiction and, when applicable, against *any* adult....” MCR 3.973(A) (emphasis added). The court’s authority to enter these orders is found in MCL 712A.6.

The court has broad authority in effectuating dispositional orders once a child is within its jurisdiction. *In re Macomber*, 436 Mich. 386, 393-399; 461 N.W.2d 671 (1990). And while the court’s dispositional orders must be “appropriate for the welfare of the juvenile and society in view of the facts proven and ascertained,” MCL 712A.18(1), the orders are afforded considerable deference on appellate review, see *In re Cornet*, 422 Mich. 274, 278-279; 373 NW2d 536 (1985) (adopting the clear-error standard of review for dispositional orders).

In re Sanders, 495 Mich 394, 406; 852 NW2d 524 (2014).

The authority to fashion remedies under MCL 712A.6 extends beyond MCL 712A.18, which provides dispositional alternatives for juveniles found to be within the court’s jurisdiction.³ Furthermore, where a “court conclude[s] that [a parent

³ *In re Macomber*, 436 Mich 386, 389-393, 398-400; 461 NW2d 671 (1990); see also *In re Contempt of Dorsey*, 306 Mich App 571, 582-583; 858 NW2d 84 (2014).

has] interfered with the court's [judicial] function, [he or she may] be punished for contempt."⁴

It could not be clearer: under the collateral bar doctrine, a party may not challenge a court's order by violating it. Instead, she must move to vacate or modify the order, or seek relief in a higher court. If she fails to do either, ignores the order, and is held in contempt, she may not challenge the order unless it was transparently invalid or exceeded the court's jurisdiction.⁵

Thus, the collateral bar rule limits the grounds on which a person who has disobeyed a court order can challenge that order to avoid being punished for criminal contempt. At its core, the rule generally prevents such a person from challenging the merits of the order, even if the order infringed on constitutional rights.⁶ In addition, the rule generally prevents such a person from challenging the court's jurisdiction to have issued the order.⁷

In *United States v Hendrickson*, 822 F 3d 812, 818 (2016), the Sixth Circuit held: "As a threshold matter, the collateral bar rule prevents Hendrickson from challenging the constitutionality of the underlying order in the course of her criminal contempt proceeding." When a court has personal and subject matter jurisdiction over a case, an order issued by the court "must be obeyed by the parties

⁴ *In re Contempt of Dorsey*, 306 Mich App at 583 (citation omitted).

⁵ *United States v Cutler*, 58 F 3d 825, 832 (1995).

⁶ See *Walker v City of Birmingham*, 388 US 307, 315-321; 87 S Ct 1824; 18 L Ed 2d 1210 (1967); *Howat v Kansas*, 258 US 181, 189-190; 42 S Ct 277; 66 L Ed 550 (1922).

⁷ See *United States v United Mine Workers*, 330 US 258, 293-294; 67 S Ct 677; 91 L Ed 884 (1947); *United States v Shipp*, 203 US 563, 573; 27 S Ct 165; 51 L Ed 319 (1906).

until it is reversed by orderly and proper proceedings.” *Id.* “Violating such an order may be punishable by criminal contempt.” *Id.* “[U]nder federal and state law, parties must obey injunctions issued by a court of competent jurisdiction, ‘however erroneous the action of the court may be,’ and ‘until [the issuing court’s] decision is reversed for error by orderly review, . . . disobedience . . . is contempt of [the court’s] lawful authority, to be punished.” *Id.* “Accordingly, we have found that a defendant in a criminal contempt proceeding may not contest the validity of the underlying court order, except on the grounds that the issuing court lacked jurisdiction or its order was ‘transparently invalid or had only a frivolous pretense to validity.’” *Id.*, at 819. “Other courts have also recognized exceptions to the collateral bar rule when no ‘adequate and effective’ opportunity for appellate review exists or the underlying order ‘require[s] an irretrievable surrender of constitutional guarantees’—though we have never explicitly adopted or rejected these principles.” *Id.*, at 819.

In short, Ms. Dorsey could have challenged the order in January of 2011; she is no stranger to the criminal justice system. She is extremely familiar with her legal rights. Ms. Dorsey was convicted by plea of second-degree retail fraud in 1998. She was also convicted by plea of operating while intoxicated in 2008. She requested a court-appointed attorney and had a public defender (Sherwood/Mitchell) and another attorney (Secrest) in the latter case.

Ms. Dorsey is not a neophyte; she is savvy, and she could have filed an interlocutory application, motion to stay, motion to vacate, mandamus, declaratory action, etc. She could have complied with the order, and still appealed. Ms. Dorsey

was represented by attorney William Hougaboom in the Neglect/Abuse case. She had access to her son's attorney and also her own attorney in the Neglect/Abuse case—the case she thought she was testing for, according to her own testimony. Ms. Dorsey's charade of naïveté is just that.

In his remarks to Judge Reader, even Ms. Dorsey's appellate counsel, Mr. Koehler, tacitly acknowledged that a court's orders must be followed until they are amended, vacated, or overturned:

Preliminarily I'd like to say that I've advised my client to follow all court orders until the Court or an appellate court vacates them notwithstanding the arguments I'm going to make today which rely on a rather – one of the exceptions to the requirement to follow an invalid order which is where the Court lacks subject matter jurisdiction in the area.⁸

Like *Hendrickson*, Ms. Dorsey's case “does not fall under any exception to the collateral bar rule.” *Id.*, at 819. As in *Walker v City of Birmingham*, Ms. Dorsey's case does not involve a court order that was “transparently invalid or had only a frivolous pretense to validity.”⁹ Judge David J. Reader ordered “random drug testing as requested by Maurice Spear Campus or the probation department” because Ms. Dorsey's juvenile son Tyler Dorsey “has not been rehabilitated” and “[i]t is contrary to the welfare of the juvenile to remain in the home because [of] the parent's inability to keep the juvenile free of illegal substances.”¹⁰

⁸ March 22, 2012 Motion Hearing, at 3-4.

⁹ *Walker v City of Birmingham*, 388 US at 315.

¹⁰ See Supplemental Order of Disposition issued by Judge David J. Reader on January 14, 2011, attached as **Exhibit A**.

It is true that the Michigan Court of Appeals found Judge Reader's order unconstitutional as a violation of Ms. Dorsey's Fourth Amendment right to be free from an unreasonable search and seizure.¹¹ But, as a general rule, even an unconstitutional order or statute must be followed "until its unconstitutionality has been judicially declared in appropriate proceedings" and "no person charged with its observance under an order or decree may disregard or violate the order or the decree with immunity from a charge of contempt of court."¹² As the United States Supreme Court concluded, "respect for judicial process is a small price to pay for the civilizing hand of law, which alone can give abiding meaning to constitutional freedom."¹³ When an order has become final, "disobedience cannot be justified by re-trying the issues as to whether the order should have issued in the first place."¹⁴ Thus, *In re Hatcher*, 443 Mich 426, 438; 505 NW2d 834 (1993) is *not* distinguishable. *Hatcher* is directly on point, and the *Dorsey* Court's opinion

¹¹ US Const Am IV reads: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized." With several exclusions controlled by the doctrine of curtilage, the Michigan Constitution mirrors the Fourth Amendment: "The person, houses, papers and possessions of every person shall be secure from unreasonable searches and seizures. No warrant to search any place or to seize any person or things shall issue without describing them, nor without probable cause, supported by oath or affirmation. The provisions of this section shall not be construed to bar from evidence in any criminal proceeding any narcotic drug, firearm, bomb, explosive or any other dangerous weapon seized by a peace officer outside the curtilage of any dwelling house in this state." Const 1963, art 1, § 11.

¹² *Walker v City of Birmingham*, 388 US at 320.

¹³ *Walker v City of Birmingham*, 388 US at 321.

¹⁴ *United States v Hendrickson*, 822 F3d at 820, citing *United Mine Workers*, 330 US at 259, and *Oriel v Russell*, 278 US 358; 49 S Ct 173; 73 L Ed 419 (1929).

following *Hatcher*—and affirming the family court’s finding of contempt—must be affirmed.

Counter-Statement of Facts

The People rely on the facts previously submitted to the Court with the incorporation of specific testimony from the hearings held in February and March of 2012, which is included in the argument portions of this brief.

Argument

I

The family court possessed subject matter jurisdiction to issue the order compelling the appellant to submit to random drug testing as part of her son’s juvenile delinquency proceeding.

Standard of Review: Whether courts have subject-matter jurisdiction under the statutes of our state is a legal question. *In re Complaint of Knox*, 255 Mich App 454, 457-458; 660 NW2d 777 (2003), citing *Lapeer Co Clerk v Lapeer Circuit Judges*, 465 Mich 559, 566; 640 NW2d 567 (2002).

Analysis: Subject-matter jurisdiction pertains to the court’s abstract power over a class of cases, not to whether the facts of a particular case present a claim subject to the court’s authority. *In re Complaint of Knox*, 255 Mich App at 457, citing *Traveler’s Ins Co v Detroit Edison*, 465 Mich 185, 204; 631 NW2d 733 (2001). Subject-matter jurisdiction cannot be conferred by consent of the parties. 255 Mich App at 457, citing *Lehman v Lehman*, 312 Mich 102, 106; 19 NW2d 502 (1945), and a court must take notice when it lacks jurisdiction regardless of whether the parties

raised the issue. 255 Mich App at 457, citing *In re AMB*, 248 Mich App 144, 166-167; 640 NW2d 262 (2001).

Const 1963, art 6, § 15 grants probate courts “original jurisdiction in all cases of juvenile delinquents and dependents, except as otherwise provided by law.” The family division of each circuit court has replaced the probate court in proceedings concerning custody of juveniles. MCL 600.1021(1)(e); see also MCL 600.1009.

The Juvenile Code, MCL 712A.2, specifically grants the family courts in this state subject-matter jurisdiction of cases concerning children under seventeen years of age. This and other statutes comprising the Juvenile Code are intended to give the family courts extensive authority to protect children.¹⁵ “The Legislature has given a broad grant of authority to the probate court to protect children who come within its jurisdiction.” *In re Macomber*, 436 Mich at 389.

The Michigan Legislature defined the probate court’s jurisdiction: “. . . *the probate court shall have the same powers as the circuit court to hear and determine any matter and make any proper orders to fully effectuate the probate court’s jurisdiction and decisions.*” MCL 600.847. (Emphasis added by Plaintiff-Appellee.)

Fairly characterized, the paramount purpose of the juvenile section of the Probate Code is to provide for the well-being of children. MCL 712A.1(3), in relevant

¹⁵ MCL 712A.6 reads: “*The court has jurisdiction over adults as provided in this chapter and as provided in chapter 10A of the revised judicature act of 1961, 1961 PA 236, MCL 600.1060 to 600.1082, and may make orders affecting adults as in the opinion of the court are necessary for the physical, mental, or moral well-being of a particular juvenile or juveniles under its jurisdiction.* However, those orders shall be incidental to the jurisdiction of the court over the juvenile or juveniles.” (Emphasis added by Plaintiff-Appellee.)

part, reads: “*This chapter shall be liberally construed so that each juvenile coming within the court’s jurisdiction receives the care, guidance, and control, preferably in his or her own home, conducive to the juvenile’s welfare and the best interest of the state.*” (Emphasis added by Plaintiff-Appellee.)

Thus, appellate courts have a “statutory obligation to liberally construe the Juvenile Code to ensure that each child coming within the probate court’s jurisdiction receives the care, guidance, and control conducive to the child’s welfare and the best interest of the state.” *In re Huisman*, 230 Mich App 372, 381; 584 NW2d 349 (1998).

MCL 712A.18(1) reads in relevant part:

“ . . . if the court finds that a juvenile is within this chapter, the court may enter any of the following orders of disposition that are appropriate for the welfare of the juvenile and society in view of the facts proven and ascertained:

* * *

“(b) . . . The court shall order the terms and conditions of probation or supervision, *including reasonable rules for the conduct of the parents, guardian, or custodian, if any, as the court determines necessary for the physical, mental, or moral well-being and behavior of the juvenile.*

* * *

“(g) *Order the parents, guardian, custodian, or any other person to refrain from continuing conduct that the court determines has caused or tended to cause the juvenile to come within or to remain under this chapter or that obstructs placement or commitment of the juvenile by an order under this section.*

* * *

“(k) If a juvenile is within the court’s jurisdiction under section 2(a)(1) of this chapter, *order the juvenile’s parent or guardian to personally participate in treatment* reasonably available in the parent’s or guardian’s location.

But, the family court power exceeds MCL 712A.18. This Court wrote: “We disagree with the reading of chapter XIAA of the probate code by the dissent to the extent it would limit the authority of the probate court to those orders expressly listed in § 18. *Our reading of the provisions granting and describing the jurisdiction of the probate court persuades us that probate court power extends beyond § 18.*” *In re Macomber*, 436 Mich at 389. (Emphasis added by Plaintiff-Appellee.)

