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STATE OF MICHIGAN
IN THE SUPREME COURT

IN RE D V LANGE MINOR

Supreme Court Case No. _____

Court of Appeals Case No. 362365

Wayne County Circuit Court, Juvenile Division Case No. 2021-000658-NA

_____/

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APPELLANT-MOTHER'S APPLICATION FOR LEAVE TO APPEAL

Oral Argument Requested

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STATEMENT OF ORDER APPEALED AND RELIEF SOUGHT

Once again, in a split opinion, the Court of Appeals has held that a court must take jurisdiction when an adoptive parent of a child experiencing a mental health crisis cannot bring them home from the hospital because of the child's immense needs, in this case, reactive attachment disorder. *In re Lange*, unpublished per curiam opinion of the Court of Appeals, issued November 2, 2023 (Docket No. 362365). The facts and legal issue presented are remarkably similar to those in *In re Holbrook*, ___ Mich ___ (2023) (Docket No. 164489), which the Court recently dismissed for mootness concerns not present here. The respondent-mother, Ms. Lange, respectfully asks this Court to use her case as an opportunity to clarify that jurisdiction is unwarranted when a parent, through no fault of their own, "is unable to manage their child's mental health crisis" despite their best efforts. *Id.* (CAVANAGH, J., concurring), p 1. As this Court has already seen, the issue presented here is not unique and will inevitably come before courtrooms across Michigan in the future.[1]

The Court of Appeals' split decision directing the trial court to take jurisdiction was clearly erroneous and will cause material injustice. MCR 7.305(B)(5)(a). A court's decision to take jurisdiction over a child under MCL 712A.2(b) should not be made lightly. When a court takes jurisdiction, it "divests

[1] See Brookland, *When Giving Up a Child is the Only Way to Get Needed Help*, Detroit Free Press (November 20, 2022) < https://www.freep.com/story/news/2022/11/20/parents-child-protective-services-mental-health-help/69656670007/ > (accessed December 12, 2023).

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the parent of her constitutional right to parent her child and gives the state that authority instead." *In re Ferranti*, 504 Mich 1, 16; 934 NW2d 610 (2019). Stripping a parent of their right to parent should only be done if it is necessary and permitted by the law.

Here, everyone involved in the proceedings below agreed that if Ms. Lange had brought her son DVL home, she could not guarantee his safety, her safety, or the safety of her other children. 14a; *In re Lange*, unpub op at 5 ("Here, evidence presented at adjudication established that . . . it was still unsafe for him to return home."). Because everyone was on the same page, there was nothing adversarial, and no need to strip Ms. Lange of her constitutional rights to direct the care of her son.

Moreover, the facts of this case and cases like it do not fit within any enumerated basis for jurisdiction under MCL 712A.2(b). Where there is no applicable statutory ground for jurisdiction, a court cannot shove the facts into one that does not actually apply—that would be against the intent of the Legislature. Here, DHHS asked the court to assume jurisdiction over DVL under either MCL 712A.2(b)(1) or (2). But as both the trial court and Judge Redford aptly recognized in his dissent, the facts presented do not fit within the statutory language of either Subsection (b)(1) or Subsection (b)(2). 26a; *In re Lange* (REDFORD, J., dissenting), unpub op at 3. By concluding otherwise, the Court of Appeals majority clearly erred.

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This is not the first family to experience a mental health emergency in Michigan and they won't be the last. Michigan courts have acknowledged the wonky fit between the statutory language and the facts in cases like this one but have implied there is nothing else they can do. See, e.g., *In re Hockett*, 339 Mich App 250, 255-56; 981 NW2d 534 (2021). But courts cannot jam a case into a jurisdictional box that does not fit; jurisdictional limits must be honored, particularly considering the burden judicial intervention places on a parent's fundamental rights. DHHS can and should provide families with necessary services without turning to an adversarial judicial process that stigmatizes and harms parents.

The Appellant respectfully urges this Court to promptly reverse the Court of Appeals' decision conferring jurisdiction over DVL or grant this Application to clarify that jurisdiction is improper in cases where a non-neglectful parent who is unable to provide proper care due to the child's immense mental health needs chooses to leave their child in a safe hospital environment while searching for suitable treatment.

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STATEMENT OF THE BASIS OF JURISDICTION

This is an application for leave to appeal after a decision by the Michigan Court of Appeals.

This Court has jurisdiction pursuant to Const 1963, art 6, § 4; MCL 600.212; MCL 600.215(3); and MCR 7.303(B)(1) to review by appeal a case after a decision by the Court of Appeals.

On November 2, 2023, the Court of Appeals reversed the trial court's decision declining to exercise jurisdiction. *In re Lange*, unpub op. Ms. Lange filed a motion to reconsider, which was denied on December 7, 2023. This timely application is being filed within 42 days of the denial of the motion to reconsider. MCR 7.305(C)(2)(c).

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STATEMENT OF QUESTION PRESENTED

Did the Court of Appeals err when it concluded the trial court must exercise jurisdiction over DVL under MCL 712A.2(b)(1) and (2)?

Appellant says yes.
Court of Appeals majority says no.
Court of Appeals dissent says yes.
Trial court says yes.

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STATEMENT OF FACTS

When the hospital abruptly discharged her son DVL without treating him, Ms. Lange was a parent placed in an impossible position. She knew that DVL's significant mental health challenges, when left untreated, threatened his life, her life, and the safety of her other two sons. While the hospital wanted him out, she knew it would be unsafe to bring him home, even with outpatient services in place. And so, she chose to do what was best for DVL—keep him in the hospital while searching for a suitable placement. That choice led to her losing her constitutional right to parent DVL, a loss she continues to experience to this day.

Ms. Lange has worked tirelessly to care for DVL and his siblings for years.

Ms. Lange adopted DVL when he was five. 15a-16a. Ever since, she has worked hard to provide him with a safe and loving childhood. DVL suffers from serious mental health challenges—he has been diagnosed with PTSD, Reactive Attachment Disorder, Oppositional Defiance Disorder, and ADHD. 16a-17a. In recent years, Ms. Lange has had to place DVL in inpatient programs for his own safety and the safety of his family. 20a. As the trial court articulated, Ms. Lange has made "Herculean efforts to deal with the mental illness of [he]r son." 9a.

Ms. Lange also shares custody of two other adopted sons with her ex-wife Lisa. 5a. While her other sons spend most of their time with Lisa during the school year, in the summertime, they spend significant time with Ms. Lange. 5a. DVL's mental health challenges have directly impacted the safety and welfare of Ms. Lange's other sons. DVL has a history of violence toward his brothers and has

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attempted to molest one of them. 21a-22a. Ms. Lange has always had to balance the safety needs of all three of her sons.

In 2021, Ms. Lange brought her son to the hospital for his own safety and the safety of their family. Everyone agreed that DVL needed inpatient care.

In Spring 2021, DVL was asked to leave an inpatient program in Montana—that Ms. Lange had paid for—due to serious behavioral problems. 17a. When he returned to Ms. Lange's home, his behavior deteriorated. He threatened to harm himself, his family, and their pets. 2a. These threats fell into a recognizable pattern; he had previously threatened to set fire to Ms. Lange's home or kill pets with household cleaning products. 2a. As Ms. Lange explained, she took him to their local hospital, St. John's, because DVL threatened to kill himself or destroy their home. 18a.

At the hospital, Ms. Lange began working with hospital staff to find suitable inpatient psychiatric care for DVL. 3a. But the treatment team immediately ran into problems. According to DHHS worker Jacquelyne Snarski, "[T]here were no available openings at the time." 6a. And as Ms. Lange testified, there was no program willing to take DVL "because of his level of extreme behaviors." 22a. Everyone agreed that DVL needed inpatient care, it was just a matter of finding it. 23a.[2]

[2] Finding suitable inpatient care for kids in Michigan is no easy task. The number of inpatient beds available for kids and teens in the state has been steadily declining. In 1993, there were 729 beds available; in 2021 that number had plummeted to only 389. Facilities are often completely full when parents need them most. The problem is made even worse by the fact that the number of kids and

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When the hospital abruptly changed its recommendation to outpatient care, Ms. Lange knew it would not be a safe option for DVL nor her family.

