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**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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*In re* K. S. CRUMMIE, Minor.

UNPUBLISHED  
September 10, 2020

No. 351619  
Wayne Circuit Court  
Family Division  
LC No. 17-001642-NA

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Before: LETICA, P.J., and FORT HOOD and GLEICHER, JJ.

PER CURIAM.

Respondent-mother appeals by leave granted<sup>1</sup> the trial court’s May 22, 2019 order, entered after dispositional review, terminating the wardship over her child, KSC. Respondent also challenges the trial court’s May 22, 2019 order removing KSC from respondent’s care and returning KSC to the care of KSC’s legal father (father). Because the trial court abused its discretion, we vacate the trial court’s orders and remand for further proceedings consistent with this opinion.

I. BACKGROUND

On September 14, 2017, petitioner, the Department of Health and Human Services (DHHS), filed a petition to terminate respondent’s parental rights to KSC. That same day KSC was removed and placed with father under DHHS supervision. The trial court determined that there were statutory grounds to exercise jurisdiction over KSC and to terminate respondent’s parental rights to KSC; however, the trial court declined to terminate respondent’s parental rights because termination was not in KSC’s best interests. The trial court then ordered respondent to participate in a treatment plan and KSC remained placed with father under the supervision of DHHS.

Respondent substantially complied with the treatment plan. After conducting a hearing, a referee stated that he intended to enter an order returning KSC to respondent’s care, and KSC was

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<sup>1</sup> *In re K S Crummie, Minor*, unpublished order of the Court of Appeals, entered January 23, 2020 (Docket No. 351619).

subsequently returned to respondent's care. Thereafter, father filed a request for review of the referee's recommendation, which the trial court treated as a request for a rehearing under MCR 3.992(A). After a hearing, the trial court returned KSC to father's care. The trial court relied upon the Michigan Supreme Court's opinion in *In re Sanders*, 495 Mich 394; 852 NW2d 524 (2014). The trial court reasoned that father had not been adjudicated to be an unfit parent, and, therefore, KSC had been erroneously removed from father's care.

We granted respondent leave to appeal.

## II. DISCUSSION

We conclude that the trial court abused its discretion when it entered the May 22, 2019 order after rehearing, removing KSC from respondent's care and returning KSC to father's care because it misapplied the law.

We review a trial court's decision on a request for rehearing or reconsideration for an abuse of discretion. See *In re Burns*, 236 Mich App 291, 293; 599 NW2d 783 (1999). "A circuit court commits legal error when it incorrectly chooses, interprets, or applies the law." *Id.* (quotation marks omitted). *In re AP*, 283 Mich App 574, 590; 770 NW2d 403 (2009).

Initially, we note that the trial court's reliance on the Supreme Court's opinion in *In re Sanders* to support its order removing KSC from respondent's care and returning KSC to the father's care was misplaced. In *In re Sanders*, 495 Mich at 401, DHHS filed petitions to terminate the parental rights of the children's mother and father. The trial court adjudicated the mother as unfit and dismissed the allegations of abuse and neglect against the father. *Id.* Nevertheless, the trial court declined to place the children with the father and ordered the father to comply with a case service plan. *Id.* In doing so, the trial court relied upon the one-parent doctrine, which allowed the trial court to enter dispositional orders affecting the parental rights of both parents even though both parents had not been adjudicated. *Id.* at 401, 407. The Court held that the one-parent doctrine was unconstitutional, reasoning as follows:

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. In doing so, we announce no new constitutional right. Rather, we affirm that an old constitutional right—a parent's right to control the care, custody, and control of his or her children—applies to *everyone*, which is the very nature of constitutional rights. Because the one-parent doctrine allows the court to deprive a parent of this fundamental right without any finding that he or she is unfit, it is an unconstitutional violation of the Due Process Clause of the Fourteenth Amendment. [*Id.* at 422.]

In this case, however, KSC was initially placed in father's care on a temporary basis after KSC was removed from respondent's care. The trial court did not order father to comply with a case service plan and KSC was returned to respondent's care only after respondent successfully completed her case service plan. Accordingly, the trial court did not infringe on father's constitutionally protected parent-child relationship without a specific adjudication of father's

fitness. The trial court's reliance on *In re Sanders* was misplaced and its' reason for returning KSC to father's care was legally incorrect.<sup>2</sup>