The *Macomber* Court also wrote: “The court is limited in that it can only act after it has jurisdiction over a child, and it may only act to ensure a child's well-being. Any orders aimed at adults must also be incidental to the court's jurisdiction over children. In addition, under § 6, the court may only make orders affecting adults if ‘necessary’ for the child's interest. The word ‘necessary’ is sufficient to convey to probate courts that they should be conservative in the exercise of their power over adults. Furthermore, upon review of an order affecting adults, if an appellate court finds the factual record insufficient to justify the ‘necessity’ of the order, it may overturn the order as clearly erroneous.”¹⁶

As the Court of Appeals wrote in Ms. Dorsey’s case: “Appellant’s contention that the family court lacked subject-matter jurisdiction is without merit. The subject matter of the proceeding involved the appellant’s son’s juvenile proceeding. Accordingly, the family court was entitled to render orders affecting adults that

¹⁶ *In re Macomber*, 436 Mich at 398-399.

were necessary for the physical, mental, or moral well-being of appellant's son. We reject appellant's challenge to the subject-matter jurisdiction of the court."¹⁷

Application of *Jackson City Bank and Trust Co v Fredrick*

Clearly, the family court possessed subject-matter jurisdiction to issue the order compelling Ms. Dorsey to submit to random drug testing as part of her son's juvenile delinquency proceeding. This claim is supported by *Jackson City Bank and Trust Co v Fredrick*, 271 Mich 538; 260 NW 908 (1935), wherein the Supreme Court considered a collateral attack on a prematurely entered divorce decree.

Acting as an estate administrator, the bank collaterally challenged the decree because the beneficiary may not have been legally divorced from her former husband when she married the deceased. Accordingly, the bank contended "the trial court had no jurisdiction to grant a decree for divorce." *Id.*, at 543.

Jurisdiction of divorce proceedings is special and statutory. The bank claimed the court "had no jurisdiction of the divorce proceedings because the testimony was taken less than two months after the filing of the bill, and by reason thereof the court acquired no jurisdiction to enter decree." *Id.*

But, the *Jackson* Court reasoned, "[b]oth of the parties to the divorce proceedings lived in the state of Michigan. Upon the filing of the bill of complaint and the issuance and service of a summons, the trial court acquired jurisdiction of the parties and of the subject-matter of the suit. If the trial court had jurisdiction of the proceedings, of the subject-matter, and of the parties, and proceeded to a final

¹⁷ *In re Contempt of Dorsey*, 306 Mich App at 583.

decree, it necessarily had to find all jurisdictional facts present necessary to sustain the decree.” *Id.*, at 544.

The *Jackson* Court wrote: “There is a wide difference between a want of jurisdiction in which case the court has no power to adjudicate at all, and a mistake in the exercise of undoubted jurisdiction in which case the action of the trial court is not void although it may be subject to direct attack on appeal. This fundamental distinction runs through all the cases.” *Id.*

When there is a want of jurisdiction over the parties, or the subject-matter, the action taken by the trial court is void, and the proceedings may be collaterally as well as directly challenged. *Id.* But, in Dorsey’s case, “There is nothing to indicate that [the family court] did not act in good faith and upon the supposition that [it possessed jurisdiction over the parties and subject matter].” Dorsey “never questioned the legality of the [order]. . . . No contest was made. No appeal was taken. Apparently, [she] acquiesced in the validity of the decree, and permitted the time for appeal to elapse[.]” *Jackson, supra* at 545.

Judge Reader had justifiable concerns regarding Tyler Dorsey’s home environment while he was living with his mother:

Upon Tyler’s initial release from Maurice Spear Campus, Kelly Dorsey was cooperative, telephoned the probation department frequently and was very respectful. In November of 2011 her abuse/neglect case was closed. In early January, Kelly’s appearance diminished as did Tylers. Tyler stopped attending school and Kelly is not appropriately supervising him. With Kelly’s admitted past history of crack addiction and a dependence to vicodine (sic), this officer requested drug testing. She stopped returning phone calls from probation. Kelly even admitted that she was aware of Tyler’s poor attendance at school. Rather than addressing Tyler for his drug use and failure to attend school, Kelly

became angry at probation and the CRP Program. During that last few CRP meetings, Kelly is confused and deceitful. This officer, as well as 2nd chance Drug Testing, has requested several drug tests from Kelly, which she continues to refuse. This officer put Kelly on the same schedule as Tyler for convenience so 2nd Chance has opportunities to speak with Kelly. This officer requested that Kelly be tested two times per week for all substances, including K2, with the intention of reducing it after two weeks. Kelly has refused all tests.¹⁸

The following orders were issued in this case: on 01/13/2011, Kelly Dorsey was ordered to submit to random drug testing as requested by the probation department or the staff at Maurice Spear Campus; on 03/25/2011, it was ordered that all terms be continued; and on 01/09/2012, it was ordered that all prior orders remain in full force and effect.¹⁹

Appellant's attorney, Mr. Koehler, tacitly acknowledged that a court's orders must be followed until they are vacated in his remarks to Judge Reader:

Preliminarily I'd like to say that I've advised my client to follow all court orders until the Court or an appellate court vacates them notwithstanding the arguments I'm going to make today which rely on a rather – one of the exceptions to the requirement to follow an invalid order which is where the Court lacks subject matter jurisdiction in the area.²⁰

But, Judge Reader found: "I do believe that there is a legitimate and public purpose for – and public policy that it is advanced by having custodians of children in delinquency matters to assure where there's a suspicion that there has been or could be drug or alcohol abuse, to have them tested as part of the jurisdiction. The

¹⁸ Show Cause Hearing Report, p 2.

¹⁹ Show Cause Hearing Report, p 2.

²⁰ March 22, 2012 Motion Hearing, at 3-4.

jurisdiction of the parent is in essence obtained, in the opinion of the court, by way of jurisdiction over the juvenile.”²¹

The *Jackson* Court elaborated on this point of law: “Want of jurisdiction must be distinguished from error in the exercise of jurisdiction. Where jurisdiction has once attached, mere errors or irregularities in the proceedings, however grave, although they may render the judgment erroneous and subject to be set aside in a proper proceeding for that purpose, will not render the judgment void, and until set aside it is valid and binding for all purposes and cannot be collaterally attacked. Error in the determination of questions of law or fact upon which the court’s jurisdiction in the particular case depends, the court having general jurisdiction of the cause and the person, is error in the exercise of jurisdiction. Jurisdiction to make a determination is not dependent upon the correctness of the determination made.” *Id.*, at 545-546. The *Jackson* Court found that the trial court had jurisdiction of the subject-matter, and of the parties. *Id.*, at 546.

In Ms. Dorsey’s case, the family court also had jurisdiction of the subject-matter and of the parties. Under MCL 712A.6, the family court was empowered to render orders affecting adults that were necessary for the physical, mental, or moral well-being of Ms. Dorsey’s son. And, as in *Jackson, supra* at 546, “If anything affecting jurisdiction occurred in that court, it constituted an error in the exercise of jurisdiction and was not a result of a want of it.”

²¹ March 22, 2012 Motion Hearing, at 20.

The People agree wholeheartedly with the *Jackson* Court's holding that "[g]ood faith, as well as sound public policy, demands that erroneous and voidable judgments be set aside and modified in the courts in which they are rendered." *Id.*, at 546. But, "[o]ne who accepts the benefits of a decree . . . cannot be heard to question the jurisdiction of the court which rendered it." *Id.* As applied to Ms. Dorsey's case, the benefit of the family court order is that she got to see her son by testing clean.

As in *Jackson*, Ms. Dorsey "cannot collaterally attack" the family court's order. *Id.* "It will not be held [the family court order] was a nullity." *Id.*, at 547. In *Jackson*, every Justice concurred with this legal holding. Justice Wiest wrote: "I concur that the court had jurisdiction of the subject-matter and the parties in the divorce case, and the validity of the decree is not open to collateral attack." *Id.*

In re Reiswitz, 236 Mich App 158; 600 NW2d 135 (1999) involved the probate court's authority to compel a juvenile's mother to pay reimbursement for the cost of the juvenile's out-of-home care during his court-ordered placement with a State agency, as ordered while the court had jurisdiction over the juvenile and the mother. This authority did not cease on the juvenile's 19th birthday even though the court's statutory jurisdiction over the parties ceased at that time. *Id.*; MCL 712A.18(2)

Similarly, the Livingston County Family Court possessed jurisdiction over Ms. Dorsey, the juvenile delinquent's parent under MCL 712A.18(1)(b), (g), and (k). Statutes must be construed in a constitutional manner if possible and the burden of

proving that a statute is unconstitutional is on the party challenging it. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). The Michigan Supreme Court has reaffirmed the family court's statutory authority and broad discretion in providing services and orders that are in the best interest of the minor child. *In re Sanders*, 495 Mich at 406.

The People ask this Court, on appellate review, to afford considerable deference to the family court orders. Judge Reader did not clearly err by ordering Ms. Dorsey to test "for the welfare of the juvenile and society."

II

Michigan recognizes an "exception" to the collateral bar rule.

This Court has asked whether Michigan jurisprudence recognizes any other exceptions to application of the collateral bar rule. *In re S. Kanjia*, 308 Mich App 660; 866 NW2d 862 (2014) discusses this facet. The *Kanjia* Court observed: it is a well-settled rule that ordinarily an adjudication cannot be collaterally attacked following an order terminating parental rights unless termination occurred at the initial disposition as a result of a request for termination contained in the original, or amended, petition. *Id.*, at 667. Instead, matters affecting the court's exercise of its jurisdiction may be challenged only on direct appeal of the jurisdictional decision. *Id.*

Whether a trial court properly exercised jurisdiction over a child can only be challenged on direct appeal. The Court of Appeals has continually invoked this rule to preclude collateral challenges to a trial court's exercise of jurisdiction, including

in cases – before *Sanders* was decided – where the challenge related to the trial court’s use of the one-parent doctrine. *Id.*

But, the *Kanjia* Court concluded 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*; instead, *it is a direct attack on the trial court’s exercise of its dispositional authority*. *Id.*, at 669. The *Sanders* Court held that due process protections prevent a trial court from entering dispositional orders—including orders of termination—against an unadjudicated respondent. *Id.*, at 669-670. The *Kanjia* Court wrote: “a respondent who raises a *Sanders* challenge on direct appeal from a trial court’s order of termination is not collaterally attacking the trial court’s exercise of jurisdiction, but rather is directly challenging the trial court’s decision to terminate the respondent’s parental rights without first having afforded the respondent sufficient due process, i.e., an adjudication hearing at which the respondent’s fitness as a parent was decided.” *Id.*, at 670.

In finding the one-parent doctrine unconstitutional, the *Sanders* Court recognized the inherent problem in requiring an unadjudicated parent to directly appeal an order of adjudication (“as a nonparty to those proceedings, it is difficult to see how an unadjudicated parent could have standing to appeal any unfavorable ruling.”) *In re Kanjia*, 308 Mich App at 670. Respondent did not have an attorney at the time the trial court entered its order of adjudication. Thus, it would have been exceedingly difficult, if not effectively impossible, for respondent to have challenged

the trial court's exercise of jurisdiction in a direct appeal from the order of adjudication. *Id.*

The *Kanjia* Court found that the general rule prohibiting a respondent from collaterally attacking a trial court adjudication on direct appeal from a termination order does not apply to cases in which a respondent raises a *Sanders* challenge to the adjudication. *Id.*, at 670-671. The *Kanjia* Court held that respondent was entitled to raise his *Sanders* challenge on direct appeal from the trial court's order of termination, notwithstanding the fact that he never appealed the initial order of adjudication. *Id.*, at 671.

In re J.A.M. Collier, Minor,²² published per curiam opinion of the Court of Appeals issued March 15, 2016 (Docket No. 328172) included a finding that respondent's challenge is not an impermissible collateral attack.

Here, respondent failed to file a direct appeal of the trial court's adjudication order and instead waited to raise any issue with regard to the adjudication until after the order was entered terminating his parental rights. Thus, were we to apply the rule from *Hatcher* and *SLH*, we would find that respondent's challenge to the adjudication was an impermissible attack because his appeal was not filed until after his parental rights were terminated.

However, we decline to find that the collateral-attack rule bars respondent's challenge in the instant case. In so holding, we are guided by this Court's decision in *Kanjia*, 308 Mich App 660. Like *Sanders*, *Kanjia* was a case involving the application of the one-parent doctrine. *Id.*, at 666. Recognizing that an adjudication cannot ordinarily be collaterally attacked following an order terminating parental rights, the panel in *Kanjia* addressed the issue of whether the respondent "may now raise the issue for the first time on direct appeal from the order of termination[.]" *Id.* at 667. This Court held that "a *Sanders*

²² *In re J.A.M. Collier, Minor*, published per curiam opinion of the Court of Appeals issued March 15, 2016 (Docket No. 328172); 2016 WL 1032660. See copy of Slip Opinion attached as **Exhibit B**.

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." *Id.* at 669. In so holding, this Court recognized that *Sanders* "held that due process protections prevent a trial court from entering dispositional orders—including orders of termination—against an *unadjudicated* respondent." *Id.* at 669-670 (emphasis added). Thus, an unadjudicated respondent raising a challenge to the lack of an adjudication on direct appeal from a trial court's order of termination is not collaterally attacking the trial court's exercise of jurisdiction, but rather is directly challenging the trial court's decision to terminate the respondent's parental rights without first having afforded the respondent sufficient due process, i.e., an adjudication hearing at which the respondent's fitness as a parent was decided. [*Id.* at 670.]²³

Although *In re Collier* did not involve the application of the one-parent doctrine, the panel nevertheless concluded that the same problem in *Kanjia* existed in *Collier*: respondent effectively never received an adjudication as to his fitness as a parent. Consequently, just as in *Kanjia*, 308 Mich App at 670, the *Collier* Court concluded that respondent "is not collaterally attacking the trial court's exercise of jurisdiction, but rather is directly challenging the trial court's decision to terminate the respondent's parental rights without first having afforded the respondent sufficient due process, i.e., an adjudication hearing at which the respondent's fitness as a parent was decided." Therefore, the *Collier* Court held that respondent is entitled to raise his challenge on direct appeal from the trial court's order of termination, notwithstanding the fact that he never appealed the initial order of adjudication.²⁴

²³ *In re J.A.M. Collier*, Slip Op. at 8-9.