After weeks of searching for an inpatient program, the hospital suddenly changed course and recommended DVL go home with Ms. Lange and receive intensive outpatient mental health services. 3a. The shift came without warning or explanation; after all, DVL had not received any treatment while in the hospital, nor had his condition improved.[3] Ms. Lange, DVL's mother and tireless advocate for eight years, knew that bringing him home was not an option. As she testified, when it came to outpatient services, it wasn't "that I wasn't interested. It wasn't safe for him to be in my care." 19a. In fact, as the trial court found, "[N]obody is contesting that [Ms. Lange] told St. John's she couldn't take him home because it wouldn't be safe . . ." 14a.

DHHS worker Jacquelyne Snarski admitted what Ms. Lange knew all too well; outpatient services that kept DVL at home could not guarantee he would not

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teens facing acute mental health crises is rising. See Tianna Jenkins, *A Closer Look: Inpatient Psychiatric Beds for Kids and Teens in Michigan*, Fox 47 News (March 23, 2021) < https://www.fox47news.com/news/local-news/a-closer-look-inpatient-psychiatric-beds-for-kids-and-teens-in-michigan-lacking > (accessed December 16, 2023); Robin Erb, *As Child Mental Health Rates Rise, Michigan Sharply Cuts Residential Beds*, Bridge Michigan (June 15, 2023) < https://www.bridgemi.com/michigan-health-watch/child-mental-health-rates-rise-michigan-sharply-cuts-residential-beds > (accessed December 16, 2023).

[3] The circumstances surrounding the sudden shift from an inpatient to outpatient recommendation make little sense, as nothing meaningfully changed about DVL's condition. The Court of Appeals panel put it well. The panel wondered "[h]ow in the course of one day DVL could go from being nondischargeable to dischargeable from the hospital without receiving treatment casts doubt on whether the hospital chose to wash its hands of this troubled youth rather than keep him in a holding pattern while DHHS tried but failed to find a suitable placement for him . . ." *In re Lange*, unpub op at 5.

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harm his brothers. 7a. The trial court also agreed that bringing DVL home was not an option for Ms. Lange given her other sons would be home too. The court asked, "[H]ow does she do that, though? I mean, if she's got three children, she's a single parent. How does a single parent keep their three children separate?" 24a. Asking Ms. Lange to pick up DVL without an inpatient program lined up was an impossible recommendation. Therefore, Ms. Lange did not pick him up from the hospital even when he was technically cleared for discharge. 4a.

Because Ms. Lange did not bring DVL home due to his immense needs, DHHS filed a petition asking the court to take jurisdiction over DVL.

DHHS filed a petition alleging that Ms. Lange abandoned DVL and asking the court to exercise jurisdiction over DVL under either MCL 712A.2(b)(1) or MCL 712A.2(b)(2).[4] The trial court agreed to remove DVL from Ms. Lange because it was "clearly contrary to [his] welfare" to go home. 8a. Notably, after DVL was placed in DHHS custody, the agency reached the same conclusion as Ms. Lange: he needed an inpatient program. DHHS placed DVL in Hanley House. 12a. A few months later, at a pretrial hearing, a DHHS worker checking in regularly with DVL explained that "the needs of the child could not be met in another placement at the current time," ruling out a move to a home-like setting with a foster family. 13a. In short, DHHS agreed with Ms. Lange that DVL needed inpatient care to address his serious mental health issues. But, because DVL had been removed from Ms. Lange's care, any visits with her son became a matter for the court to decide. She

[4] DHHS initially asked the court to exercise jurisdiction over DVL's brothers, but the trial court dismissed the petition with respect to Ms. Lange's other sons at the first hearing. 10a-11a.

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could not make decisions for her son, or bring him home for brief visits or holidays, without judicial permission.

Recognizing Ms. Lange was blameless, the trial court concluded statutory ground for jurisdiction did not exist and dismissed the petition.

The trial court ultimately declined to exercise jurisdiction over DVL under MCL 712A.2(b)(1) or MCL 712A.2(b)(2). The trial court explained, "I just don't see how I can find that [Ms. Lange has] been neglectful or abusive in terms of her actions to date . . ." 26a. The court noted that Ms. Lange was caught in an impossible situation: "Nobody here has told me what the mother . . . was supposed to do except to say she was supposed to go pick him up at the hospital . . . even if it means that her other children are going to be abused . . ." 25a.[5] It was Ms. Lange who had the last word, explaining that when she received the news that the hospital was discharging her son, it was a "no win situation." 28a. She elaborated:

> I love [my son] with all my heart. I've done everything I can and the only thing I know is that he's not safe to have in the home and I'm looking to the state that I live in for help and there is no help . . . we need to address our mental care because it's not happening, and I don't want to be another news story. 28a.

On appeal, the Court of Appeals majority found the trial court clearly erred and mandated that it take jurisdiction over DVL under both MCL 712A.2(b)(1) and MCL 712A.2(b)(2).

After the trial court declined to exercise jurisdiction and dismissed the petition, DHHS appealed. In a split opinion, the Court of Appeals concluded that the trial court clearly erred in dismissing the petition, finding jurisdiction was

[5] The trial court also recommended that DHHS could consider filing a dependency petition under MCL 712A.2(b)(3). 27a.

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required under both MCL 712A.2(b)(1) and MCL 712A.2(b)(2). *In re Lange*, unpub op. The majority concluded that Ms. Lange "refused to provide proper or necessary mental health care to her son" and had an "inability to care for DVL's significant mental health needs," rendering "her home statutorily unfit." *Id.* at 4.

The majority analogized to *In re Hockett*, 339 Mich App at 250, which also involved a child with a history of serious mental health challenges. Like Ms. Lange, the respondent-mother in *Hockett* received a determination from a hospital that her child should be discharged, but she declined to take him home until "he received the help she believed he needed." *In re Lange*, unpub op at 4. The *Hockett* panel concluded that jurisdiction was appropriate under Subsection (b)(2) because the respondent-mother's "admitted inability" to care for her child rendered her home "a place of danger for the seriously ill child, and thus, statutorily unfit." *Id.* at 4-5, quoting *In re Hockett*, 339 Mich App at 255-56.

Here, the majority concluded that the trial court clearly erred when it declined to exercise jurisdiction over DVL under Subsection (b)(2), because "despite her best efforts, respondent admitted that she could not care for DVL's special and significant mental health needs" and therefore her home was a place of danger and "statutorily unfit." *In re Lange*, unpub op at 5.

Unlike the panel in *Hockett*, here, the majority also concluded the trial court clearly erred by declining to exercise jurisdiction under Subsection (b)(1). It found that Ms. Lange "refused to cooperate in obtaining mental health services for her child" because she did not "secure outpatient treatment for DVL." *Id.* Failing to

bring him home and secure outpatient care, in the majority's estimation, amounted to a refusal to provide proper or necessary care under Subsection (b)(1). *Id.* at 6-7.

Judge Redford dissented, concluding the trial court's decision was not clearly erroneous. *Id.* (REDFORD, J., dissenting), unpub op at 1. He explained that "[t]here is no indication that DVL's mother did anything other than undertake exhaustive, comprehensive, and costly measures to try to care for DVL." *Id.* at 3. Refusing to bring DVL home "with two other minor children who would be endangered was not an act of neglect," and there was no evidence "that *she was able*, despite her repeated and substantial efforts, to provide DVL with the proper or necessary support in her home." *Id.* (emphasis added).

Following the decision, Ms. Lange filed a motion for reconsideration, which the Court of Appeals denied. Judge Redford would have granted the motion. She now seeks leave to appeal, asking this Court to either grant her application for leave or peremptorily reverse the Court of Appeals' clearly erroneous decision.