Regarding the proceedings on remand, we further note that we have recognized that “a conflict may arise concerning the care and custody of a child, as in this case, where domestic relations law and juvenile law intersect.” *In re AP*, 283 Mich App at 593. Under domestic relations law, including actions for child support, paternity actions, and divorce, where the action directly or incidentally involves the legal or physical custody of a child, our courts are bound to apply the Child Custody Act (CCA), in determining who should have physical and legal custody of a child. *In re AP*, 283 Mich App at 592. “However, once a juvenile court assumes jurisdiction over a child and the child becomes a ward of the court under the juvenile code, the juvenile court's orders supersede all previous orders, including custody orders entered by another court, even if inconsistent or contradictory.” *Id.* at 593. “In other words, the previous custody orders affecting the minor become dormant, in a metaphoric sense, during the pendency of the juvenile proceedings, but when the juvenile court dismisses its jurisdiction over the child, all those previous custody orders continue to remain in full force and effect.” *Id.* at 593-594. “[D]uring the duration of the juvenile proceedings, while the parties subject to the custody order can move to modify [it], any modification would remain superseded by the juvenile court's orders.” *Id.* at 594 (footnote omitted).

But, following the creation of the family division within the circuit court, “[w]hen a domestic relations dispute arises and a juvenile action involving the same parties is already pending, or vice versa, one judge may resolve both matters if the judges on the respective dockets confer and deem it appropriate.” *Id.* at 596. Moreover, “when a family division court deems it appropriate to consolidate numerous matters concerning the same family that fall within the jurisdiction of the family division under MCL 600.1021 but may have originally been assigned to different judges, it is necessary that family division courts follow the procedural requirements incumbent upon them.” *Id.* at 599.

In this case, father established paternity over KSC through the Acknowledgement of Parentage Act (APA), MCL 722.1001 *et seq.*, which provides:

After a mother and father sign an acknowledgment of parentage, the mother has initial custody of the minor child, without prejudice to the determination of either parent's custodial rights, until otherwise determined by the court or otherwise agreed upon by the parties in writing and acknowledged by the court. This grant of initial custody to the mother shall not, by itself, affect the rights of either parent

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<sup>2</sup> To the extent that the trial court expressed its personal belief that jurisdiction in a child neglect proceeding is unwarranted so long as the child is in the custody of a fit parent, our caselaw confirms the ability of the court to take jurisdiction over a child and to terminate the parental rights of an unfit parent. *In re Ramsey*, 229 Mich App 310, 314-317; 581 NW2d 291 (1998); *In the Matter of Marin*, 198 Mich App 560, 566-568; 499 NW2d 400 (1993).

in a proceeding to seek a court order for custody or parenting time. [MCL 722.1006.<sup>3</sup>]

Upon execution of the acknowledgment of parentage, respondent received initial legal and physical custody over KSC by operation of law. See *Sims v Verbrugge*, 322 Mich App 205, 214; 911 NW2d 233 (2017) (acknowledging that the plaintiff-mother automatically received initial legal and physical custody of her child upon execution of an acknowledgement of parentage under the Acknowledgment of Parentage Act). Because initial custody was granted by operation of law, not a judicial determination, there is no judicial determination regarding KSC's legal or physical custody requiring father to demonstrate proper cause or a change in circumstances when he moved for a change in KSC's legal and physical custody. *Id.* at 214-215.

However, unbeknownst to the trial court and respondent,<sup>4</sup> custody was modified on September 13, 2018, when another judge entered a default judgment of support granting father sole legal and physical custody over KSC during a separate proceeding. On July 14, 2020, while this appeal was pending, this default judgment of support regarding KSC was amended *nunc pro tunc*. In relevant part, the amendment provided that the issues of custody and parenting time over KSC would be reserved and addressed in another pending juvenile matter—presumably this juvenile neglect matter. Consequently, respondent returned to the position of having legal and physical custody by operation of law. *Id.* at 214-215. On remand, the trial court should address father's motion for a change of legal and physical custody. *In re AP*, 283 Mich App at 598.

We vacate the trial court's orders and remand so that the trial court may render a custody determination in light of the procedures set forth in the CCA before dismissing the neglect matter against respondent.

We do not retain jurisdiction.

/s/ Anica Letica  
/s/ Karen M. Fort Hood  
/s/ Elizabeth L. Gleicher

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<sup>3</sup> MCL 722.1007(c) likewise provides:

The mother has initial custody of the child, without prejudice to the determination of either parent's custodial rights, until otherwise determined by the court or agreed by the parties in writing and acknowledged by the court. This grant of initial custody to the mother shall not, by itself, affect the rights of either parent in a proceeding to seek a court order for custody or parenting time.

<sup>4</sup> We do not fault the trial court or respondent for the current procedural posture of this case as father, who was representing himself at that time, failed to present the family court's September 13, 2018 order during the May 22, 2019 hearing in the neglect proceeding.