²⁴ *In re J.A.M. Collier, Minor*, Slip Op. at 9.

This case is distinguishable from both *Kanjia* and *Collier*. Ms. Dorsey *did* have an attorney—William Hougaboom—representing her interests when the family court imposed orders requiring her to test; she was represented in the Neglect/Abuse case, for which she thought she was testing. Additionally, Ms. Dorsey was no stranger to Livingston County’s criminal justice system. She has served jail time and received fines and costs in several cases. Ms. Dorsey was convicted by plea of second-degree retail fraud in 1998. She was also convicted by plea of operating while intoxicated in 2008. She requested a court-appointed attorney and had a public defender (Sherwood/Mitchell) and another attorney (Secret) in the latter case. She also pled guilty to operating without a license on her person in 2009. In January of 2011, there was an evidentiary hearing regarding the juvenile’s motion to suppress his statements. After waiving *Miranda* warnings, Ms. Dorsey had invoked the right to an attorney during the interview. Ultimately, the trial court suppressed the juvenile’s statements: this demonstrates how shrewd Ms. Dorsey was about the legal system.

In her contempt case, Ms. Dorsey never raised a claim that she was not represented by an attorney or that she did not understand her rights. Instead, Ms. Dorsey claimed that she thought she only had to test for the Neglect/Abuse case. According to her, it was all a big mistake that she failed to test; she never claimed that her constitutional rights were infringed until attorney Koehler belatedly advanced that defense in a hearing that took place following the criminal contempt evidentiary hearing where Ms. Dorsey was represented by attorney Hougaboom.

II-A

Appellant had an opportunity for meaningful appellate review.

In re Deng, ___ Mich App ___; ___ NW2d ___ (2016) provides an example of how a similarly-situated parent took advantage of the opportunity for meaningful appellate review of a family court order with which she disagreed.²⁵ At a permanency planning hearing, the foster care worker requested an order from the trial court requiring the children to be immunized. Respondent mother objected to vaccination on religious grounds. The trial court granted petitioner's request for immunization, but afforded respondent an opportunity to file written objections and to present evidence at a hearing. At the evidentiary hearing, respondent testified regarding her religious objections to vaccination, and the trial court also heard medical testimony from the children's pediatrician, who testified regarding the benefits of immunization, both to protect the children from disease and to protect society by preventing the spread of disease. Following the hearing, the trial court issued a written opinion and order, requiring the physician-recommended vaccinations over respondent's religious objections. The trial court noted that MCL 712A.18(1)(f) and MCL 722.124a afford the court authority to direct the medical care of a child within the court's jurisdiction, such that it fell to the court, and not respondent, to make medical rulings, including immunization decisions.

“Ultimately, the trial court concluded that it had authority to order vaccination over respondent's objections. Because it concluded that the giving of

²⁵ See *In re Deng*, 2016 WL 1123132 (Docket No. 328826, issued March 22, 2016), slip op attached as **Exhibit C**.

vaccines would benefit the children and society, the trial court entered an order for the children to receive the physician-recommended immunizations.

“Respondent filed an application for leave to appeal and a motion for immediate consideration, both of which [the Court of Appeals] granted. Pending the outcome of this appeal, the trial court has stayed enforcement of its inoculation order.”²⁶

The Court of Appeals agreed with the trial court: after respondent mother’s adjudication as an unfit parent, she lost (at least temporarily) her right to make immunization decisions for her children. That responsibility then rested with the trial court, which did not exceed its authority by ordering immunization of the children over respondent’s objections given that the facts proven and ascertained demonstrated that immunization is appropriate for the welfare of the children and society.

In the context of the *Dorsey* case, *In re Deng* demonstrates the appropriate way to challenge the trial court’s order. Respondent mother did not acquiesce to immunization, then later collaterally attack the court’s order. Instead, respondent mother challenged the order, testified at an evidentiary hearing, and filed an application for leave to appeal along with a motion for immediate consideration in the Court of Appeals. The trial court also stayed enforcement of its inoculation order pending the outcome of the appeal.

²⁶ *In re Deng*, Slip Op, pp 1-2.

That is the correct way to approach an adverse order. Ms. Dorsey could have similarly challenged the family court's order regarding testing. Instead, Ms. Dorsey tested several times and did not challenge the order until more than a year later. When Ms. Dorsey finally challenged the order at a show cause hearing, the family court judge stayed the punishment for his finding of contempt on Ms. Dorsey's part. The family court's action in staying punishment indicates that the judge would have been receptive to staying his order more than a year earlier when it was first issued if Ms. Dorsey had sought such a hearing. Thus, there was an opportunity for meaningful appellate review of the drug testing order. Ms. Dorsey could have had the same review she is receiving now—without a finding of contempt—and it would not have amounted to a collateral attack. Ms. Dorsey could have filed an application for leave to appeal and a motion for immediate consideration, just as respondent mother did in *In re Deng*.

II-B

Appellant irretrievably surrendered constitutional guarantees by complying with the drug testing order.

In *Maness v Meyers*, 419 US 449, 457-458; 95 S Ct 584; 42 L Ed 2d 574 (1975), the Supreme Court wrote, “even incorrect orders from courts ordinarily must be obeyed until set aside” but petitioner “had asserted a valid Fifth Amendment privilege, and therefore neither he nor his lawyer could be held in contempt for asserting that privilege.” The narrow issue in *Maness* was whether a lawyer may be held in contempt for advising his client, during the trial of a civil case, to refuse to

produce material demanded by a subpoena duces tecum when the lawyer believes in good faith the material may tend to incriminate his client. *Id.*, at 458.

The *Maness* Court began with the basic proposition that “all orders and judgments of courts must be complied with promptly. If a person to whom a court directs an order believes that order is incorrect the remedy is to appeal, but absent a stay, he must comply promptly with the order pending appeal. Persons who make private determinations of the law and refuse to obey an order generally risk criminal contempt even if the order is ultimately ruled incorrect.” *Id.*

“The orderly and expeditious administration of justice by the courts requires that ‘an order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper proceedings.’” *Id.*, at 459. But, “[t]his does not mean, of course, that every ruling by a presiding judge must be accepted in silence. Counsel may object to a ruling. An objection alerts opposing counsel and the court to an issue so that the former may respond and the latter may be fully advised before ruling.” *Id.* “Remedies for judicial error may be cumbersome but the injury flowing from an error generally is not irreparable, and orderly processes are imperative to the operation of the adversary system of justice.” *Id.*, at 460.

The *Maness* Court observed that, where compliance could cause irreparable injury because appellate courts cannot always ‘unring the bell’ once the information has been released, “precompliance review is particularly appropriate where the Fifth Amendment privilege against self-incrimination is involved.” *Id.*, at 460-461.

The *Maness* Court distinguished *United States v Blue*, 384 US 251, 255; 86 S Ct 1416; 16 L Ed 2d 510 (1966), where the Justices held: “Even if we assume that the Government did acquire incriminating evidence in violation of the Fifth Amendment, Blue would at most be entitled to suppress the evidence and its fruits if they were sought to be used against him at trial.” *Maness*, 419 US at 462. But, “the crucial distinction between” *Blue* and *Maness* is that Blue acquiesced without asserting the Fifth Amendment privilege (as Ms. Dorsey did in this case) while the petitioner’s client in *Maness* “had not yet delivered the subpoenaed material, and he consistently and vigorously asserted his privilege.” *Id.*, at 463.

The privilege against self-incrimination can be asserted in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory. *Id.*, at 464. But, it must be asserted. The Fifth Amendment privilege “is not a self-executing mechanism; it can be affirmatively waived, or lost by not asserting it in a timely fashion.” *Id.*, at 466. Ms. Dorsey, like Blue, failed to claim either the Fifth Amendment privilege or Fourth Amendment protections. The *Maness* case is decidedly different: “Both in a pretrial written motion and orally during trial, petitioner cogently stated his reasons for believing the privilege applied,” arguing the subpoena sought to compel the person named to incriminate himself which is prohibited by the Fifth Amendment. *Id.*, at 468-469.

This line of cases can be distinguished from *In re Contempt of Dorsey* because *Kanjia* resulted from the one-parent doctrine which allowed a trial court to interfere with the constitutionally protected parent-child relationship without any finding

that the parent was unfit, thus violating the Due Process Clause of the Fourteenth Amendment. Ms. Dorsey was already part of her son's juvenile case when the trial court ordered testing. Pursuant to statute, Judge Reader ordered testing to protect a child—Tyler Dorsey—who came within his jurisdiction.

III

Appellant failed to properly preserve Issue II for appellate review.

Objections not raised and passed upon by the trial court will not be heard for the first time on appeal. *People v Willis*, 1 Mich App 428, 430; 136 NW2d 723 (1965). *Raising the issue on motion will not be timely preservation of the record unless it is new matter that could not have been presented before and is crucial to the interests of justice. Id.*, at 430.

The Supreme Court has ruled that the appellate courts of this state will not hear appeals on matters that were not preserved in the record. *People v Matteson*, 280 Mich 218, 221; 273 NW 454 (1937) (“Upon other occasions we have said that objections not raised during the trial and passed upon by the trial court will not be heard here for the first time. This disposes of the constitutional objection . . .”).

In the prosecutor's answer opposing application for leave to appeal, the People wrote: “Appellant has filed a timely application for leave to appeal, raising the same issues in this Court that she raised in the Court of Appeals: . . . (b) no opportunity for meaningful review of the court's order; however, the order was in

place for a year before appellant contested its origin. Therefore, appellant waived this challenge;”²⁷

“This Court will not allow the defense to take one tactical approach on trial and then on appeal seek to use another avenue of defense. Appeal as of right affords this Court the opportunity to review what has occurred on trial, but not to prognosticate what might have transpired had the defendant chosen an alternate defense.” *People v Spann*, 3 Mich App 444, 456; 142 NW2d 887 (1966).

Ms. Dorsey testified her son Tyler was part of a delinquency case and through that case there was a neglect/abuse case open. Ms. Dorsey understood the difference between the two cases: “One case was because of something that my son did, he got in trouble. The other case was through DHS, my case.”²⁸

Ms. Dorsey said that she did not know about the order; she was confused and thought the order was in the Neglect/Abuse case. And, because the Neglect/Abuse case was closed, Ms. Dorsey did not think she needed to test. Ms. Dorsey was represented by attorney William Hougaboom in her Neglect/Abuse case; she had specifically requested Hougaboom as her court-appointed lawyer (on January 26, 2012) in the contempt proceeding.

The court ordered Ms. Dorsey to drug test back in January of 2011.²⁹ During the pendency of the NA and DL cases, Ms. Dorsey was compliant with drug testing for “[j]ust over a year, yes.”³⁰ Tyler’s probation agent, juvenile caseworker Susan

²⁷ Plaintiff-Appellee’s Answer Opposing Application for Leave to Appeal, p 2, ¶3.

²⁸ February 2, 2012 Show Cause Hearing, p 17.

²⁹ February 2, 2012 Show Cause Hearing, at 11.

³⁰ February 2, 2012 Show Cause Hearing, at 10.

Grohman had many discussions with Ms. Dorsey about the court order requiring her to test.³¹ Asked if it was possible that Ms. Dorsey could be confused between the two cases because they are so intertwined, Grohman said, “No. It was discussed with her. She knew.”³² Tyler was part of an aftercare program and Ms. Dorsey was a part of that as well. “She was very cooperative up until January,” Grohman testified.³³

Grohman asked Ms. Dorsey if she knew about the order requiring her to test, and “[s]he said she was aware of it.”³⁴ The last test Grohman asked her for was on 9/29/11 and it came out negative. It was after the NA case was closed and after Tyler was returned from residential treatment.³⁵ Ms. Dorsey refused to test upon request on four different dates in January of 2012.³⁶

Ms. Dorsey acknowledged that, through those cases, she was required to follow court orders. Ms. Dorsey acknowledged drug testing during the time that the two cases were concurrently open. She said, “I was testing for the NA case.” She said she never missed a drug test in that NA case. No one told her there were concurrent orders between the NA case and DL case: “I didn’t know that. I thought I was just testing through DHS.” The NA case was closed in November.³⁷

³¹ February 2, 2012 Show Cause Hearing, at 7.

³² February 2, 2012 Show Cause Hearing, p 11.

³³ February 2, 2012 Show Cause Hearing, 13.

³⁴ February 2, 2012 Show Cause Hearing, p 13.

³⁵ February 2, 2012 Show Cause Hearing, at 11.

³⁶ February 2, 2012 Show Cause Hearing, at 7.

³⁷ February 2, 2012 Show Cause Hearing, p 18.