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ARGUMENT

Standard of Review and Issue Preservation

This Court reviews a trial court's decision denying jurisdiction for clear error in light of the court's findings of fact. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). A trial court's decision only rises to the level of clear error when a reviewing court has a "definite and firm conviction that a mistake has been made." *In re LaFrance*, 306 Mich App 713, 723; 858 NW2d 143 (2014). The issue of whether the trial court clearly erred in declining to exercise jurisdiction is preserved. 26a.

Taking jurisdiction deprives a parent of their constitutional right to parent and it should therefore be reserved for cases where the Legislature has specifically authorized courts to do so.

"The right to parent one's children is 'essential to the orderly pursuit of happiness by free men.'" *In re Sanders*, 495 Mich 394, 409; 852 NW2d 524 (2014), quoting *Meyer v Nebraska*, 262 US 390, 399; 43 S Ct 625; 67 L Ed 1042 (1923). It is a right that enshrines and protects "the importance of the familial relationship." *In re Sanders*, 495 Mich at 409. A parent's liberty interest in the "care, custody, and management" of their children is fundamental and deeply rooted. See *Santosky v Kramer*, 455 US 745, 753; 102 S Ct 1388; 71 L Ed2d 599 (1982). When a parent like Ms. Lange chooses to adopt a child, the right to parent that child—to care for them and make decisions in their best interest—flows to the adoptive parent. MCL 710.60(1) ("The person . . . adopting the adoptee then become[s] the parent . . . of the adoptee under the law as though the adopted person had been born to the adopting parent[] and are . . . entitled to all the rights of parents.").

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When a court takes jurisdiction over a child, it "divests the parent of her constitutional right to parent her child and gives the state that authority instead." *In re Ferranti*, 504 Mich at 16. Depriving a parent of her constitutional right to parent is *not* something that courts should do lightly; it produces a meaningful and concrete harm for the parent, restricting their ability to make decisions for their child. The trial court appropriately found that jurisdiction was unwarranted here because Ms. Lange did nothing but care for her son, doing the best she could in an impossible situation. Simply put, this case is not one where judicial intervention was necessary to protect the child.

Court proceedings should be reserved for cases in which there is actual harm and disagreement. Throughout the proceedings, no one disputed that Ms. Lange was doing everything she could for DVL. No one disputed that DVL needed significant support to address his mental health crisis, which threatened to put himself and his family in danger. Both DHHS and Ms. Lange ultimately concluded that DVL needed inpatient support. In short, there was no need for the court to involve itself in this case. Because this judicial proceeding was unnecessary and deprived a faultless parent of a constitutional right, this Court should intervene to clarify that mandating jurisdiction was a clear error.

Because the undisputed facts of this case do not fall under plain language of either MCL 712A.2(b)(1) and MCL 712A.2(b)(2), the Court of Appeals majority clearly erred in reversing the trial court.

To take jurisdiction over a child, a court must establish statutory grounds exist by a preponderance of the evidence. *In re SLH*, 277 Mich App 662; 747 NW2d 547 (2008); MCL 712A.2(b). Here, DHHS asked the trial court to take jurisdiction

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over DVL under either MCL 712A.2(b)(1) or MCL 712A.2(b)(2). The trial court and Judge Redford, writing in dissent, correctly concluded that neither Subsection (b)(1) nor Subsection (b)(2) apply to the undisputed facts. By finding that both bases for jurisdiction apply here, the Court of Appeals majority clearly erred.

Ms. Lange's actions do not fall under Subsection (b)(1) because she was not able to provide proper or necessary care to her son by bringing him home.

Subsection (b)(1) allows a court to take jurisdiction over a child:

> Whose parent or other person legally responsible for the care and maintenance of the juvenile, *when able to do so*, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. MCL 712A.2(b)(1) (emphasis added).

In this case, the trial court and Court of Appeals asked whether Ms. Lange, "when able to do so, neglect[ed] or refuse[d] to provide proper or necessary support . . . or other care necessary for [DVL's] health." MCL 712A.2(b)(1).

The relevant facts are undisputed and straightforward. While DVL was at the hospital, Ms. Lange was working with hospital staff to find a suitable inpatient placement to address DVL's severe mental health needs. 3a. She was unable to find a program with availability that could properly care for DVL given his extreme needs. 22a. Then, even though DVL did not receive treatment, the hospital abruptly changed its recommendation to outpatient care, meaning DVL was

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technically dischargeable. 3a. Because his condition had not changed, Ms. Lange knew that bringing him home would not be safe for DVL or his family. 19a.

Ms. Lange's actions do not fit within the plain language of Subsection (b)(1), as the trial court and Judge Redford correctly concluded. 26a; *In re Lange* (REDFORD, J., dissenting), unpub op at 3. Critically, Subsection (b)(1) limits jurisdiction to scenarios where a parent fails to provide proper care "*when able to do so*." MCL 712A.2(b)(1) (emphasis added). Ms. Lange was *not* able to provide DVL proper care by bringing him home from the hospital before his condition had improved. As Judge Redford aptly noted, there was *no evidence* presented at the trial court "that she was *able*, despite her repeated and substantial efforts, to provide DVL with the proper or necessary support in her home." *In re Lange* (REDFORD, J., dissenting), unpub op at 3 (emphasis added).

Under the plain language of Subsection (b)(1), when a parent is unable to provide proper care, a court cannot take jurisdiction. The Court of Appeals' analysis in *Hockett* is instructive here. *In re Hockett*, 339 Mich App at 250. *Hockett* involved similar facts. A mother's son was hospitalized because he was experiencing a life-threatening mental health crisis. *Id.* at 253. After the hospital decided he should be discharged, his mother did not want to bring him home until she could find suitable help. *Id.* at 252-53.

In analyzing whether jurisdiction was warranted under Subsection (b)(1), the *Hockett* panel noted that the mother, like Ms. Lange, "was unable to manage the complex mental health needs of her child" on her own. *Id.* at 255. The panel also

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noted that, like Ms. Lange, the mother had "the physical capacity to retrieve her minor child" from the hospital and did not do so. *Id.* Ultimately, the panel concluded that the mother had an "*inability* . . . to care for [her son]'s special needs with the level of assistance she was receiving." *Id.* at 256 (emphasis added). The panel correctly concluded that jurisdiction was unwarranted under Subsection (b)(1) because the mother "was not able" to provide care for her son.

A mere physical ability to pick up a child from the hospital does not mean a parent "was able to" provide "proper or necessary support" for their child. MCL 712A.2(b)(1). In her recent concurrence in *Holbrook*, Justice Cavanagh was correct to conclude that whether a parent has the physical capacity to pick up a child from the hospital "misses the point." *In re Holbrook*, ___ Mich ___ (CAVANAGH, J., concurring), slip op at 3. Justice Cavanagh concluded that "the phrase should be understood more broadly under a plain-language reading" with an eye toward "other barriers" that prevent a parent from safely retrieving a child in crisis. *Id.*

But here, the Court of Appeals majority ignored those other barriers in its analysis, pointing out that Ms. Lange "although able to do so, refused to pick [DVL] up from the hospital and failed to secure" outpatient treatment for him. *In re Lange*, unpub op at 6. The majority's reasoning is clearly erroneous in implying that ability under Subsection (b)(1) is merely a technical, physical ability to pick up a child. Such analysis is not only wrong, but it generates tension with *Hockett*, a published decision binding on the panel. This Court should take this opportunity to step in and clarify the statutory meaning.

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Moreover, Subsection (b)(1) limits jurisdiction to cases where a parent "neglects" to provide "proper" support. MCL 712A.2(b)(1). But here, there is no indication that Ms. Lange had proper support available to her that she chose to neglect. The Court of Appeals majority concluded that Subsection (b)(1) applied because Ms. Lange "refused to cooperate in obtaining mental health services" for DVL. *In re Lange*, unpub op at 5. The majority was referring to Ms. Lange's decision not to fill out paperwork for outpatient programming for DVL—outpatient programming that would require him to live at home, where everyone agreed he was not safe. In fact, even the Court of Appeals majority agreed that "it was still unsafe for him to return home." *Id.* Ultimately, the majority concluded that by choosing not to pick DVL up from a safe place, bring him home to an unsafe place, and follow-up on applications for unsuitable treatment, Ms. Lange somehow neglected to provide him with proper care. *Id.* at 5-6.

