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2013 IL App (3d) 120968-U

Order filed August 26, 2013

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2013

<i>In re</i> A.E. and D.T., Minors,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
(The People of the State of Illinois,	)	Peoria County, Illinois,
	)	
Petitioner-Appellee,	)	Appeal No. 3-12-0968
	)	Circuit Nos. 12-JA-135
v.	)	12-JA-136
	)	
Dontia E.,	)	Honorable
	)	Mark E. Gilles,
Respondent-Appellant).	)	Judge, Presiding.

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JUSTICE O'BRIEN delivered the judgment of the court.  
Justices McDade and Schmidt concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The trial court did not err when it determined it had jurisdiction over the State's neglect petitions against the respondent mother or when it determined it had personal jurisdiction over the respondent. The respondent's first amendment rights were not violated when she was found unfit for medical neglect and providing an environment injurious to her children's welfare. Additionally, the respondent's fourth amendment rights were not violated when DCFS obtained her children's medical records while the children were in the Department's custody. Finally, the trial court did not err by granting jurisdiction when the Moorish Science Temple of America was not joined as a party to the action.

¶ 2 On the State’s petition, the trial court found respondent mother, Dontia E., unfit.

We affirm.

¶ 3 FACTS

¶ 4 Respondent-appellant, Dontia E., is the mother of A.E., a minor girl, and D.T., a minor boy. This action commenced following medical treatment of A.E. for an infection the respondent observed several days prior to seeking medical treatment. Respondent is a Moorish American Moslem who believes traditional medical care is not necessary for the health of either her or her children. On May 23, 2012, respondent gave birth to A.E. According to respondent, A.E. was born via a “lotus birth,” which is a birth where the placenta and umbilical cord remain attached until they naturally fall off. In early June 2012, respondent noticed redness developing around A.E.’s belly button. After applying herbal remedies for nearly five days, she noticed the redness receding and continued to apply herbal remedies after the umbilical cord fell off on June 6, 2012. On June 8, 2012, respondent noticed pus near the belly button and finally proceeded to take A.E. to a hospital. After a nurse reported respondent to the Department of Children and Family Services (“DCFS”), a DCFS investigator attempted to interrogate respondent at the hospital. After respondent failed to cooperate, DCFS had the family removed from the hospital and informed them they would be contacted soon for a court date.

¶ 5 On June 18, 2012, neglect petitions were filed by the State in cases 12-JA-135 (A.E.) and 12-JA-136 (D.T.). Case 12-JA-135 alleged two counts of neglect, one count for medical neglect, due to the delay in seeking medical treatment, and one for an injurious environment based on the lack of medical care; respondent’s failure to cooperate with DCFS; the family’s prior cases with Child Protective Services in St. Louis, Missouri; the father, Armando A.’s criminal history; and respondent

and Armando's failure to complete requested drug drops. Case 12-JA-136 alleged one count for an injurious environment based on A.E.'s medical condition; respondent's failure to cooperate with DCFS; the family's prior cases with Child Protective Services in St. Louis, Missouri; Armando's criminal history; and respondent and Armando's failure to complete requested drug drops.

¶ 6 On June 18, 2012, a shelter care hearing took place for both cases. Written arraignment orders were made stating the court had jurisdiction over the respondent and Armando by personal service in court. The respondent informed the court that Levon T. is the father of D.T., and his first appearance was set for July 23, 2012. Temporary custody and orders for temporary shelter for both children were granted to DCFS. A hearing was set for July 2, 2012, for the respondent to answer the neglect petitions and Armando to prove paternity of A.E., but neither of them attended that hearing and both were ordered defaulted. On July 23, the court determined Levon T. is the legal father of D.T. An arraignment order was made stating jurisdiction was granted by service in open court. On July 30, Levon filed an answer to the neglect petitions that stated he was not a cause for the neglect of A.E. or D.T. He also filed a motion to vacate the order for temporary custody and sought custody of D.T. The motion to vacate was granted on August 20, 2012.

¶ 7 After an attorney entered an appearance and then withdrew on behalf of the respondent, the matter was continued to August 20 for consideration of the respondent's answer and Levon's motion to vacate the order for temporary custody. The motion was granted, but respondent failed to come prepared with answers to the neglect petitions. After repeatedly objecting to and challenging the court's authority, the court entered a general denial on the respondent's behalf and scheduled an adjudicatory hearing. At the adjudicatory hearing on October 15, 2012, the respondent opened the hearing by saying, "This is a private estate. The executors of the estate are standing outside." Upon

the judge threatening to hold her in contempt for failing to cooperate and then asking for the deputy, the respondent exited the courtroom. The DCFS child protection investigator then took the stand for direct examination and testified to her encounter with respondent at the hospital. Near the end of the investigator's testimony, respondent returned to the courtroom.