Ms. Dorsey understood the difference between a DHS worker in an abuse and neglect case and a probation agent in a juvenile delinquency case. Ms. Dorsey knew that Grohman did not work for DHS.³⁸ Ms. Dorsey admitted testing both before and after the Neglect/Abuse case was open and closed. Dorsey also admitted previously testing upon Ms. Grohman's request.³⁹

Ms. Grohman asked her to do a drug test but she did not say there was an order from the DL case requiring her to drug test. Ms. Dorsey said, "I didn't refuse right then but I refused later on that day until I could talk to my attorney."⁴⁰

Ms. Dorsey testified that she signed up for testing and then she reconsidered ("I didn't know if it was legal . . . that she could make me do that because my case was closed and . . . in my opinion there was no reason why I would have to drug test."). Ms. Dorsey did not test when asked to by Ms. Grohman.⁴¹

Ms. Dorsey's attorney, Mr. Hougaboom argued:

"[W]e heard testimony today which I think was clear that *Ms. Dorsey was confused about this whole process*. She had two concurrent cases running, she was working in a neglect abuse case and delinquency case. Those cases get thick in a hurry. If something comes up she had nobody to explain to her if there was a court order. That she was not willfully refusing a court order, she didn't know if there was a court order. Further, to show that contempt exists they have to show that it impairs the authority and impedes the function of the court. I didn't hear any testimony today which stated how that refusal, if it was a refusal, would impair and impede the functions of the court. That must be shown in order to have contempt of the court, (inaudible) criminal contempt.

³⁸ February 2, 2012 Show Cause Hearing, p 22.

³⁹ February 2, 2012 Show Cause Hearing, pp 22-23.

⁴⁰ February 2, 2012 Show Cause Hearing, p 19.

⁴¹ February 2, 2012 Show Cause Hearing, p 23.

*“So we’re asking this Court not to find contempt because there was no willful misconduct when we – we didn’t know there was an order (inaudible). If there was an order out there we did not know about it.”*⁴²

Judge David J. Reader observed that Ms. Dorsey’s failure to comply with an appropriate aftercare program for her son (“who had made tremendous advances” while in a probationary residential program) resulted in a quick, downhill slide and a show cause hearing where the Court terminated juvenile court probation and sentenced Tyler to a jail term.⁴³ Judge Reader said:

The record would reflect that there is contained in the file an order that directs Ms. Dorsey to test for drug testing in relationship to her son’s DL case as requested by his probation officer. The testimony was that she had from time to time at the request of the probation officer tested. In January of this year she was requested to test after her son had been released from the Maurice Spear campus and there was a refusal to test.

* * *

The testing was required of the Respondent here, Ms. Dorsey, because of concerns regarding her use of substances. Specifically as it related to concerns for her son’s use of similar illegal substances. There was an order in place for testing. She was requested to test. She did not test as requested.

Judge Reader found that Ms. Dorsey was in contempt of a lawful court order which required her to do what the probation agent requested.⁴⁴

During allocution, Ms. Dorsey told the Court, *“the only reason I refused is because in the beginning I was only supposed to drug test for 90 days. And even though I had no positive drug tests I drug tested for 10 months and had all clean*

⁴² February 2, 2012 Show Cause Hearing, p 26. (Emphasis added by Appellee.)

⁴³ February 2, 2012 Show Cause Hearing, p 27.

⁴⁴ February 2, 2012 Show Cause Hearing, pp 27-28.

drug tests.” She acknowledged one dilute drug test.⁴⁵ Judge Reader said: “If I drug tested you today what would it show?” Ms. Dorsey replied: “I’m clean.” She added that she had spinal arthritis and she took a prescription muscle relaxer, antidepressant, and pain medication. She took Oxycodone.⁴⁶ The Court adjourned sentencing so that Ms. Dorsey could test. At the request of the prosecutor, the Court included testing for K2 over defense counsel’s request for a standard drug test.⁴⁷ Ms. Dorsey did not go directly from court to drug testing. And, a week later, Ms. Dorsey received 93 days in jail,⁴⁸ which has been stayed pending the outcome of this appeal.

Conclusion and Request for Relief

The issues here concern questions of statutory interpretation that this Court reviews de novo. *In re Reiswitz*, 236 Mich App at 162. The primary goal of judicial interpretation of statutes is to give effect to the intent of the Legislature. In determining legislative intent, this Court first looks at the words of the statute. If the language is clear and unambiguous, judicial construction is not normally permitted. If reasonable minds can differ regarding its meaning, then judicial construction is appropriate. The Legislature is presumed to have intended the meaning it plainly expressed. *In re Reiswitz*, 236 Mich App at 163.

⁴⁵ February 2, 2012 Show Cause Hearing, p 30. (Emphasis added by Plaintiff-Appellee.)

⁴⁶ February 2, 2012 Show Cause Hearing, pp 30-31.

⁴⁷ February 2, 2012 Show Cause Hearing, p 31.

⁴⁸ February 9, 2012 Sentencing, p 5.

The probate court is a court of limited jurisdiction. It derives its power from statutory authority. In this case, the probate court obtained jurisdiction over Tyler Michael Dorsey under MCL 712A.1 and MCL 712A.2(a)(1). Accordingly, the probate court obtained ancillary jurisdiction over Kelly Michelle Dorsey.

The plain language of MCL 712A.6 provides the probate court with the ability to order a parent of a juvenile under its jurisdiction to submit to drug testing because the probate court “may make orders affecting adults as in the opinion of the court are necessary for the physical, mental, or moral well-being of a particular juvenile or juveniles under its jurisdiction.” Furthermore, “a court has authority to enforce its proper orders.” *In re Reiswitz*, 236 Mich App at 172. “When a court issues an order and that order is violated, the case returns to the court for enforcement.” *In re Reiswitz*, 236 Mich App at 172, quoting *People v Norman*, 183 Mich App 203, 206; 454 NW2d 393 (1989). MCL 600.611 provides that circuit courts “have jurisdiction and power to make any order proper to fully effectuate the circuit courts’ jurisdiction and judgments.” *In re Reiswitz*, 236 Mich App at 172.

MCL 600.847 provides that probate courts “have the same powers as the circuit court to hear and determine any matter and make any proper orders to fully effectuate the probate court’s jurisdiction and decisions.” *In re Reiswitz*, 236 Mich App at 172. The probate court had jurisdiction over the parties when it exercised its authority under MCL 712A.6 to order drug testing by the juvenile’s mother, and thus it has the power to enforce that order.

As the Court held in *In re Reiswitz*, 236 Mich App at 172, “a probate court, being a court of record, does have the contempt power, MCL § 600.1416 and 600.1701(3); MSA 27A.1416 and 27A.1701(3)’ *Teasel v Dep’t of Mental Health*, 419 Mich 390, 417; 355 NW2d 75 (1984).” As the Court of Appeals held in *In re Reiswitz*, 236 Mich App at 172, “Therefore, the probate court had the authority, under the statute, to issue its . . . order and additionally had the authority, under its contempt power, to enforce its proper order.”

Based on the statutes and relevant case law, the People ask this Court to **deny** leave to appeal and thus affirm the decision of the Michigan Court of Appeals.

Respectfully Submitted,

WILLIAM J. VAILLIENCOURT (P39115)
Livingston County Prosecuting Attorney

Dated: August 24, 2016

William M. Worden

WILLIAM M. WORDEN (P39158)
Assistant Prosecuting Attorney
210 S. Highlander Way
Howell, MI 48843
(517) 546-1850

****EXHIBIT A****

Approved, SCAO

STATE OF MICHIGAN 44TH CIRCUIT COURT FAMILY DIVISION LIVINGSTON COUNTY	SUPPLEMENTAL ORDER OF DISPOSITION FOLLOWING REVIEW HEARING (DELINQUENCY PROCEEDINGS)	CASE NO. 2008 0000012596-DL
204 S. HIGHLANDER WAY, SUITE 3 HOWELL, MI 48843		(517) 546-1500

1. In the matter of TYLER MICHAEL DORSEY Petition(s)#
05/26/1994 2009-0801259602
2. Date of hearing: 01/13/2011 Judge/Referee: SANDRA ASPINALL 56826
Bar No.
3. Review Hearing to extend jurisdiction Probation violation hearing
4. As of the last order, dated 10/14/2010, the juvenile was placed with Maurice Spear Campus in the temporary custody of the court.
5. Notice of hearing was served as required by law.
6. The juvenile appeared in court in person with parent(s), guardian, legal custodian, or guardian ad litem, and
- was represented by an attorney. DENNIS L. BREWER
- waived representation by an attorney.

THE COURT FINDS:

7. Restitution has been made as ordered.
8. The juvenile has not been rehabilitated.
9. The juvenile presents a serious risk to public safety.
10. The case service plan has been successfully completed (for use when terminating jurisdiction).
11. The juvenile has reached an age no longer within the jurisdiction of the court (for use when terminating jurisdiction).
12. The juvenile must be placed in an institution outside Michigan because
- a. institutional care is in the best interests of the juvenile,
- b. equivalent facilities to meet the juvenile's needs are not available within Michigan, and
- c. the placement will not cause undue hardship.
13. It is contrary to the welfare of the juvenile to remain in the home because the parent's inability to keep the juvenile free of illegal substances and in compliance with the law.
14. a. Reasonable efforts to prevent removal of the juvenile from the home were not made.
- b. Reasonable efforts were made prior to the placement of the juvenile in foster or other out-of-home care, to prevent or eliminate the need for removing the juvenile from his/her home. Those efforts include: (specify)

Do not write below this line - For court use only

(SEE NEXT PAGE)

STATE OF MICHIGAN 44TH CIRCUIT COURT FAMILY DIVISION LIVINGSTON COUNTY	SUPPLEMENTAL ORDER OF DISPOSITION FOLLOWING REVIEW HEARING (DELINQUENCY PROCEEDINGS)	CASE NO. 2008 0000012596-DL
--	--	---------------------------------------

204 S. HIGHLANDER WAY, SUITE 3
HOWELL, MI 48843

(517) 546-1500

In the matter of TYLER MICHAEL DORSEY

Petition(s)#
2009-0801259602

THE COURT FINDS: (continued)

15. a. Reasonable efforts were were not made to preserve and reunify the family to make it possible for the juvenile to safely return to the child(ren)'s home.
 (Specify reasonable efforts below, and if applicable, the reasons for return.)
 1) Reasonable efforts for reunification should be continued.
 2) Those reasonable efforts were successful and the juvenile should be released to

Name(s) of parent(s), guardian, or legal custodian

The reasonable efforts include: (specify)
placement at Maurice Spear Campus which includes individual and family counseling

- b. Reasonable efforts to preserve and reunify the family to make it possible for the juvenile to safely return to the juvenile's home are not required based on a prior order.

NOTE: If the juvenile had been previously removed from the home, was then returned to the home, and is being removed again through this order, contrary to the welfare and reasonable efforts findings must be made even though the findings had been made at a prior hearing.

16. The permanency plan is

Reasonable efforts were were not made to place the juvenile in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the juvenile.*

*MCL 712A.19a provides that the permanency planning hearing shall not be delayed beyond 12 months from the most recent date of removal of the juvenile and every 12 months thereafter.

17. Other:

IT IS ORDERED:

18. Prior orders remain in effect except as modified by this order.
 19. The juvenile shall remain in the Maurice Spear Campus.
 20. The juvenile's placement shall be changed to _____.
 21. The juvenile is placed in and shall satisfactorily complete the juvenile boot camp program established by the Michigan Department of Human Services. Upon satisfactorily completing the program, the juvenile shall be placed in the home of _____ and shall complete a minimum of 120 to a maximum of 180 days of intensive supervised probation in the community.
 22. The juvenile may be released on probation subject to the attached probation rules and regulations.

(SEE NEXT PAGE)

RECEIVED by MSC 8/24/2016 3:09:40 PM

Approved, SCAO

STATE OF MICHIGAN 44TH CIRCUIT COURT FAMILY DIVISION LIVINGSTON COUNTY	SUPPLEMENTAL ORDER OF DISPOSITION FOLLOWING REVIEW HEARING (DELINQUENCY PROCEEDINGS)	CASE NO. 2008 0000012596-DL
--	--	---------------------------------------

204 S. HIGHLANDER WAY, SUITE 3
HOWELL, MI 48843

(517) 546-1500

In the matter of TYLER MICHAEL DORSEY

Petition(s)#
2009-0801259602

IT IS ORDERED: (continued)

- 23. _____ shall participate in treatment programs reasonably available to the parent/guardian.
- 24. The jurisdiction of this court is terminated in this case except that the court reserves the right to enforce payments of support and attorney fees that have accrued up to and including the date of this order.
- 25. Jurisdiction is extended until the juvenile reaches the age of 21.
- 26. Previous reimbursement orders shall continue.
- 27. Other:
 - Kelly Dorsey shall submit to random drug testing as requested by Maurice Spear Campus or the probation department.
 - Destiny Dorsey shall submit to random drug testing as requested by Maurice Spear Campus or the probation department.
 - Kelly Dorsey and Destiny Dorsey shall comply with all visitation rules and participate in the family component of the program as directed.
 - Kelly Dorsey shall submit Tyler's social security check to the court as she receives them.
 - The home that Kelly Dorsey resides in shall be alcohol/drug free. The home shall be subject to random searches.
 - Kim Ognian shall provide documentation to the court that she cancelled the Social Security Checks she was receiving on behalf of Tyler Dorsey.

28. The next review date is 01/31/2011 at 11:00 AM 204 S. HIGHLANDER WAY
Date, Time, and Place SUITE 3
HOWELL, MI 48843

- 29. **IT IS RECOMMENDED:** (Use in cases where applicable.)
 - The juvenile shall remain in the _____.
 - The juvenile's placement shall be changed to _____.