The majority's reasoning and conclusion is clearly erroneous and must be reversed. To claim that Ms. Lange's refusal to move forward with a plan that was *actively unsafe for her son* amounted to *neglect* is a clear error. Simply put, there is nothing proper about moving forward with a treatment option that is unsafe. The Court should use this opportunity to clarify that Subsection (b)(1) does not apply in cases like this where a parent chooses not to pursue an unsafe treatment option. When a non-neglectful parent is unable to provide proper care, Subsection (b)(1) does not apply.

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Because Ms. Lange plainly did not neglect her son, this case does not fall under Subsection (b)(2) either.

Subsection (b)(2) allows a court to take jurisdiction over a child:

> Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in . . . MCL 712A.2(b)(2).

Subsection (b)(2) only applies where a home is unfit because of "neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent . . ." MCL 712A.2(b)(2). Neglect is statutorily defined as "harm to a child's health or welfare by a person responsible for the child's health or welfare that occurs through negligent treatment, including failure to provide adequate . . . medical care . . ." MCL 712A.2(b)(2); MCL 722.602(1)(d). The definition requires the parent to fail to take reasonable care to address their child's needs.

As explained above, Ms. Lange did not neglect her child by refusing to move forward with a plan that everyone—DHHS workers, the trial court, the Court of Appeals majority and dissent—agreed was not safe for DVL and his family. As Judge Redford stated, Ms. Lange undertook "exhaustive, comprehensive, and costly measures to try to care for DVL." *In re Lange (*REDFORD, J., dissenting), unpub op at 3. "Her refusal to allow DVL to be placed in her home . . . was not an act of neglect." *Id.*

The Court of Appeals majority concluded that Subsection (b)(2) applied because Ms. Lange's "actions rendered the home environment a place of danger for DVL," appearing to reference Ms. Lange's decision not to seek outpatient services

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for her son. *In re Lange*, unpub op at 5. But of course, such services were unsafe precisely because they would require DVL to be home, a place where, in the majority's own words—"he had threatened to harm his family, the home, his pets and himself." *Id.* What made the home unfit for DVL quite clearly had nothing to do with Ms. Lange's actions. She did not neglect DVL and therefore, this case falls outside the plain language of Subsection (b)(2). The Court of Appeals clearly erred in concluding otherwise.

While *Hockett*, *Holbrook*, and the present case involve substantially similar facts and legal issues, what sets this case apart is the standard of review.

A decision finding or denying jurisdiction under MCL 712A.2(b) is reviewed for clear error, which is a high bar. *In re BZ*, 264 Mich App at 295. While this case presents similar facts and a similar legal issue to *Hockett* and *Holbrook*, the procedural posture is distinguishable. In both *Hockett* and *Holbrook*, the Court of Appeals affirmed the trial court's decision finding jurisdiction. *In re Hockett*, 339 Mich App at 265; *In re Holbrook*, unpublished per curiam opinion of the Court of Appeals, issued May 19, 2022 (Docket No. 359504), p 10. In other words, both panels did nothing more than conclude they lacked a "definite and firm conviction that a mistake has been made." *In re LaFrance*, 306 Mich App at 723. In contrast, the Court of Appeals panel below *overturned* the trial court's decision declining to exercise jurisdiction, requiring it to surpass the high bar of clear error. In a case where the facts fit so poorly within the plain text of the statutory language, the Court of Appeals majority clearly erred in finding that the trial court's decision to

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decline jurisdiction was a definite mistake, making this an even more compelling vehicle for this Court's intervention.

While exercising jurisdiction was not warranted in this case, there is nothing stopping DHHS from working with Ms. Lange to provide the necessary resources.

Ms. Lange and her son are not the first family to experience a mental health emergency in Michigan and they won't be the last. This is a scenario destined to repeat itself. Michigan jurists have admitted to the wonky fit between the statutory language under MCL 712A.2(b) and the reality faced by blameless parents like Ms. Lange who are trying their best. While acknowledging the negative consequences that flow from exercising jurisdiction, courts have essentially thrown up their hands, concluding *this is the best we can do*—at least without intervention from the Legislature. See, e.g., *In re Hockett*, 339 Mich App at 255-56 ("The scant and costly resources available for mental healthcare for children likely places other parents in the same situation as this respondent. . ."); *In re Holbrook*, ___ Mich ___ (CAVANAGH, J., dissenting), slip op at 4 ("The available grounds for jurisdiction are ill-equipped to address situations like this.").

Under our current statutory scheme, it is undeniable that the facts of this case, and cases like it where faultless parents desperately need resources to address their child's mental health challenges, do not fit within any statutory basis for jurisdiction. Subsection (b)(1) and Subsection (b)(2) do not apply. Nor do any others including MCL 712A.2(b)(3)(A), which the trial court threw out as a possible alternative. See *Id.* (questioning the applicability of Subsection (b)(3)(A) to cases like this involving a "non-neglectful parent who is unable to provide for their child's

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mental health needs"). Courts cannot jam the facts of a case into an ill-fitting statutory box simply because there is no better-suited box available. When this is the case, as it is here, it indicates the Legislature did not want courts to be involved at all.

Decisions like this one put parents caring for high-needs children in an impossible bind: either bring your child home to a situation that pose risks to the child and their family or lose your constitutional right to your child simply because you want him to receive services. Certainly, the Legislature did not intend to punish parents seeking treatment for their children. Jurisdiction has its limits, and those limits must be honored, particularly when considering the burden placed on a parent's constitutional rights. This Court must step in and clarify that trial courts should not take jurisdiction over children in situations like this one, where a parent is unable to provide proper care through no fault of their own.

In so doing, it is important to remember that judicial intervention and assistance from DHHS are not one in the same. According to the DHHS Adoption Policy Manual, DHHS has a program expressly designed to help families like Ms. Lange and DVL without the involvement of the courts.[6] The Adoption Medical Subsidy program is designed to assist adoptive parents to pay for "treatment of physical, mental or emotional conditions" including "[t]emporary out-of-home placement." *Id.* In fact, Ms. Lange was already receiving help from DHHS before

[6] Michigan Department of Health and Human Services, *Post Adoption Services*, ADB 2013-003 (October 10, 2013) < https://dhhs.michigan.gov/olmweb/ex/AD/Public/ADM/0990.pdf > (accessed December 16, 2023).

the court got involved here. There was nothing stopping the agency from working with Ms. Lange to find a suitable inpatient program for her son outside of the purview of the courts. When parents like Ms. Lange have the best interests of their children in mind and are working actively to meet the intense needs of those children, DHHS should support them and offer them with services—without court involvement—rather than file petitions in juvenile court seeking to strip them of their right to parent their children.

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CONCLUSION

For the reasons mentioned above, Ms. Lange respectfully asks this Court to either issue a peremptory order reversing the Court of Appeals or grant this Application.

Respectfully submitted,

/s/ *Vivek Sankaran*

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Statement of Countable Words
This document contains 4,990 countable words. MCR 7.212(B).

Attachment: In re Holbrook, unpublished opinion
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STATE OF MICHIGAN

COURT OF APPEALS

In re J J HOLBROOK, Minor.

UNPUBLISHED
May 19, 2022

No. 359504
Oakland Circuit Court
Family Division
LC No. 2020-882579-NA

Before: SWARTZLE, P.J., and CAMERON and PATEL, JJ.

PER CURIAM.

Respondent appeals the trial court order finding statutory grounds for jurisdiction over the minor child, JJH, under MCL 712A.2(b)(1) (parent, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for health or morals or parent presents a substantial risk of harm to the child's mental well-being). We affirm.

