STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of CAH, Minor.

No. 309440
Muskegon Circuit Court
Family Division
LC No. 11-007681-AF

In the Matter of CMH, Minor.

No. 309441
Muskegon Circuit Court
Family Division
LC No. 11-007680-AF

Before: SERVITTO, P.J., and MARKEY and MURRAY, JJ.

PER CURIAM.

Respondent mother appeals by right the trial court's orders terminating her parental rights to her minor children, approving the children's placement in petitioners' home, and granting petitioners authority to consent to the adoption of the children. We vacate the trial court's orders and remand for further proceedings consistent with this opinion.

Petitioners are the maternal grandparents and guardians of CAH and CMH. In January 2011, petitioners filed pleadings in the trial court to adopt CAH and CMH. Petitioners requested termination of parental rights inconsistent with orders of adoption, asserting that MCL 712A.19b(3)(a)(ii), (b)(i) and (ii), (g), and (j), provided grounds to terminate respondent's parental rights. After respondent was released from jail in July 2011, the trial court held a three-day hearing and terminated respondent's parental rights under §§ 19b(3)(a)(ii) and (g). The court's order allowed petitioners to proceed with the adoption of CAH and CMH.

On appeal, respondent argues that the trial court erred when it terminated her parental rights without holding a trial to obtain jurisdiction over CAH and CMH. Because respondent did not raise this issue below, it is unpreserved. See *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). We review unpreserved claims of error for plain error affecting substantial rights. *Id.* An error affects substantial rights when it affects the outcome of the proceedings. *Id.* at 9.

A person desiring to adopt a child must file a petition with the court of the county in which the person resides or where the child is found. MCL 710.24(1). But, the child must be

available for adoption. *In re Handorf*, 285 Mich App 384, 387; 776 NW2d 374 (2009). A child may be adopted after the parental rights of the child's parents have been terminated under the Adoption Code, MCL 710.21 *et seq.*, or the juvenile code, MCL 712A.1 *et seq*. See MCL 710.41(1); *Handorf*, 285 Mich App at 387. Here, the trial court terminated respondent's rights under the juvenile code.

Child protective proceedings begin with the filing of a petition. MCR 3.961(A). A guardian may file a petition to terminate the parental rights of a child's parents. MCL 712A.19b(1); MCR 3.977(A)(2). Petitioners failed to file such a petition in this case. Moreover, child protective proceedings are divided into two phases: the adjudicative phase and the dispositional phase. *In re AMAC*, 269 Mich App 533, 536; 711 NW2d 426 (2006). In the adjudicative phase, the court determines whether the child comes within the court's jurisdiction as defined by MCL 712A.2. *Id.*; see also *In re AP*, 283 Mich App 574, 593; 770 NW2d 403 (2009) ("Although the court has jurisdiction over the matter, the child will not come under the court's jurisdiction and become a ward of the court until the court holds an adjudication on the merits of the allegations in the petition and finds by a preponderance of evidence that there is factual support for permitting judicial intervention."). In a protective proceeding, the court may acquire jurisdiction over the child through a trial, at which the child's parent has the right to a jury, or at plea proceedings. MCR 3.911(A); *In re AMAC*, 269 Mich App at 536. If the court acquires jurisdiction over the child, the dispositional phase follows. MCR 3.973. The dispositional phase determines what action, if any, will be taken on behalf of the child. *In re AMAC*, 269 Mich App at 537; see also *In re AMB*, 248 Mich App 144, 177; 640 NW2d 262 (2001) ("Once the family court determines that the child comes within its jurisdiction, it can enter dispositional orders that govern all matters of care for the child.").

In this case, the trial court never held a trial to obtain jurisdiction over CAH and CMH, nor did it gain jurisdiction through any plea proceedings. In fact, there is nothing on the record to indicate that the trial court was aware that it had to obtain jurisdiction over CAH and CMH under MCL 712A.2(b) before it could terminate respondent's parental rights. The court must find through a trial or plea proceedings that a statutory ground for its jurisdiction over a child is proven by the preponderance of evidence before the court can issue a dispositional order, including an order terminating parental rights. MCR 3.971; MCR 3.972; *In re SLH, AJH, & VAH*, 277 Mich App 662, 669, 674; 747 NW2d 547 (2008); see also *In re AMB*, 248 Mich App at 177 (holding the trial court erred in entering a dispositional order when the trial court had not yet acquired jurisdiction over the minor). Here, the trial court was without authority to issue any dispositional orders regarding CAH and CMH because the trial court never made a determination, either in its oral opinion or in its written orders, that it had jurisdiction over CAH and CMH. Accordingly, the trial court plainly erred in terminating respondent's parental rights without obtaining jurisdiction over CAH and CMH.

Because the trial court was without jurisdiction to terminate respondent's parental rights, plain error affected respondent's substantial rights. *In re Utrera*, 281 Mich App at 9. Accordingly, we vacate the orders terminating respondent's parental rights. And, because we vacate the trial court's orders terminating respondent's parental rights, CAH and CMH are no

longer available for adoption. We, therefore, also vacate the court's other orders making CAH and CMH wards of the court, approving the placement of the children in petitioners' home, and granting petitioners authority to consent to the adoption of CAH and CMH.[1]

We vacate the trial court's orders and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Deborah A. Servitto
/s/ Jane E. Markey
/s/ Christopher M. Murray

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[1] Because of our conclusion, we need not address respondent's other arguments on appeal.