Recommended by: 
Referee signature SANDRA ASPINALL

Date

 1-14-11 27877
 Judge DAVID J. READER Bar No.

STATE OF MICHIGAN
44TH CIRCUIT COURT
FAMILY DIVISION
LIVINGSTON COUNTY

PROOF OF SERVICE/NONSERVICE

CASE NO.
2008 0000012596-DL

USE NOTE: This form is not to be used for proof of service of a summons or for publication

204 S. HIGHLANDER WAY, SUITE 3
HOWELL, MI 48843

(517) 546-1500

1. In the matter of TYLER MICHAEL DORSEY
(name[s], alias(es), DOB)

Petition(s)#
05/26/1994 2009-0801259602
2010-0801259603
2010-0801259604
Date of hearing: 1/31/2011

2. I served Supp Dispo Order, Ord for Adjournment, Ord after Motion, & Notice as follows:
(specify the titles of the papers served)

SERVICE BY MAIL On: 1/18/2011 I served the above papers, copies of which are either attached or were previously filed with the court, on the following person(s) by ordinary certified registered mail addressed to their last known address(es).

NAME	ADDRESS
PROSECUTOR OFFICE	INTER OFFICE MAIL 204 S HIGHLANDER WAY HOWELL, MI 48843
FINANCIAL DEPT JUVENILE COURT	INTEROFFICE MAIL HOWELL, MI 48843
TYLER MICHAEL DORSEY	MAURICE SPEAR CAMPUS 2910 AIRPORT ROAD ADRIAN, MI 49221
DENNIS L. BREWER	2000 GRAND RIVER ANX STE 200 BRIGHTON, MI 48114
DIANE MARIE KAY	2360 ORCHARD LAKE ROAD SUITE 108 SYLVAN LAKE, MI 48320
SUE GROHMAN	204 S. HIGHLANDER WAY SUITE 3 HOWELL, MI 48843
KELLY MICHELLE DORSEY	2256 SEXTON RD HOWELL, MI 48843
FRIEND OF THE COURT	Interoffice Mail

PERSONAL SERVICE Copies of the above papers were served personally by me on the following person(s):

NAME	PLACE OF SERVICE	DATE AND TIME

NONSERVICE After diligent inquiry, I have been unable to find and serve the following person(s):

NAME	REASON

I declare that this proof of service/nonservice has been examined by me and that its contents are true to the best of my information, knowledge and belief.

01/18/2011


Signature Kathy R

*****EXHIBIT B*****

STATE OF MICHIGAN
COURT OF APPEALS

In re J. A. M. COLLIER, Minor.

FOR PUBLICATION
March 15, 2016
9:00 a.m.

No. 328172
St. Clair Circuit Court
Family Division
LC No. 13-000164-NA

Before: TALBOT, C.J., and WILDER and BECKERING, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating his parental rights to his daughter, JC. The trial court determined that a statutory basis for termination existed under MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), MCL 712A.19b(3)(g) (failure to provide proper care and custody), and MCL 712A.19b(3)(j) (reasonable likelihood of harm). Because we find that respondent was effectively deprived of an adjudication hearing, we vacate and remand.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

JC is the child of respondent and KR. At the time the proceedings in this case began, KR and respondent shared joint physical and legal custody of JC. On June 21, 2013, JC was removed from KR's care and placed in the custody of respondent. JC was removed from KR's care due in large part to KR's significant substance abuse, including the use of methamphetamine, cocaine, and marijuana, as well as her involvement in manufacturing methamphetamine. She had also failed to provide proper supervision of JC. The trial court ordered that as a condition of respondent caring for JC, the "mother shall not have any contact with [JC] outside of visitation arranged by [petitioner] or any other contact permitted by [petitioner]." Following a preliminary hearing, a petition filed by DHHS was authorized; KR pled no contest to the petition and the trial court entered an order of adjudication with regard to KR.

On March 13, 2014, JC was removed from respondent's care. Petitioner filed a supplemental petition alleging that despite respondent's being aware of KR's intractable drug problem, he nevertheless continued to allow KR unauthorized and unsupervised contact with JC on multiple occasions. At an April 10, 2014 pretrial hearing, Lesley Clark, KR's attorney, indicated that she would be representing respondent at the adjudication hearing, and that

respondent was seeking a bench trial. On April 14, 2014, the court entered an order appointing Clark to serve as respondent's attorney.

On May 14, 2014, the date scheduled for the adjudication bench trial, respondent did not appear. Clark stated on the record that since the last hearing, she had given respondent her telephone number and address and asked him to call her and make an appointment to come and see her. She stated that to her knowledge, he had not done so, and thus, she did not feel she could adequately represent him. She moved to be "dismissed from the case," and the hearing referee "thank[ed] and excuse[d]" Clark from representing respondent. Clark did not participate in the remainder of the hearing.

Immediately after excusing Clark, the referee announced that "[t]he Court will enter a default." Without elaborating on what that meant, the referee indicated that counsel for petitioner could proceed. What followed was testimony from two witnesses, spanning seven pages of transcript. The first witness, Samantha Dixon, testified that she was employed at JC's day care facility, and thus, she knew JC. Dixon testified that she had seen JC with a woman she "assumed" was her mother, KR.¹ Respondent, whom Dixon also knew, was not with JC and the woman. Dixon described the woman with JC as "skinny" with "dark hair, glasses" and her hair pulled back. The second witness, Child Protective Services worker Andrea Smallenberg, testified that the description Dixon gave was consistent with KR's appearance. Smallenberg also testified that she had spoken to an employee at KR's doctor's office, who indicated that KR had been in the office on March 1, 2014 with a child she believed was JC. Smallenberg testified that after being shown a picture of JC, the employee verified that it was JC she had seen with KR.

Following the testimony, the referee stated on the record that, "[b]ased on the evidence presented the Court finds" that "there is a preponderance of the evidence to establish a temporary Wardship pursuant to the statutory grounds in the petition." The referee indicated it would enter an order to that effect. A subsequent written order noted that the referee "entered a default against [respondent] for failure to appear and proceeded in a default manner." The order concluded that "for the reasons stated on the record, or in a written opinion, the Court finds that the minor children [sic] shall remain under the jurisdiction of the Court."

Although respondent failed to attend the adjudication trial, the record reveals that he attended subsequent hearings during the dispositional phase, including a permanency planning hearing five days later on May 19, 2014. Respondent did not have counsel present at the May 19, 2014 hearing. Nor does it appear from our review of the record that he had counsel for quite some time. According to the record provided to us, it appears at least from dispositional orders, that respondent was without counsel for approximately a year.²

Indeed, the record next contains an order appointing counsel for respondent on April 9, 2015 for a show-cause hearing that took place on April 13, 2015. The purpose of that hearing

¹ Dixon testified she assumed it was KR, adding "I've seen her [KR] once or twice."

² We have not been provided with transcripts from various dispositional review hearings.

was for respondent to show cause as to why he should not be held in contempt for violating a no-contact order with KR.³ At the show-cause hearing, foster-care worker Samantha Mullens testified that it appeared there had been contact between respondent and KR after KR's parental rights had been terminated. Mullens's testimony was based on certain text messages between respondent and KR. Mullens testified that one message sent from KR to respondent stated, "Will you let me call [JC] when you get her? I would love to talk to her on the phone so I can tell her I'm going to get her some new shoes and stuff today. lol." Respondent replied, "I do not have a phone I will see if I can take her to my mom's house again." "Immediately after that," Mullens testified, "I received a text message from [respondent] stating, am I allowed to take my daughter to my mom's house[?]" Respondent pled guilty to violating the trial court's no contact order and admitted he had violated the order, explaining that his contact with KR was in part due to a "soft part" he had in his heart for her, and that when he looks at his daughter, he sees KR in her. He avowed, however, that such contact would not happen again. "I messed up," "made a big mistake," respondent stated. But he assured the court that he had "learned from it."⁴

Three weeks later, petitioner filed a supplemental petition requesting termination of respondent's parental rights in light of the information that came out at the show cause hearing. On May 18, 2015, the court appointed counsel for respondent for the impending termination hearing.

At the June 10, 2015 termination hearing, social worker Jessica Leenanegt testified that she worked with respondent through the Family Together Building Solutions (FTBS) Program from October 2014 until February 2015. She testified that respondent was successful in obtaining suitable housing, and he already had employment by the time she became involved with him at FTBS. Leenanegt observed respondent's visits with JC; she testified that he and JC had a positive relationship, a loving bond, and for the most part, he demonstrated good parenting skills. At the beginning of her service, respondent and KR were doing their supervised parenting visits together, but once the petition was filed to terminate KR's parental rights, respondent took over visits by himself and that is when he was advised not to have contact with KR. Leenanegt worked with respondent on understanding the difference between healthy and unhealthy relationships, and they talked about how a relationship with KR would be unhealthy because her substance abuse could be dangerous to JC. Respondent assured her that he was not having contact with KR. Although Leenanegt believed she had successfully closed respondent's case in

³ KR voluntarily agreed to relinquish her parental rights on February 4, 2015. It appears that the court imposed a no-contact order between respondent and KR in February 2015, after KR voluntarily relinquished her parental rights. On February 19, 2015, the trial court issued a restraining order. In the order, the trial court noted that KR's parental rights had been terminated and she had been ordered to have no contact with respondent, with whom JC was placed. The trial court found that despite this prohibition against contact between KR and respondent, "contact with mother has been occurring and is detrimental to said minor."

⁴ The trial court indicated that it was going to order respondent to serve ten days in the county jail, but he would hold that order in abeyance, subject to respondent performing 20 hours of community service.

February, she agreed that if he had in fact been having contact with KR, she would say he was not successful in the program with regard to the healthy relationship aspect of his services.

Mullens testified regarding her observations of respondent over the prior year. She noted that he had successfully obtained suitable housing and he had a legal source of income. According to plan, he had been having supervised parenting visits together with KR until a petition was filed in December of 2014 seeking termination of KR's parental rights. At that time, KR's visits ceased. Respondent's visits with JC were changed to unsupervised as of January 2015 "due to the progress that he was making." Mullins testified that respondent engaged well with JC and they had "a really great bond." However, Mullens discovered that respondent and KR had been in contact between February and "mid-March," after KR's parental rights had been terminated. Mullens testified that KR had provided her with text messages documenting this contact. There were allusions to drug use by respondent and KR in the messages. Mullens testified that at one point respondent had had so many negative drug screens that petitioner stopped requiring the tests. But after the text messages implied that he was using, he was tested again and had two positive tests and two missed tests. Mullens summed it up by saying that respondent had been doing "very well," and he was "one hundred percent compliant," but "then in the last month or two it really went downhill."

Respondent acknowledged that he had used marijuana and stated he "had a miss-relapse," but denied that he has a marijuana problem. Consistent with his testimony at the show cause hearing, respondent admitted that he had had contact with KR, and when asked why he stated, "Stupidity, wasn't thinking." Respondent explained he had "messed up," "made a couple of mistakes," "slipped up," "fumbled," but vowed that "it won't happen again."

The trial court found that statutory grounds for termination existed under MCL 712A.19b(3)(c)(i), § 19b(3)(g), and § 19b(3)(j) stemming from respondent's contact with KR—including their using marijuana together—despite his alleging that he was not in contact with her, its judicial notice of the show cause hearing, and evidence that respondent arranged in February 2015 for KR to have contact by phone with JC pursuant to KR's request. The trial court stated that it was aware JC was in a relative placement, but it still believed termination of respondent's parental rights was in the child's best interests because she was three years old and in need of permanence.

II. ANALYSIS

Respondent challenges the adjudicative phase of the proceedings on multiple grounds, as well as whether the trial court clearly erred when it found statutory grounds for termination and that termination was in the best interests of the child. We first consider his contention that the referee violated his right to due process by proceeding in a default manner against him with regard to adjudication. "Whether child protective proceedings complied with a parent's right to procedural due process presents a question of constitutional law, which we review *de novo*." *In re Sanders*, 495 Mich 394, 403-404; 852 NW2d 524 (2014).

A. ADJUDICATION

“In Michigan, child protective proceedings comprise two phases: the adjudicative phase and the dispositional phase.” *Id.* at 404. Generally, during the first phase, a court determines whether it can take jurisdiction over the child in the first place. *Id.* “Once the court has jurisdiction, it determines during the dispositional phase what course of action will ensure the child’s safety and well-being.” *Id.*

Petitioner may initiate child protective proceedings by filing a petition “containing facts that constitute an offense against the child under the juvenile code.” *Id.* at 405, citing MCR 3.961. The parent may demand an adjudication trial at which he has a right to a jury trial and at which the rules of evidence “generally apply,” or he may admit to the allegations contained in the petition. *Id.* The “petitioner has the burden of proving by a preponderance of the evidence one or more statutory grounds for jurisdiction alleged in the petition, MCR 3.972(E).” *Id.* “When the petition contains allegations of abuse or neglect against a parent . . . and those allegations are proved by a plea or at the trial, the adjudicated parent is unfit.” *Id.* “While the adjudicative phase is only the first step in child protective proceedings, it is of critical importance because [t]he procedures used in adjudicative hearings protect the parents from the risk of erroneous deprivation of their parental rights.” *Id.* at 406 (citation and quotation marks omitted).