I. BACKGROUND

JJH has a complex mental health history that was addressed with various treatment modalities for a number of years. When JJH's emotional outbursts, physical aggression, and self-harming behaviors increased in frequency and intensity, respondent took JJH to a local hospital because she could no longer keep JJH safe. JJH was transferred from the hospital to a mental health facility for inpatient treatment.

While JJH was at the mental health facility, Child Protective Services (CPS) became involved due to allegations of physical abuse and neglect. In preparation for JJH's return home, CPS investigator Christian Saba worked with respondent on establishing a safety plan. Saba and other CPS workers repeatedly asked respondent to complete paperwork for Community Mental Health (CMH) services so that additional mental health resources could be accessed for JJH.[1]

[1] Due to the nature of respondent's insurance, there were barriers in getting him treatment. The CMH paperwork was necessary to put JJH in the CMH network to access services that private insurance could not provide.

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Respondent advocated for JJH's admission to a long-term residential treatment program. But mental health professionals allegedly told DHHS that JJH did not meet the criteria for long-term residential treatment services and all other options, such as in-home treatment, would have to be exhausted first. Saba and respondent discussed intensive in-home mental health services recommended by the mental health professionals. Respondent refused the in-home services, did not fill out the CMH paperwork, and did not provide an alternative plan for JJH's care in lieu of returning home.

After several weeks at the mental health facility, JJH was transferred to a short-term crisis center to prepare for reintegration into the family home. JJH's self-harming behavior and aggression escalated at the short-term crisis center. Due to the lack of adequate resources to address JJH's risks and needs, the short-term crisis center released JJH from its services. JJH threatened suicide if he was returned home with respondent. Respondent refused to pick JJH up from the short-term crisis center because she did not feel safe around JJH and she would not allow him to return to her home due to the risk of harm to himself and others.[2]

In advance of filing its petition for temporary custody of JJH, DHHS enlisted the assistance of the Regional Placement Unit (RPU) to find suitable placement to address JJH's mental health needs. A placement was found at a residential treatment program, but respondent refused to transport JJH there. Saba warned respondent that she would be charged with neglect if she refused to pick JJH up from the short-term crisis center. Respondent stated that she would accept whatever penalties would be imposed because she did not feel safe with JJH.

DHHS filed a temporary custody petition requesting that the trial court take jurisdiction over JJH under MCL 712A.2(b)(1) and/or (2). The petition alleged that JJH was "abandoned" at the short-term crisis center, that respondent had refused multiple services offered, that respondent would not allow JJH to return home, and that respondent stated that she was unable and unwilling to care for JJH. A referee concluded that there were reasonable grounds to remove JJH and entered an interim placement order granting DHHS custody of JJH.[3] On the same day, a DHHS employee transported JJH to the residential treatment center for admission.

Following a bench trial, the trial court determined that there was sufficient evidence to establish a statutory basis to exercise jurisdiction over JJH pursuant to MCL 712A.2(b)(1). This appeal followed.

II. STANDARD OF REVIEW

This Court "review[s] the trial court's decision to exercise jurisdiction for clear error in light of the court's findings of fact." *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004).

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[2] It was undisputed that JJH had suicidal tendencies, a history of sexually assaulting a younger sibling in respondent's home, and violence against respondent.

[3] JJH's presumed legal father (by marriage) was excluded as JJH's father through DNA testing. JJH's biological father signed an Affidavit of Parentage, but was unable and unwilling to care for JJH.

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A finding is clearly erroneous when this Court is "left with a definite and firm conviction that a mistake has been made." *In re Schadler*, 315 Mich App 406, 408; 890 NW2d 676 (2016) (quotation marks and citations omitted). "To be clearly erroneous, a decision must be more than maybe or probably wrong." *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011). This Court must consider "the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *Id.*

III. ANALYSIS

Respondent argues that the trial court erred in finding statutory grounds to exercise jurisdiction under MCL 712A.2(b)(1). We disagree.

There are two phases to child protection proceedings, the adjudicative phase and the dispositional phase. MCR 3.972; *In re AMAC*, 269 Mich App 533, 536; 711 NW2d 426 (2006). At issue in this case are the circumstances of the adjudicative phase. "The adjudicative phase occurs first and involves a determination whether the trial court may exercise jurisdiction over the child, i.e., whether the child comes within the statutory requirements of MCL 712A.2(b)." *In re AMAC*, 269 Mich App at 536 (citation omitted). The trial court must find that a statutory basis for jurisdiction exists by a preponderance of the evidence. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004).

The trial court found statutory grounds to exercise jurisdiction over JJH under MCL 712A.2(b)(1), which states, in part:

> (b) Jurisdiction in proceedings concerning a juvenile under 18 years of age found within the county:
>
> (1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals . . . .

The trial court noted that Saba testified that there were a number of barriers to JJH's mental health treatment, including respondent's private health insurance and the fact that community-based services had to be exhausted before residential treatment could be considered. The trial court referenced Saba's testimony that respondent did not complete the necessary CMH paperwork so that JJH could be placed in the CMH network to access additional mental health resources. In determining that there were statutory grounds to exercise jurisdiction, the trial court reasoned:

> [A]lthough I find that mother's behaviors all along the way have been as much as she possibly could to provide proper care and custody for her child, I am going to find that because that child does come under the Court's jurisdiction pursuant to MCL 712A.2(b)(1), that "the parent or person legally responsible for care and maintenance of the juvenile when able to do so neglected or refused to provide proper medical care." And I only make that finding based on the failure to complete the CMH documentation. That's—that's all I got.

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> [T]he records are replete that this child not only has multiple attempts of suicide, [but he] has threatened to kill himself or to kill his mother if [he] came into her care. But the law doesn't provide for when a parent can't handle the overwhelming circumstances of their child's mental health.

A similar conundrum existed in *In re Hockett*, ___ Mich App ___, ___; ___ NW2d ___ (2021) (Docket No. 353132). In that case, the minor child was hospitalized after his mental health problems escalated to threats of harm to another child and threats of suicide. *Id*. at ___; slip op at 1-2. The respondent declined to pick the child up from the hospital when he was released because she believed that he needed further help for his mental problems and she was homeless. *Id.* The trial court found statutory grounds for jurisdiction under MCL 712A.2(b)(1), concluding that the respondent "failed to provide proper and necessary support and care for [the minor child], who was subject to a substantial risk of harm to his mental health and wellbeing." *Id*. at ___; slip op at 3. This Court affirmed, reasoning:

> The trial court and this Court acknowledge the extremely difficult position in which the respondent found herself. She had no home. She had a child whose mental health issues were significant. She wanted the kind of care for [the minor child] that he only began to get when the state assumed jurisdiction. While she is not a mental health care professional, respondent sensed, and later mental health care professionals agreed, that [the minor child] needed more than respondent could give. It is unfortunate that our statute uses the word "unfit" to describe situations such as this. We note that "the underlying purpose of the statutory scheme is to protect children from an unfit homelife." Unfitness connotes active wrong doing which we do not see in this case. The statute however implies some understanding of the existence of parents who do not have the resources to provide for their children in the phrase "when able to do so". This mother was unable to manage the complex mental health needs of her child. The trial court correctly determined that respondent declined to retrieve her child upon discharge. The court also correctly noted that respondent had the physical capacity to retrieve her minor child and did not do so . . . . However, "culpability is not a prerequisite for probate court intervention under § 2(b)(2)." Respondent's admitted inability, not her *unwillingness* to care for [the minor child's] special needs with the level of assistance she was receiving, along with her homelessness rendered [the minor child's] home a place of danger for the seriously ill child and thus, statutorily unfit. [*Id.* at ___; slip op at 3 (emphasis in original, citations omitted).]