In *Sanders*, our Supreme Court considered the constitutionality of the one-parent doctrine; this doctrine is not at issue here, but a brief discussion of the doctrine is merited. The one-parent doctrine permitted a trial court to exercise jurisdiction based on an adjudication of only one parent, and “allow[ed] the court to then enter dispositional orders affecting the parental rights of *both* parents.” *Id.* at 407. The Court struck down the one-parent doctrine, noting that parents have a fundamental right “to make decisions concerning the care, custody, and control of their children.” *Id.* at 409. The Court emphasized that this right “cannot be overstated.” *Id.* at 415. Because this right is fundamental and protected by the Due Process Clause of the Fourteenth Amendment, it “cannot be infringed without *some* type of fitness hearing.” *Id.* Therefore, the Court concluded that “due process requires that every parent receive an adjudication hearing before the state can interfere with his or her parental rights.” *Id.* The adjudication required by due process is “a specific adjudication of a parent’s unfitness before the state can infringe the constitutionally protected parent-child relationship.” *Id.* at 422. Pertinent to that case, the Court rejected the one-parent doctrine as a violation of due process because it “allows the court to deprive a parent of this fundamental right without any finding that he or she is unfit[.]” *Id.*

B. RESPONDENT WAS EFFECTIVELY DENIED AN ADJUDICATION TRIAL

Although the one-parent doctrine is not at issue in this case, we find that respondent was effectively denied the adjudication trial to which he was entitled. The hearing referee who conducted the adjudication trial stated that it was “enter[ing] a default” against respondent because he failed to appear for the trial. We are aware of no authority for the proposition that a respondent in child protective proceedings can be defaulted. In fact, the court rules are clear that a default cannot be entered in child protective proceedings. MCR 3.901(A)(1) sets forth the court rules that are applicable to child protective proceedings; the rule pertaining to defaults, MCR 2.603 *et seq.*, is not among the rules specifically incorporated in juvenile or child

protective proceedings. Moreover, MCR 3.901(A)(2) declares that “[o]ther Michigan Court Rules apply to juvenile cases in the family division of the circuit court *only when this subchapter specifically provides.*” (Emphasis added). Thus, respondent should not have been defaulted for failing to appear. Furthermore, as recognized in *Sanders*, 495 Mich 422, due process requires an adjudication trial on a parent’s fitness “before the state can infringe the constitutionally protected parent-child relationship.” It is axiomatic that a default is not an adjudication trial as to respondent’s fitness as a parent, nor have we encountered any authority that a default can serve as a substitute for such a trial. Although an adjudication trial “is only the first step in child protective proceedings,” it is nevertheless of “critical importance” because “[t]he procedures used in adjudicative hearings protect the parents from the risk of erroneous deprivation of their parental rights.” *Sanders*, 495 Mich at 406 (citation and quotation marks omitted). As such, the hearing referee denied respondent his right to due process by entering a default against him for his failure to appear at the adjudication trial and by infringing on his fundamental right to make decisions regarding the care and custody of his minor child.⁵

Petitioner argues that respondent, despite having a default entered against him, nevertheless received an adjudication trial. Examining the record and the manner in which the alleged adjudication trial proceeded, we do not agree.⁶ To begin with, we note that respondent’s counsel was excused from the adjudication “trial” before it started, and that counsel did not advocate on respondent’s behalf during the proceeding. And, respondent was not present. Thus, respondent had no representation whatsoever during the adjudication trial, and petitioner was simply left to put on evidence, unopposed.⁷ Plowing forward with an adjudication trial in the absence of both respondent and an attorney who can represent respondent offends due process by any stretch of the imagination.⁸ See *Bye v Ferguson*, 138 Mich App 196, 205; 360 NW2d 175 (1984). Indeed, “[d]espite [respondent’s] apparent lack of interest in participating in his own

⁵ Our decision by no means indicates that a respondent can choose not to show up for an adjudication proceeding and somehow stymie the adjudication process. Practitioners in the field of child protective proceedings know well that some parents do not always show up for hearings. In those instances, assuming proper notice was given, the parent’s interests are protected by counsel. This case is unique because the referee chose to dismiss respondent’s counsel at the outset of the proceedings, with no indication that respondent had any intention of proceeding without counsel or otherwise foregoing his due process rights.

⁶ Despite the fact that a cursory proceeding occurred after the hearing referee stated that it was entering a default, the subsequent order exercising jurisdiction over the child as to respondent stated that it was entered “for the reasons stated on the record, or in a written opinion[.]” Thus, it is unclear why the court exercised jurisdiction, and it is not apparent that the court even relied on the cursory proceeding that followed the default.

⁷ We note that the guardian ad litem for JC was present to represent JC’s interests.

⁸ Again, we do not attempt to excuse respondent’s failure to appear for the adjudication trial; however, we note our concern that respondent was effectively railroaded when the adjudication trial—to the extent it was even conducted given the referee’s remarks about a default—was conducted without any semblance of representation for respondent.

defense, he was entitled to assume that he would be represented at trial.” *Pascoe v Sova*, 209 Mich App 297, 301; 530 NW2d 781 (1995). That is, having had counsel appointed for him in April 2014, respondent was entitled to assume that counsel would represent him at the adjudication trial, notwithstanding his unexcused absence at the trial. While similar issues resulted in error requiring reversal in civil cases such as *Bye* and *Pascoe*, we find the problem even more egregious in the instant case, a child protective proceeding. It is well established that “[p]arents have a significant interest in the companionship, care, custody, and management of their children, and the interest is an element of liberty protected by due process.” *Sanders*, 495 Mich at 409 (citation and quotation marks omitted). Thus, even assuming that respondent was not simply defaulted and that an adjudication “trial” occurred, we find a violation of due process given that petitioner was permitted to proceed unopposed at adjudication, thereby effectively depriving respondent of an adjudication trial.

On a related note, respondent was deprived of the assistance of counsel during the adjudication proceeding. See MCR 3.915(B)(1) (explaining that a respondent has the right to counsel, including appointed counsel, at the respondent’s first court appearance and “at any hearing” conducted thereafter); *In re Williams*, 286 Mich App 253, 275; 779 NW2d 286 (2009) (recognizing that a respondent in a child protective proceeding has the right to counsel, including appointed counsel). In April 2014, respondent requested counsel, and there is no indication that he waived his right to counsel before the May 14, 2014 adjudication trial.⁹ Nor is there any indication that he terminated the attorney-client relationship, based on what was characterized as a one-month-long failure to communicate with counsel. In *In re Hall*, 188 Mich app 217, 222; 469 NW2d 56 (1991), this Court held the respondent “effectively terminated the attorney-client relationship, thereby ‘waiving’ or relinquishing her right to counsel” by failing to contact her appointed counsel for 16 months. Here, although respondent’s counsel indicated that she was not in contact with him for approximately one month, we do not find that respondent’s conduct was such that he effectively terminated the attorney-client relationship or otherwise waived his right to be represented by counsel. Rather, respondent’s lack of communication with counsel spans only one month, and it came on the heels of respondent’s specific request for counsel.

In addition to the fact that the adjudication trial was essentially an ex parte proceeding, we note that the brief “trial” that occurred lacked some of the hallmarks of a typical adjudication trial. Notably, petitioner was allowed to present inadmissible hearsay evidence from Smallenberg, who testified that JC was with KR based on an out-of-court conversation she had with an employee at KR’s doctor’s office. See MRE 802. Unlike at the dispositional phase of protective proceedings, the rules of evidence apply to adjudication trials. MCR 3.972(C); *Sanders*, 495 Mich at 405. Thus, Smallenberg’s testimony should not have been admitted against respondent. Moreover, the only other testimony about whether JC was with KR was speculative testimony from Dixon who testified that she “assumed” the woman with JC was KR. The presentation of this evidence spanned only seven pages of trial transcript. The flimsy nature of the evidence and the proceeding was a manifestation of the larger problems in this case: the

⁹ We are also troubled by the fact that it appears, from the record before us, that respondent did not have counsel for nearly the entirety of the dispositional phase of the proceedings.

trial was a perfunctory default proceeding, respondent had no representation, and petitioner was allowed to present its case against him unopposed.

In light of the forgoing issues, we hold that respondent was effectively denied an adjudication in this matter. In *Sanders*, 495 Mich at 422, our Supreme Court held that “due process requires a specific adjudication of a parent’s unfitness before the state can infringe the constitutionally protected parent-child relationship.” Given all that occurred in this case, we simply cannot conclude that respondent was afforded a “specific adjudication” regarding his fitness or lack thereof. Accordingly, we hold that respondent was denied his right to due process. *Id.*

C. RESPONDENT’S CHALLENGE IS NOT AN IMPERMISSIBLE COLLATERAL ATTACK

Petitioner argues that, despite any deficiencies in the adjudication trial, we should deny respondent’s challenge because it is an impermissible collateral attack on the court’s exercise of jurisdiction. We disagree.

When, as occurred in this case, a termination of parental rights occurs following the filing of a supplemental petition for termination after the issuance of the initial dispositional order, any attack on the adjudication is an impermissible collateral attack. *In re SLH*, 277 Mich App 662, 668; 747 NW2d 547 (2008) (“Ordinarily, an adjudication cannot be collaterally attacked following an order terminating parental rights.”). See also *In re Hatcher*, 443 Mich 426, 437-438; 505 NW2d 834 (1993). Instead, “[m]atters affecting the court’s exercise of its jurisdiction may be challenged only on direct appeal of the jurisdictional decision[.]” *In re Kanjia*, 308 Mich App 660, 667; 866 NW2d 862 (2014). Here, respondent failed to file a direct appeal of the trial court’s adjudication order and instead waited to raise any issue with regard to the adjudication until after the order was entered terminating his parental rights. Thus, were we to apply the rule from *Hatcher* and *SLH*, we would find that respondent’s challenge to the adjudication was an impermissible collateral attack because his appeal was not filed until after his parental rights were terminated.

However, we decline to find that the collateral-attack rule bars respondent’s challenge in the instant case. In so holding, we are guided by this Court’s decision in *Kanjia*, 308 Mich App 660. Like *Sanders*, *Kanjia* was a case involving the application of the one-parent doctrine. *Id.* at 666. Recognizing that an adjudication cannot ordinarily be collaterally attacked following an order terminating parental rights, the panel in *Kanjia* addressed the issue of whether the respondent “may now raise the issue for the first time on direct appeal from the order of termination[.]” *Id.* at 667. This Court held 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.” *Id.* at 669. In so holding, this Court recognized that *Sanders* “held that due process protections prevent a trial court from entering dispositional orders—including orders of termination—against an *unadjudicated* respondent.” *Id.* at 669-670 (emphasis added). Thus, an unadjudicated respondent raising a challenge to the lack of an adjudication

on direct appeal from a trial court's order of termination is not collaterally attacking the trial court's exercise of jurisdiction, but rather is directly challenging the trial court's decision to terminate the respondent's parental rights without first having afforded the respondent sufficient due process, i.e., an adjudication hearing at which the respondent's fitness as a parent was decided. [*Id.* at 670.]

Although the instant case did not involve the application of the one-parent doctrine, we nevertheless conclude that the same problem present in *Kanjia* exists in this case: respondent effectively never received an adjudication as to his fitness as a parent. This is also the same due process issue identified in *Sanders*. See *Sanders*, 495 Mich at 422 (“We accordingly hold that due process requires a specific adjudication of a parent’s unfitness before the state can infringe the constitutionally protected parent-child relationship.”). Consequently, just as in *Kanjia*, 308 Mich App at 670, we conclude that respondent “is not collaterally attacking the trial court’s exercise of jurisdiction, but rather is directly challenging the trial court’s decision to terminate the respondent’s parental rights without first having afforded the respondent sufficient due process, i.e., an adjudication hearing at which the respondent's fitness as a parent was decided.”¹⁰ Therefore, “we hold that respondent is entitled to raise his [] challenge on direct appeal from the trial court’s order of termination, notwithstanding the fact that he never appealed the initial order of adjudication.” *Id.* at 671.

III. CONCLUSION

Because respondent was effectively unadjudicated, we vacate the order terminating his parental rights and the order of adjudication, and remand for further proceedings consistent with this opinion.¹¹ We do not retain jurisdiction.

/s/ Michael J. Talbot
 /s/ Kurtis T. Wilder
 /s/ Jane M. Beckering

¹⁰ Furthermore, we note the problem that exists in this case with requiring respondent to file a direct appeal from the order of adjudication. As noted above, respondent was deprived of his right to counsel and the adjudication proceeded with no representation for respondent whatsoever. To expect respondent to appeal an order entered after a proceeding at which his counsel withdrew, without his knowledge, and at which he was not present, would be to impose a heavy burden on respondent. For this reason, we are also uncomfortable with petitioner’s characterization of this issue being unpreserved. We question how respondent could reasonably be expected to have raised the issues about which he complains on appeal when there was no one present at the adjudication trial to represent his interests. And it appears he did not receive appointed counsel again until nearly a year later.

¹¹ Because we vacate the order terminating respondent’s parental rights, we need not address respondent’s remaining arguments.

****EXHIBIT C****

STATE OF MICHIGAN
COURT OF APPEALS

In re DENG, Minors.

FOR PUBLICATION
March 22, 2016
9:05 a.m.

No. 328826
Kent Circuit Court
Family Division
LC No. 14-053706-NA

Before: SAAD, P.J., and SAWYER and HOEKSTRA, JJ.

HOEKSTRA, J.

In these child protective proceedings under the Juvenile Code, MCL 712A.1 *et seq.*, respondent appeals by leave granted a dispositional order, requiring that respondent's children receive physician-recommended vaccinations. Because the trial court has the authority to make medical decisions for children under its jurisdiction over respondent's objections to immunization and the court did not clearly err by determining that vaccination was appropriate for the welfare of children and society, we affirm.

I. FACTS & PROCEDURAL HISTORY

Respondent and her husband have four children together, all under the age of six. Following a hearing on December 23, 2014, respondent and her husband were both adjudicated as unfit parents. The facts leading to this adjudication included periods of homelessness and unstable housing, failure to provide financial support and food for the children, improper supervision of the children, and respondent's mental health and substance abuse issues, including suicidal ideation prompting respondent's hospitalization. Given these circumstances, the trial court found by a preponderance of the evidence that statutory grounds existed to exercise jurisdiction over the children pursuant to MCL 712A.2(b)(1) and (b)(2). The children were made temporary wards of the court and placed in out-of-home foster care. Respondent and her husband both received a case service plan, with the aim of reunifying the family.

At a permanency planning hearing on June 3, 2015, the foster care worker assigned to the case requested an order from the trial court requiring the children to be immunized. Respondent

objected to vaccination on religious grounds.¹ The trial court granted petitioner's request for immunization, but afforded respondent an opportunity to file written objections and to present evidence at a hearing. At the evidentiary hearing, respondent testified regarding her religious objections to vaccination, and the trial court also heard medical testimony from the children's pediatrician, who testified regarding the benefits of immunization, both to protect the children from disease and to protect society by preventing of the spread of disease. The pediatrician opined that the benefits of vaccination outweighed the risks, and she specified that vaccinations were recommended by the American Academy of Pediatrics and the Center for Disease control.

Following the hearing, the trial court issued a written opinion and order, requiring the physician-recommended vaccinations over respondent's religious objections. The trial court indicated that it would "assume" that respondent's religious objections were sincere. But, despite the sincerity of her objections, the trial court nonetheless concluded that respondent could not prevent the inoculation of her children on religious grounds because she had been adjudicated as unfit and she thus "forfeited the right" to make vaccination decisions for her children. In particular, the trial court noted that MCL 712A.18(1)(f) and MCL 722.124a afford the court authority to direct the medical care of a child within the court's jurisdiction, such that it fell to the court, and not respondent, to make medical decisions, including immunization decisions. In this context, although parents generally enjoy the right to prevent vaccinations on religious grounds incident to MCL 333.9215(2) and MCL 722.127, the trial court reasoned that these provisions did not apply to parents who have been adjudicated as "unfit." Apart from these specific statutory provisions, the trial court determined that, more generally, respondent could not raise a constitutional challenge to immunization because Free Exercise Clause challenges to immunizations have been routinely rejected by the courts and, in any event, after being adjudicated as "unfit," respondent did not have "the same level of constitutional rights of child-rearing decisions for her children in care as a fit parent would." Ultimately, the trial court concluded that it had authority to order vaccination over respondent's objections. Because it concluded that the giving of vaccines would benefit the children and society, the trial court entered an order for the children to receive the physician-recommended immunizations.

Respondent filed an application for leave to appeal and a motion for immediate consideration, both of which we granted.² Pending the outcome of this appeal, the trial court has stayed enforcement of its inoculation order.

On appeal, respondent argues that she has the right to object to the vaccination of her children on religious grounds, such that the trial court erred by entering an order requiring the immunization of her children. Relying on MCL 722.127 and citing briefly to provisions in the Public Health Code, MCL 333.1101 *et seq.*, respondent primarily claims a statutory right to object to the immunization of her children. Interwoven with this statutory argument, respondent

¹ Respondent's husband also initially objected to immunization of his children on religious grounds, but he did not participate in the evidentiary hearing and he is not a party to this appeal.

² *In re Deng Minors*, unpublished order of the Court of Appeals, entered October 23, 2015 (Docket No. 328826).

also emphasizes that that she has a protected liberty interest in religious freedom and the determination of the care, custody and nurturance of her children. According to respondent, under the principles set forth in *Hunter v Hunter*, 484 Mich 247; 771 NW2d 694 (2009), her rights survive even after she had been adjudicated “unfit.” Consequently, respondent contends that she has an ongoing right, under MCL 722.127, to object to the vaccination of her children based on her sincerely held religious beliefs.

II. STANDARD OF REVIEW & RULES OF STATUTORY INTERPRETATION

A trial court’s dispositional orders, entered after the court assumes jurisdiction over the child, “are afforded considerable deference on appellate review.” *In re Sanders*, 495 Mich 394, 406; 852 NW2d 524 (2014). While dispositional orders must be “appropriate for the welfare of the juvenile and society in view of the facts proven and ascertained,” they will not be set aside unless clearly erroneous. *Id.*, quoting MCL 712A.18(1); see also *In re Macomber*, 436 Mich 386, 399; 461 NW2d 671 (1990). Likewise, any factual findings underlying the trial court’s decision are reviewed for clear error. *In re Morris*, 300 Mich App 95, 104; 832 NW2d 419 (2013). To the extent the trial court’s order in this case implicates questions of statutory interpretation and constitutional law, our review of these questions of law is de novo. *In re AMAC*, 269 Mich App 533, 536; 711 NW2d 426 (2006).

The goal of statutory interpretation is to give effect to the Legislature’s intent. *In re AJR*, 496 Mich 346, 352; 852 NW2d 760 (2014). To ascertain the Legislature’s intent, we begin with the language of the statute, affording words their plain and ordinary meaning. *In re LE*, 278 Mich App 1, 22; 747 NW2d 883 (2008). “The Legislature is presumed to have intended the meaning it plainly expressed, and when the statutory language is clear and unambiguous, judicial construction is neither required nor permitted.” *In re RFF*, 242 Mich App 188, 198; 617 NW2d 745 (2000).

III. ANALYSIS

Religious freedom and the right to “bring up children” are among those fundamental rights “long recognized . . . as essential to the orderly pursuit of happiness by free men.” *Meyer v Nebraska*, 262 US 390, 399; 43 S Ct 625, 626; 67 L Ed 1042 (1923). “Generally, the state has no interest in the care, custody, and control of the child and has no business interfering in the parent-child relationship.” *In re AP*, 283 Mich App 574, 591; 770 NW2d 403 (2009). Instead, “the custody, care and nurture of the child reside first in the parents[.]” *Prince v Massachusetts*, 321 US 158, 166; 64 S Ct 438, 442; 88 L Ed 645 (1944). Indeed, “[i]t is undisputed that parents have a fundamental liberty interest in the companionship, care, custody, and management of their children.” *In re B & J*, 279 Mich App 12, 23; 756 NW2d 234 (2008). Moreover, parents, and their children, enjoy the right to the free exercise of religion, and parents have the right to give their children “religious training and to encourage them in the practice of religious belief, as against preponderant sentiment and assertion of state power voicing it[.]” *Prince*, 321 US at 165. See also *Wisconsin v Yoder*, 406 US 205, 213; 92 S Ct 1526; 32 L Ed 2d 15 (1972).

However, a parent’s right to control the custody and care of children “is not absolute, as a state has a legitimate interest in protecting the moral, emotional, mental, and physical welfare of the minor.” *In re Sanders*, 495 Mich at 409-410; (citation and quotation marks omitted). “When

a child is parented by a fit parent, the state's interest in the child's welfare is perfectly aligned with the parent's liberty interest.” *Id.* at 416. That is, “there is a presumption that fit parents act in the best interests of their children.” *Troxel v Granville*, 530 US 57, 68; 120 S Ct 2054; 147 L Ed 2d 49 (2000) (opinion by O’CONNOR, J.). Thus, “so long as a parent adequately cares for his or her children (*i.e.*, is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children.” *Id.* at 68-69. See also *In re AP*, 283 Mich App at 591.

In contrast, when a parent has been found “unfit,” the state may interfere with a parent’s right to direct the care, custody, and control of a child. See *In re Sanders*, 495 Mich at 418; *In re AP*, 283 Mich App at 592-593. This intervention may be initiated under abuse and neglect provisions of the Juvenile Code, which begins with the state's filing of a petition, requesting that the court take jurisdiction over a child. *In re Sanders*, 495 Mich at 404; *In re Kanjia*, 308 Mich App 660, 664; 866 NW2d 862 (2014). Once a petition has been filed, there are two phases to child protective proceedings in Michigan: the adjudicative phase and the dispositional phase. *In re Sanders*, 495 Mich at 404. During the adjudicative phase, by accepting a parent’s plea or conducting a trial regarding the allegations in the petition, the court determines whether it can take jurisdiction over the child. *Id.* at 404-405. See also MCL 712A.2(b); MCR 3.971; MCR 3.972. The procedural safeguards in place during the adjudicative phrase “protect the parents from the risk of erroneous deprivation” of their rights. *In re Sanders*, 495 Mich at 406, quoting *In re Brock*, 442 Mich 101, 111; 499 NW2d 752 (1993). Ultimately, “[w]hen the petition contains allegations of abuse or neglect against a parent, MCL 712A.2(b)(1), and those allegations are proved by a plea or at the trial, the adjudicated parent is unfit.” *In re Sanders*, 495 Mich at 405.

After the parent has been found “unfit,” the trial court assumes jurisdiction over the child and the dispositional phase of proceedings begins. *Id.* at 406. “The purpose of the dispositional phase is to determine ‘what measures the court will take with respect to a child properly within its jurisdiction and, when applicable, against any adult’” *Id.*, quoting MCR 3.973 (emphasis omitted). To effectuate this purpose, the court holds periodic review hearings at which respondent has a right to be present, to examine reports, and to cross-examine individuals making those reports. MCR 3.973(D)(2) and (E)(3); *In re Sanders*, 495 Mich at 407. In determining what measures to take with respect to a child, the court must consider the case service plan prepared by the DHHS as well as information provided by various individuals, including the child’s parent. MCL 712A.18f(4); MCL 3.973(E)(2) and (F)(2); *In re Sanders*, 495 Mich at 406-407.

“The court has broad authority in effectuating dispositional orders once a child is within its jurisdiction.” *In re Sanders*, 495 Mich at 406. And, the court may enter “orders that govern all matters of care for the child.” *In re AMB*, 248 Mich App 144, 177; 640 NW2d 262 (2001). See also *In re Macomber*, 436 Mich at 389. For example, relevant to the present dispute, under MCL 712A.18(1), if the court finds that a child is under its jurisdiction, the court may enter orders of disposition that are “appropriate for the welfare of the juvenile and society in view of the facts proven and ascertained,” including an order to “[p]rovide the juvenile with medical, dental, surgical, or other health care, in a local hospital if available, or elsewhere, maintaining as

much as possible a local physician-patient relationship” MCL 712A.18(1)(f). See also MCL 712A.18f(4); *In re AMB*, 248 Mich App at 176-177.

With this framework in mind, the question before us in this case is a narrow one—namely, whether a parent who has been adjudicated as unfit has the right during the dispositional phase of the child protective proceedings to object to the inoculation of her children on religious grounds.³ We conclude that, by virtue of adjudication proceedings establishing a parent as “unfit,” the parent relinquishes this right and must yield to the trial court’s orders regarding the child’s welfare. Consequently, during the dispositional phase, the trial court has the authority to order vaccination of a child when the facts proven and ascertained demonstrate that immunization is appropriate for the welfare of the juvenile and society. MCL 712A.18(1)(f).

In particular, as noted, parents have a fundamental liberty interest in the care and control of their children, and a fundamental right to the free exercise of their religion, including the right to raise their children in that religion. *Meyer*, 262 US at 399. These rights do “not evaporate simply because they have not been model parents.” *Santosky v Kramer*, 455 US 745, 753; 102 S Ct 1388; 71 L Ed 2d 599 (1982). Nonetheless, it is only “fit” parents who are presumed to act in the best interests of their children, and only “fit” parents who enjoy the control, care, and custody of their children unfettered by governmental interference. See *Troxel*, 530 US at 68-69; *In re Sanders*, 495 Mich at 410. In contrast, through the course of child protective proceedings, particularly the adjudicative phase, the parent loses the presumption of fitness, at which time the state becomes empowered to interfere in the family for the welfare of the child and to infringe on the parent’s ability to direct the care, custody, and control of the child. See *In re Sanders*, 495 Mich at 418; *In re AP*, 283 Mich App at 592-593. Parental rights have not been irrevocably lost at this stage, but a determination of “unfitness so breaks the mutual due process liberty interests as to justify interference with the parent-child relationship.” *In re Clausen*, 442 Mich 648, 687 & n 46; 502 NW2d 649 (1993).

As a result, the court gains broad powers to enter orders for the welfare of the child and the interests of society, and to make decisions regarding a host of issues which would normally fall to the parent to decide, including the ability to decide the child’s placement, to order medical or other health care for the child, to provide clothing and other incidental items as necessary, to order compliance with case service plans, to allow parental visitation with the child, to enter orders affecting adults, and, more generally, to enter orders as the court considers necessary for the interests of the child. MCL 712A.18; MCL 712A.18f(4); MCL 712A.6; MCR 3.973(F);

³ While the trial court more generally considered the right to object to childhood immunizations on religious grounds and concluded that Free Exercise Challenges cannot be maintained against physician-recommended vaccines, even by fit parents, we find it unnecessary to decide this broader constitutional question and instead limit our holding to parents who have been adjudicated as unfit in the course of child protective proceedings. See generally *Booth Newspapers, Inc v Univ of Mich Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993) (“[T]here exists a general presumption by this Court that we will not reach constitutional issues that are not necessary to resolve a case.”).