Respondent here was similarly unable to manage the complex mental health needs of JJH. The evidence revealed that JJH was unable to return to respondent's home, there was no other relative who could care for him, and the short-term crisis facility was unable to address his mental health needs. Respondent had the physical capacity to complete the CMH paperwork to obtain the resources for JJH's mental health treatment, but she did not do so. As a result, JJH did not have the necessary resources for his mental health care, his mental well-being was subjected to a substantial risk of harm, and he was without proper custody or guardianship. The evidence established that the only way JJH was going to get the mental health treatment he needed was for the trial court to force the issue and exercise jurisdiction over JJH. While we acknowledge the

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difficult nature of the situation, we are not left with a definite and firm conviction that the trial court was mistaken in finding statutory grounds for jurisdiction under MCL 712A.2(b)(1). Culpability is not a factor here. As our Supreme Court has recognized, "[t]he purpose of the juvenile code . . . is to protect children from an unfit home, not to punish bad parents." *In re Jacobs*, 433 Mich 24, 41; 444 NW2d 789 (1989). "[T]he Legislature did not intend for children to suffer long term damage merely because the neglect by the parents was not culpable." *In re Campbell*, 170 Mich App 243, 255; 428 NW2d 347 (1988) (citations omitted).

Respondent also argues that the trial court erred when it determined that there were grounds to exercise jurisdiction over JJH because he was in residential, inpatient care and, therefore, he was not without proper care or custody. "When considering whether to exercise jurisdiction under MCL 712A.2(b), the trial court must examine the child's situation at the time the petition was filed." *In re Hockett*, ___ Mich App at ___; slip op at 3. At the time that the petition was filed, JJH was at the short-term crisis center. It is undisputed that the short-term crisis center was not capable of addressing JJH's mental health needs and had released JJH from its care. JJH was not transported to the residential treatment facility until after the petition was filed and the trial court assumed jurisdiction over JJH. Thus, the threat to JJH's well-being had not ceased at the time that the petition was filed and there is no clear error on this basis.

IV. CONCLUSION

For the reasons stated in this opinion, we affirm the trial court's order concluding that there was sufficient evidence to establish a statutory basis to exercise jurisdiction over JJH pursuant to MCL 712A.2(b)(1).

/s/ Brock A. Swartzle
/s/ Thomas C. Cameron
/s/ Sima G. Patel

Attachment: In re Lange, unpublished opinion per curiam of the Court of Appeals
If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

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STATE OF MICHIGAN

COURT OF APPEALS

In re D V LANGE, Minor.

UNPUBLISHED
November 2, 2023

No. 362365
Wayne Circuit Court
Family Division
LC No. 2021-000658-NA

Before: REDFORD, P.J., and O'BRIEN and FEENEY, JJ.

PER CURIAM.

In this child protective proceeding, petitioner, the Department of Health and Human Services ("DHHS"), appeals by right the circuit court's order dismissing for lack of jurisdiction the petition to take temporary custody of the minor child, DVL. Because a preponderance of the evidence supports a finding of jurisdiction under MCL 712A.2(b)(1) and (2), we reverse and remand for further proceedings.

I. FACTUAL AND PROCEDURAL BACKGROUND

In 2013, through a single parent adoption, respondent adopted five-year-old DVL. Because he had been exposed to trauma and abuse while in the care of his family of origin, DVL treated with both a therapist and a psychiatrist. DVL suffers from post traumatic stress disorder, reactive attachment disorder, oppositional defiance disorder and attention deficit hyperactivity disorder. Over the years, DVL's behaviors escalated and his mental health deteriorated. DVL has a history of attempting to set fires in the family home and attempting to injure family pets. Due to DVL's destructive and sexualized behavior, respondent installed door alarms on his bedroom door and never left him alone with his two siblings. Between the ages of 10 and 13, DVL was hospitalized six or seven times to receive psychiatric care at Hubbard Oaks and Havenwyck for threatening to kill his parents and siblings. The hospitalizations were typically two weeks in duration and were followed by outpatient treatment. As respondent testified at trial, DVL returned home after each hospitalization:

> Yes [out-patient treatment was provided] and each time he was provided with day treatment programs to follow-up with the in-patient treatment and he would complete that and things would be ok for a while and then it would go right back where it was.

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DVL also has a history of sexually inappropriate behaviors at home and while in placement. In November 2020, respondent enrolled then 13-year-old DVL into a year-long out-of-state residential treatment program.[1] Six months in, the program terminated DVL for sexually inappropriate behavior with other residents. DVL returned to respondent's home in April 2021.

After his return to Michigan, DVL's behaviors worsened. In early June 2021, when he attempted to start a fire in the home and threatened suicide, respondent took DVL to St. John Hospital. Respondent sought the hospital admission because she knew DVL first needed to be medically cleared before he could enter into an inpatient treatment program. On June 10, 2021, Children's Protective Services ("CPS") received a referral after respondent informed hospital staff that because of safety concerns, she was unwilling to manage or care for DVL's mental health needs. Thereafter, CPS and the hospital emergency room social worker unsuccessfully searched for a suitable pediatric inpatient psychiatric program for DVL. While at the hospital in the holding area and in the hospital's general population waiting to be transferred, DVL was not receiving treatment; he was only being held until a suitable pediatric psychiatric facility could be found. According to respondent, who was the only witness to testify at the adjudication, the pediatric psychiatric hospitals would not take DVL due to the severity of his issues and "they couldn't guarantee the safety of the other patients."

On July 8, 2021, DVL was not cleared for discharge home. Amazingly, on July 9, 2021, DVL's medical providers at St. John Hospital cleared him for discharge with the recommendation that DVL receive intensive outpatient mental health services. Upon learning of the impending discharge, respondent refused to pick up DVL from the hospital and indicated that she would not allow him to return to her home because it was unsafe for all of them; respondent testified that "to hear that there was no help was . . . heartbreaking." During a July 2021 team decision meeting, CPS offered respondent assistance in securing outpatient mental health services for DVL but she refused based upon DVL's numerous prior short-term inpatient stays, subsequent outpatient treatment. and ongoing mental health issues that made him a significant threat to himself and others

On July 16, 2021, DHHS filed a petition alleging that respondent's abandonment of DVL allowed the court to assume jurisdiction over DVL, as well as his two siblings.[2] At the preliminary hearing, a referee entered an interim placement order that permitted DHHS to place DVL in a residential home. The two-day adjudication trial commenced in May 2022, and concluded in June 2022. At the conclusion of the trial, the court found that a statutory ground to exercise jurisdiction over DVL did not exist. Consequently, it dismissed the petition. This appeal followed.

II. STANDARD OF REVIEW

We review a trial court's jurisdiction decision for clear error in light of the court's findings of fact. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). A finding is clearly erroneous

[1] Respondent testified that the year-long residential program DVL attended in 2020 cost $2000 per month and the parents covered the cost as it was not covered by insurance.

[2] At the preliminary hearing, respondent's other two children were dismissed from the petition and, throughout the lower court proceedings, they remained in the care of their other legal parent.

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if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re Long,* 326 Mich App 455, 460; 927 NW2d 724(2018) (citation omitted). To the extent that the jurisdictional issue presents a question of statutory interpretation, we review that issue de novo. *In re LaFrance,* 306 Mich App 713, 723; 858 NW2d 143 (2014).

III. ANALYSIS

DHHS argues on appeal that the trial court clearly erred when it refused to exercise jurisdiction over DVL under MCL 712A.2(b)(1). We agree, and further find that the trial court also erred when it failed to assume jurisdiction over the minor child under MCL 712A.2(b)(2).

The purpose of child protective proceedings is the protection of the child. *In re Brock,* 442 Mich 101, 107; 499 NW2d 752 (1993). "Child protective proceedings are generally divided into two phases: the adjudicative and the dispositional." *Id*. at 108. The adjudicative phase determines whether the trial court may exercise jurisdiction over the child. *Id*. To establish jurisdiction, the petitioner must prove by a preponderance of the evidence that a statutory ground exists under MCL 712A.2(b). *In re SLH*, 277 Mich App 662, 669; 747 NW2d 547 (2008). A "preponderance of the evidence" means evidence of a proposition that when weighed against the evidence opposed to the proposition "has more convincing force and the greater probability of truth." *People v Cross,* 281 Mich App 737, 740; 760 NW2d 314 (2008).