MCL 3.975(G). See also *In re Sanders*, 495 Mich at 407. Quite simply, following adjudication, which affords a parent due process for the protection of her liberty interests, the parent is no longer presumed “fit” to make decisions for the child and that power, including the power to make medical decisions involving immunizations, rests instead with the court. See MCL 712A.18(1)(f); *In re Sanders*, 495 Mich at 409-410, 418. Consequently, given respondent’s adjudication as an unfit parent and the safeguards affording her due process for the protection of her rights during the child protective proceedings, we find no constitutional basis on which respondent may prevent the court’s interference with her control of her children and, in particular, the immunization of her children, when the facts proven and ascertained in this case demonstrate that inoculation is appropriate for the welfare of her children and society.⁴ MCL 712A.18(1)(f).

Aside from her espousal of general constitutional principles, respondent contends on appeal that she has the statutory authority—which was designed for the protection of her constitutional rights—to object to the immunization of her children, and that this right persists even after her adjudication as an unfit parent. With regard to immunizations, Michigan has a statutory scheme, as set forth in the Public Health Code, governing vaccinations. As empowered by the Legislature, the Michigan Department of Health and Human Services⁵ (DHHS) has the authority to establish procedures for the control of diseases and infections, including the ability to establish immunization requirements. MCL 333.5111(2)(c). Regarding children in particular, the DHHS may promulgate rules related to childhood immunizations, including ages for immunizations and minimum number of doses required. MCL 333.9227(1). Parents are required to provide for the immunization of their children “within an age period” prescribed by the DHHS, MCL 333.9205, and to present a certificate of immunization when enrolling their child in school or preschool, MCL 333.9208(1); MCL 333.9211(1). However, as an exception to this requirement, a child is exempt from vaccination requirements if a parent provides a written statement indicating that the vaccination requirements “cannot be met because of religious convictions or other objection to immunization.” MCL 333.9215(2). See also MCL 333.5113(1) and MCL 380.1177(1)(b).

We recognize that, were respondent a fit parent entitled to the control and custody of her children, MCL 333.9215(2) would undoubtedly allow her to forego the immunization of her children otherwise required by the Public Health Code on the grounds of a religious objection. However, this provision is inapplicable on the present facts for the simple reason that the

⁴ Respondent does not challenge the trial court’s factual findings and, based on the evidence presented at the evidentiary hearing, we see nothing clearly erroneous in the trial court’s conclusion that vaccination of the children served their welfare and that of society.

⁵ The statute refers to the Department of Community Health (DCH). See MCL 333.5456(1). However, the DCH merged with the Department of Human Services (DHS), and is now known as the DHHS. *Estate of Ketchum v Dep’t of Health & Human Servs*, ___ Mich App ___, ___; ___ NW2d ___ (2016) (Docket No. 324741), slip op at 1 n 1, citing Executive Order No. 2015–4. The authority and responsibilities of the DCH and the DHS transferred to the DHHS. See MCL 400.227.

children are not being immunized as a result of provisions in the Public Health Code. That is, the trial court did not order the children's immunization under any provision in the Public Health Code; rather, as discussed, the court exercised its broad authority to enter dispositional orders for the welfare of a child under its jurisdiction, including the authority to enter dispositional orders regarding medical treatment. See MCL 712A.18(1)(f); *In re Sanders*, 495 Mich at 406. This authority is conferred on the trial court by MCL 712A.18(1)(f) of the Juvenile Code, following the adjudication of the parent as unfit. See MCL 712A.2(b). The Juvenile Code includes no provision restricting the trial court's authority to enter dispositional orders affecting a child's medical care on the basis of a parent's objections to immunizations, and it would be inappropriate to graft in such an exception from the Public Health Code. See generally *Grimes v Mich Dep't of Transp*, 475 Mich 72, 85; 715 NW2d 275 (2006) (“[R]eliance on an unrelated statute to construe another is a perilous endeavor to be avoided by our courts.”); *Donkers v Kovach*, 277 Mich App 366, 371; 745 NW2d 154 (2007) (“[C]ourts cannot assume that the Legislature inadvertently omitted from one statute the language that it placed in another statute, and then, on the basis of that assumption, apply what is not there.” (citation omitted)). Instead, as a statutory matter, after a parent has been found unfit, MCL 712A.18(1)(f) affords courts the broad authority to make medical decisions for a child under its jurisdiction, and respondent cannot rely on provisions in the Public Health Code to trump this broad grant of judicial authority.

Similarly, as a statutory matter, respondent relies heavily on MCL 722.127 of The Child Care Organizations Act, MCL 722.111 *et seq.* The Child Care Organizations Act concerns the care of children in child care organizations, including institutions, placing agencies, camps, nursery schools, day care centers, foster homes, and group homes. See MCL 722.111. Under MCL 722.124a(1):

A probate court, a child placing agency, or the department may consent to routine, nonsurgical medical care, or emergency medical and surgical treatment of a minor child placed in out-of-home care pursuant [MCL 400.1 to MCL 400.121; MCL 710.21 to MCL 712A.28]. If the minor child is placed in a child care organization, then the probate court, the child placing agency, or the department making the placement shall execute a written instrument investing that organization with authority to consent to emergency medical and surgical treatment of the child. The department may also execute a written instrument investing a child care organization with authority to consent to routine, nonsurgical medical care of the child. If the minor child is placed in a child care institution, the probate court, the child placing agency, or the department making the placement shall in addition execute a written instrument investing that institution with authority to consent to the routine, nonsurgical medical care of the child.

“By its language, this statute applies to children ‘placed in out-of-home care’ pursuant to a variety of statutes concerning child welfare, adoption, and protection, including protective proceedings under the Juvenile Code.” *In re AMB*, 248 Mich App at 178. This provision is more general than statutes relating to the court's authority to enter a dispositional order under the Juvenile Code in the sense that, unlike a court's authority to enter orders during the dispositional phrase of child protective proceedings, MCL 722.124a(1) is not “related to any particular phase

in any of the varied child welfare proceedings to which it applies.” *In re AMB*, 248 Mich App at 178-179. Rather, the court’s authority to enter treatment under this statute “primarily depends on whether the child has been ‘placed in out-of-home care.’” *Id.* at 179.

Aside from this provision authorizing a probate court, a child placing agency, or DHHS to consent to a child’s treatment when the child is placed in out-of-home care, the Child Care Organizations Act states that the DHHS⁶ “is responsible for the development of rules for the care and protection of children in organizations covered by this act.” MCL 722.112(1). In addition, MCL 722.127 of the Child Care Organizations Act protects a parent’s ability to object to medical immunization on religious grounds. It states: “Nothing in the rules adopted pursuant to this act shall authorize or require medical examination, immunization, or treatment for any child whose parent objects thereto on religious grounds.” MCL 722.127.

Respondent argues that MCL 722.127 applies to children placed in out-of-home care and it thus affords her the ongoing right to prevent the immunization of her children. Assuming that MCL 722.127 functions as limit on judicial authority under MCL 722.124a,⁷ the obvious flaw in respondent’s argument is that MCL 722.127 plainly applies in the context of “this act,” and “this act” is the Child Care Organization Act, not the Juvenile Code. As discussed, the Juvenile Code contains no provision limiting the court’s broad authority to make medical decisions based on a parental objection to immunizations, and it is not our role to create such an exception in the Juvenile Code.

Moreover, to the extent MCL 722.124a covers the same subject matter as provisions in the Juvenile Code, and there is an arguable conflict between the limitations in MCL 722.127 and a court’s broader authority under the Juvenile Code, the Juvenile Code prevails as the more specific grant of authority. See *Detroit Pub Sch v Conn*, 308 Mich App 234, 251; 863 NW2d 373 (2014); *In re Harper*, 302 Mich App 349, 358; 839 NW2d 44 (2013). That is, the Juvenile Code and MCL 722.124a of the Child Care Organizations Act may overlap in cases, such as this one, where a child has been placed in out-of-home care following an adjudication of parental unfitness. In such cases, the court could potentially look to either MCL 722.124a or MCL 712A.18(1)(f) when considering the medical needs of a child. However, MCL 712A.18(1)(f) is a more specific provision insofar as it applies to the court’s authority to enter dispositional orders, while MCL 722.124a applies whenever a child is placed in out-of-home care without regard to any particular phase of any of the various child welfare proceedings to which it applies. See *In re AMB*, 248 Mich App at 179. As the more specific provision, governing the court’s authority to order medical care after a parent has been adjudicated “unfit” during child protective

⁶ The statute refers to the DHS. MCL 722.112. But, as noted, the DHS has merged with the DCH to become the DHHS.

⁷ We note that MCL 722.127 applies to “the rules adopted pursuant to this act,” and “the rules” are developed by DHHS pursuant to MCL 722.112(1). See, e.g., Mich Admin Code R 400.12413(1)(d). Given that the DHHS, and not the probate court, develops rules under the Child Care Organization Act, it is questionable whether MCL 722.127 functions as a limitation on the probate court’s authority to consent to medical care under MCL 722.124a.

proceedings, MCL 712A.18(1)(f) prevails over the court's more general authority as set forth in MCL 722.124a. See *Detroit Pub Sch*, 308 Mich App at 251; *In re Harper*, 302 Mich App at 358. Because the Juvenile Code contains no immunization limitations on the trial court's broad authority to enter dispositional orders for the welfare of the children and society, the court acted within its statutory order under MCL 712A.18(1)(f) when entering the order in this case.

Finally, we note that respondent's reliance on *Hunter* is misplaced. *Hunter* involved a child custody dispute between a birth-mother and the children's paternal aunt and uncle, who had provided the children with an established custodial environment during a period of time when the mother was incarcerated and addicted to crack cocaine. *Hunter*, 484 Mich at 252. The trial court concluded that the mother was an unfit parent and ultimately awarded custody to the aunt and uncle, reasoning that they had an established custodial environment and the children's best interests were served by remaining in that environment. *Id.* at 253-256. On appeal, the Supreme Court considered provisions of the Child Custody Act, MCL 722.21 *et seq.* and, in particular, the interplay between the presumption in favor of parental custody set forth MCL 722.25(1) and the presumption in favor of an established custodial environment in MCL 722.27(1)(c). *Hunter*, 484 Mich at 257-259. The Supreme Court concluded that the parental presumption prevails over the presumption in favor of an established custodial environment. *Id.* at 265-266, 273. In so holding, the Court expressly rejected the proposition that the statutory presumption in favor of natural parents applies only to fit parents. *Id.* at 271. The Court reasoned that MCL 722.25(1) did not mandate a fitness determination for the presumption to apply, and thus the presumption contained in this provision applies to all natural parents, not merely fit parents. *Id.* at 270-272.

Respondent now argues on appeal that *Hunter* supports the proposition that her right to object to the immunization of her children does not depend on whether she is a fit or unfit parent because the statutory provisions on which she relies contain no reference to "fit" parents. Contrary to respondent's argument, *Hunter* does not support her position, and it does not impact the rights of parents adjudicated as "unfit" in child protective proceedings. Rather, by its express terms, *Hunter* distinguished custody proceedings from other proceedings involving parental rights, and made plain that *Hunter's* application was limited to cases involving the Child Custody Act. The Court explained:

(1) This case deals with custody actions initiated under the [Child Custody Act] involving both the parental presumption in MCL 722.25(1) and the established custodial environment presumption in MCL 722.27(1)(c). This opinion should not be read to extend beyond [Child Custody Act] cases that involve conflicting presumptions or to cases that involve parental rights generally but are outside the scope of the [Child Custody Act].

(2) This opinion does not create any new rights for parents. The United States Supreme Court decisions regarding the constitutional rights of parents previously discussed in this opinion provide guidance that informs our analysis. This opinion does not magically grant parents additional rights or a constitutional presumption in their favor. It does not grant unfit parents constitutional rights to their children other than due process rights. [*Hunter*, 484 Mich at 276.]

Thus, *Hunter* does not apply in this case because the present case does not involve the Child Custody Act or the application of the parental presumption found in MCL 722.25(1). Instead, the proceedings are child protective proceedings under the Juvenile Code, which, unlike the presumption found in MCL 722.25(1), fully contemplate a trial court's assessment of parental fitness during the adjudicative phrase, MCL 712A.2(b); *In re Sanders*, 495 Mich at 405, and which expressly authorize the court to order medical care for a child within its jurisdiction, after a finding of parental unfitness, during the dispositional phrase, MCL 712A.18(1)(f). Quite simply, *Hunter* is inapplicable in the context of the child protective proceedings at hand.

In sum, respondent's reliance on MCL 722.127 and provisions of the Public Health Code is misplaced. After her adjudication as an unfit parent, respondent lost, at least temporarily, the right to make immunization decisions for her children. That responsibility now rests with the trial court, and the trial court did not exceed its authority by ordering immunization of the children over respondent's objections given that the facts proven and ascertained demonstrate that immunization is appropriate for the welfare of the children and society. MCL 712A.18(1)(f).

Affirmed.

/s/ Joel P. Hoekstra
/s/ Henry William Saad
/s/ David H. Sawyer