In this case, DHHS requested that the court assume jurisdiction over DVL under MCL 712A.2(b)(1) and (2), which provide that a court has jurisdiction over a child in the following circumstances:

> (1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. As used in this sub-subdivision:
>
> (A) "Education" means learning based on an organized educational program that is appropriate, given the age, intelligence, ability, and psychological limitations of a juvenile, in the subject areas of reading, spelling, mathematics, science, history, civics, writing, and English grammar.
>
> (B) "Neglect" means that term as defined in section 2 of the child abuse and neglect prevention act, 1982 PA 250, MCL 722.602.
>
> (C) "Without proper custody or guardianship" does not mean a parent has placed the juvenile with another person who is legally responsible for the care and maintenance of the juvenile and who is able to and does provide the juvenile with proper care and maintenance.
>
> (2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent

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> adult, or other custodian, is an unfit place for the juvenile to live in. As used in this sub-subdivision, "neglect" means that term as defined in section 2 of the child abuse and neglect prevention act, 1982 PA 250, MCL 722.602.

We find that the trial court erred when it declined to exercise jurisdiction over DVL under both MCL 712A.2(b)(1) and (2). A preponderance of the evidence established that respondent refused to provide proper or necessary mental health care to her son and that her admitted inability to care for DVL's significant mental health needs, despite repeated efforts to obtain effective treatment for him, rendered her home statutorily unfit.

This Court's recent opinion in *In re Hockett,* 339 Mich App 250; 981 NW2d 534 (2021), guides our resolution of the jurisdictional issue in this case. The facts in *In re Hockett* are substantially similar to those in the present case. In *In re Hockett*, minor child NRH had a history of mental illness that included brief yet frequent hospitalizations, suicidal ideation, and threats of harm to others in the home. *Id.* at 252-253. The respondent-mother similarly refused to take her mentally ill child home from the hospital until he received the help she believed he needed. *Id*. Notably, as in the present case, the Department of Health and Human Services relied on the hospital's determination that NRH should be discharged. *Id.* at 253. The trial court found that NRH came within the court's jurisdiction under MCL 712A.2(b)(1). *In re Hockett,* 339 Mich App at 255. Specifically, the trial court ruled that the respondent failed to provide her child proper care and custody when she refused to pick up NRH from the hospital. *Id.* This Court affirmed the order of the lower court, but determined that jurisdiction was proper under MCL 712A.2(b)(2), not MCL 712A.2(b)(1). *In re Hockett,* 339 Mich App at 256. This Court's analysis of the provisions of MCL 712A.2(b) is instructive:

> It is unfortunate that our statute uses the word "unfit" to describe situations such as this. We note that "the underlying purpose of the statutory scheme is to protect children from an unfit homelife." *In re Sterling*, 162 Mich App 328, 339; 412 NW2d 284 (1987). Unfitness connotes active wrongdoing, which we do not see in this case. The statute, however, implies some understanding of the existence of parents who do not have the resources to provide for their children in the phrase "when able to do so." *This mother was unable to manage the complex mental health needs of her child. The referee correctly determined that respondent declined to retrieve her child upon discharge. The referee also correctly noted that respondent had the physical capacity to retrieve her minor child and did not do so.* Our concern is that this mother, who took desperate action to get care for her child, is now labeled "unfit" and listed on a registry for persons who acted to harm children when she, in fact, was seeking to protect her child. *The scant and costly resources available for mental healthcare for children likely places other parents in the same situation as this respondent. We can only look to our policymakers for a resolution to this conundrum. However, "culpability is not a prerequisite" for court intervention under MCL 712A.2(b)(2). In re Jacobs*, 433 Mich 24, 41; 444 NW2d 789 (1989). Respondent's admitted inability, not her unwillingness, to care for NRH's special needs with the level of assistance she was receiving, along with

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> her homelessness[3], rendered NRH's environment a place of danger for the seriously ill child and, thus, statutorily unfit. In this case, we are not left with a definite and firm conviction that the trial court was mistaken in finding statutory grounds to exercise jurisdiction over NRH. [*In re Hockett,* 339 Mich App at 255-256; emphasis added.]

Applying the rationale employed by this Court in *In re Hockett*, we conclude that the trial court erred when it declined to exercise jurisdiction over DVL under MCL 712A.2(b)(2). In this case, despite her efforts, respondent admitted that she could not care for DVL's special and significant mental health needs. She testified that DVL and her other two children would be at risk of harm if DVL were in the home. Testimony established that respondent refused DHHS's assistance in obtaining outpatient treatment, including in-home services. It is clear from the record that respondent had attempted years of outpatient therapy while DVL was living with her yet his behaviors continued to escalate. Even her attempts to have him placed in a year-long residential program that was intended to provide intensive mental health treatment ended prematurely because the residential program could not tolerate DVL's behavior. Yet the hospital and DHHS determined that DVL was safe to go home where he had threatened to harm his family, the home, his pets and himself.[4] A preponderance of the evidence supported a finding that respondent's actions rendered the home environment a place of danger for DVL, as well as respondent's other two children and, thus, statutorily unfit. See, *In re Hockett,* 339 Mich App at 256. Considering the record, we are left with a definite and firm conviction that the trial court erred when it failed to exercise jurisdiction over DVL under MCL 712A.2(b)(2).

Although the Court in *In re Hockett* found jurisdiction under MCL 712A.2(b)(2), it was reluctant to do so under MCL 712A.2(b)(1). A preponderance of the evidence in this case supports the assumption of jurisdiction under MCL 712A.2(b)(1), as well. *In re Hockett* did not involve a parent that *refused to cooperate in obtaining mental health services* for her child. The respondent mother in *Hockett*, like DVL's respondent mother, actually sought mental health services for her child. *In re Hockett*, 339 Mich App at 255-256. It is this salient fact that makes the Court's opinion in *In re Hockett* applicable to the present matter. Here, evidence presented at adjudication established that respondent refused to secure outpatient treatment for DVL—not because she refused to cooperate in obtaining mental health services for her son but because she had sought those services for years, DVL's behavior was escalating, and it was still unsafe for him to return home. During a July 13, 2021 team decision meeting, CPS offered respondent assistance in

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[3] Unlike the mother in *Hockett*, respondent had housing for DVL but testified that her home was not safe for DVL, her other children, or herself when DVL resided there.

[4] How in the course of one day DVL could go from being nondischargeable to dischargeable from the hospital without receiving treatment casts doubt on whether the hospital chose to wash its hands of this troubled youth rather than keep him in a holding pattern while DHHS tried but failed to find a suitable placement for him. This circumstance likely occurs throughout the state of Michigan as beds in pediatric residential treatment facilities are few and far between.

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securing outpatient mental health services for DVL after his discharge into her care.[5] DHHS also looked into a Community Mental Health referral that would have allowed DVL and respondent to receive services in the home.[6] Respondent, however, declined the offered services because her son required psychiatric care and "it wasn't safe for him to be in my care."

The trial court recognized the quandary that respondent faced:

> That DVL has a very severe detachment disorder. It causes him to act out in very dangerous ways and that the mother has made numerous efforts to try to have DVL's condition addressed. . . . It doesn't matter what other circumstances she has to deal with, including the fact that she has two other children who would be at risk if she brought DVL home who is, as far as I can tell, that would be like bringing a ticking time bomb into your home. . . . It's her job to pick him up at the hospital even if it means that her other children are going to be abused because she's a single parent, and she has three children in one home. I don't know how anybody is supposed to manage that situation. That is beyond my comprehension. No one has explained that to me.

The trial court admitted it had never seen a case like this and the judge did not "see how I can find that she's been neglectful or abusive in terms of her actions to date and this is a very prickly problem." The court opined that a dependency petition could possibly be filed but it did not find respondent to be abusive or neglectful and denied to authorize the petition. Notably, the trial court as well as the Assistant Attorney General, the lawyer guardian ad litem and respondent's attorney all recognized that if the petition were not authorized, DVL needed to be picked up from his placement at the time (Hanley House); if respondent did not pick DVL up, DHHS would need to file another petition and the process would begin again. Respondent acknowledged that this was a "no-win situation" and she was facing a "Sophie's choice" because she loved DVL but they "exhausted everything the state has to offer, everything, and nothing has made a difference."

Based on this record, we are left with a definite and firm conviction that the trial court was mistaken in finding no statutory grounds to exercise jurisdiction over DVL. A preponderance of the evidence supports a finding that, despite recommendations made by an examining adult (not pediatric) psychiatrist, respondent, although able to do so, refused to pick him up from the hospital and failed to secure intensive outpatient treatment for her son. This was sufficient testimony to establish by a preponderance of the evidence that respondent refused to provide proper or

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[5] Indeed, DHHS discussed with respondent the option of using an adoption subsidy to obtain a residential treatment program for DVL. How DHHS or respondent would pay for such a program was irrelevant as the record is devoid of evidence that there were open residential programs in Michigan but no funds to place DVL in a qualified residential treatment program. This also ignores the fact that respondent had already invested in an out-of-state residential treatment program and that program terminated DVL due to his unacceptable behavior.

[6] Again, there is no evidence in the record to establish that community mental health programs coming to the home weekly were sufficient to address DVL's extensive mental health challenges.

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necessary care for DVL, who was subject to a substantial risk of harm to his mental well-being. MCL 712A.2(b)(1). *In re Hockett,* described respondent as well as NRH's parent when it found:

> This mother was unable to manage the complex mental health needs of her child. The [court] correctly determined that respondent declined to retrieve her child upon discharge. The [court] also correctly noted that respondent had the physical capacity to retrieve her minor child and did not do so. . . she, in fact, was seeking to protect her child. *In re Hockett*, 339 Mich App at 255.

Accordingly, we are left with a definite and firm conviction that a mistake has been made, and find that the trial court clearly erred when it failed to assume jurisdiction of DVL under MCL 712A.2(b)(1). *In re Long*, 326 Mich App 455, 460; 927 NW2d 724 (2018).[7]

Because the circuit court should have exercised jurisdiction over the minor child, we reverse the trial court's July 19, 2022 order finding no jurisdiction and dismissing the petition. We remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Colleen A. O'Brien
/s/ Kathleen A. Feeney

[7] We agree with the court in *In re Hockett*, 339 Mich App at 256, that "[w]e can only look to our policymakers for a resolution to this conundrum," i.e., providing services for the growing number of youth struggling with significant mental health issues in light of the "scant and costly resources available;" unless the Legislature addresses this crisis, more parent will be placed in the same unfortunate situation as the respondent here and in *Hockett*.

Attachment: In re Lange, unpublished per curiam opinion of the COA (REDFORD, P.J., dissenting)
If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

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STATE OF MICHIGAN

COURT OF APPEALS

In re D V LANGE, Minor.

UNPUBLISHED
November 2, 2023

No. 362365
Wayne Circuit Court
Family Division
LC No. 2021-000658-NA

Before: REDFORD, P.J., and O'BRIEN and FEENEY, JJ.

REDFORD, P.J. (*dissenting*).

In this child protective proceeding, I respectfully dissent because I am satisfied the trial court's decisions in this matter were not clearly erroneous. I would affirm.

The majority accurately summarizes the factual and procedural background in this case and correctly sets forth the standard of review.

In this appeal, DHHS argues that the trial court erred when it refused to exercise jurisdiction over DVL under MCL 712A.2(b)(1). I disagree, and conclude that the trial court did not commit reversible error when it declined to assume jurisdiction over the minor child under MCL 712A.2(b)(2).

In memorializing its decision to deny the petition sought, the trial court stated:

> So look, I think that the facts are pretty clear. That (DVL) has a very severe detachment disorder. It causes him to act out in very dangerous ways and that the mother has made numerous efforts to try to have (DVL)'s condition addressed. The mother has two other children and, and I'm being told that, look, if the hospital says he's ready to be discharged then as long as she doesn't come and pick him up regardless. It doesn't matter what other circumstances she has to deal with, including the fact that she has two other children who would be at risk if she brought (DVL) home who is, as far as I can tell, that would be like bringing a ticking time bomb into your home. Nobody here has told me what the mother—what, what she was supposed to do except to say she was supposed to go pick him up at the hospital. The rest of it, it's her problem despite the fact that she's made numerous attempts to try to find help for him and been unsuccessful. It's her job to pick him up at the hospital even if it means that her other children are going to be abused because she's a

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> single parent, and she has three children in one home. I don't know how anybody is supposed to manage that situation. That is beyond my comprehension. No one has explained that to me. I agree that you've made out a record that she failed to pick him up when they, when the hospital, "Said he's ready for discharge", but I, you know, I guess, you know, this is a case that can be appealed. I've never had a case like this. I can't find that the mother—I just don't see how I can find that she's been neglectful or abusive in terms of her actions to date and this is a very prickly problem. It's sad but and maybe, you know, maybe the law needs to be changed or perhaps a dependency petition can be filed because whatever I decide here, (DVL) still needs help. Nobody is going to dispute that. (DVL) needs help. Mother is trying to get him help. Mother is trying to keep her other children safe. I'm being told that she doesn't really have choice. She just has to choose to bring him home or be deemed neglectful on the part of the law and I, I—just that, you know, if I can't figure out what I would do as a parent in a situation like this then how am I supposed to say, well, she's neglectful and she's abusive because she didn't do what I—what I wouldn't know what to do besides what she was doing so, you know, for those reasons I'm going to deny the petition.

As the majority states, the purpose of child protective proceedings is the protection of the child. *In re Brock,* 442 Mich 101, 107; 499 NW2d 752 (1993). "Child protective proceedings are generally divided into two phases: the adjudicative and the dispositional." *Id*. at 108. The adjudicative phase determines whether the trial court may exercise jurisdiction over the child. *Id*. To establish jurisdiction, the petitioner must prove by a preponderance of the evidence that a statutory ground exists under MCL 712A.2(b). *In re SLH*, 277 Mich App 662, 669; 747 NW2d 547 (2008). A "preponderance of the evidence" means evidence of a proposition that when weighed against the evidence opposed to the proposition "has more convincing force and the greater probability of truth." *People v Cross,* 281 Mich App 737, 740; 760 NW2d 314 (2008).

In this matter, DHHS requested that the court assume jurisdiction over DVL under MCL 712A.2(b)(1) and (2), which provide that a court has jurisdiction over a child in the following circumstances:

> (1) Whose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship. As used in this sub-subdivision:
>
> (A) "Education" means learning based on an organized educational program that is appropriate, given the age, intelligence, ability, and psychological limitations of a juvenile, in the subject areas of reading, spelling, mathematics, science, history, civics, writing, and English grammar.
>
> (B) "Neglect" means that term as defined in section 2 of the child abuse and neglect prevention act, 1982 PA 250, MCL 722.602.

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> (C) "Without proper custody or guardianship" does not mean a parent has placed the juvenile with another person who is legally responsible for the care and maintenance of the juvenile and who is able to and does provide the juvenile with proper care and maintenance.
>
> (2) Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in. As used in this sub-subdivision, "neglect" means that term as defined in section 2 of the child abuse and neglect prevention act, 1982 PA 250, MCL 722.602.

There is no indication that DVL's mother did anything other than undertake exhaustive, comprehensive, and costly measures to try to care for DVL. Her refusal to allow DVL to be placed in her home with two other minor children who would be endangered was not an act of neglect, cruelty, drunkenness, criminality, or depravity. Nor was there evidence that she was able, despite her repeated and substantial efforts, to provide DVL with the proper or necessary support in her home.

As a result, I conclude that the trial court did not err when it declined to exercise jurisdiction over DVL under both MCL 712A.2(b)(1) and (2). Petitioner failed to establish that a preponderance of the evidence demonstrated that respondent refused to provide proper or necessary mental health care to her son and that her admitted inability to care for DVL's mental health needs rendered her home statutorily unfit. I would affirm.

/s/ James Robert Redford