¶ 8 The State then entered into evidence the medical records for A.E. The medical records indicated the attending physician diagnosed A.E. with omphalitis, a condition with a mortality rate of 7-15% for all infants. The records also indicated that doctor had learned that respondent attempted to apply herbal remedies approximately one week before A.E.'s admittance to the hospital, and pus draining from A.E.'s belly button may have been visible up to four days prior to A.E.'s admittance. The doctor determined that the respondent was "clearly aware" of A.E.'s redness and drainage several days prior to seeking medical treatment. In his opinion, the failure to seek medical care placed A.E. at serious risk of harm and constituted medical neglect. After considering the evidence and allegations presented, the trial court adjudicated the children neglected as alleged and continued the matter until November 5, 2012 for a dispositional hearing.

¶ 9 The father of A.E., Armando A., entered his appearance at the dispositional hearing and requested his default from July 2 be vacated. The motion was granted. Again, respondent attempted to argue the trial court and the State did not provide proof of their authority over "the property of the estate." The court reminded respondent that children are not property. The caseworker prepared a dispositional hearing report and testified to the matter. Following argument, the trial court found it in the best interest of the children to make A.E. a ward of the court and granted custody to DCFS. Levon T. was found to be a fit and willing parent, and he was granted custody of D.T. Respondent filed notice of this appeal on November 19, 2012.

¶ 10

## ANALYSIS

¶ 11 The first issue is whether the trial court has jurisdiction over this matter. The respondent contends the trial court was without jurisdiction because she and her children have been conveyed to MSTTA. Illinois circuit courts derive their jurisdictional authority from the Illinois constitution, which states, “Circuit Courts shall have original jurisdiction of all justiciable matters.” Ill. Const. 1970, art. 6. § 9; *In re Lawrence M.*, 172 Ill.2d 523, 529 (1996);. The filing of a petition invokes the circuit court’s jurisdiction. *In re Ayala*, 344 Ill. App. 3d 574, 584 (2003). Additionally, the Juvenile Court Act of 1987 (the “Act”) provides for jurisdiction by the filing of neglect petitions. 705 ILCS 405/2-1 (West 2010) (stating “Proceedings may be instituted under the provision of this Article concerning boys and girls who are abused, neglected, or dependent.”). In addition to subject matter jurisdiction, the circuit court must also have jurisdiction over the parties. *State Bank of Lake Zurich v. Thill*, 113 Ill.2d 294, 308 (1986). Personal jurisdiction must be acquired according to statute, absent a general appearance. *Id.* The Act provides that when the minor’s legal guardian or custodian appears in court, he or she is waiving service and submitting to the jurisdiction of the court. *See* 705 ILCS 405/2-15(7) (West 2010). Whether the trial court properly exercised its jurisdictional authority is reviewed *de novo*. *In re John C.M.*, 382 Ill. App. 3d 553, 558 (2008).

¶ 12 Here, the trial court had subject matter jurisdiction over the matter and personal jurisdiction over the parties. On June 18, 2012, neglect petitions were filed in both A.E. and D.T.’s cases. As stated in *Ayala*, the filing of the neglect petitions invokes the court’s jurisdiction. *Ayala*, 344 Ill. App. 3d at 584. Thus, subject matter jurisdiction was clearly established. At the beginning of the hearing on August 20, 2012, to answer the petitions, respondent stated, “I’m Noble Dontia E[.] making special appearance in mind, body and soul and in love, true, peace. Freedom and justice for the

person, [D.T.]. May I board the ship?” The trial judge allowed her to have a seat at the respondent’s table. The trial judge then acknowledged for the record that the respondent was present in the courtroom. Furthermore, the respondent had voluntarily appeared in open court, and, as the Juvenile Court Act mentions, the respondent’s appearance in court constituted a waiver of summons and a submission to the jurisdiction of the court. *See* 705 ILCS 405/2-15(7) (West 2010). The minors were given personal service. The respondent’s contention that she appeared in court under coercion and duress is without merit. Although she was there for the purpose of having her children returned to her custody, the matter does not rise to the level of duress and coercion as stated in her brief. An appearance under section 2-15(7) is not coercive or threatening in nature simply because she did not *want* to be in court, or else nearly every case in which a defendant was required to appear before the court would be determined coercive. Arraignment orders were entered in both cases stating that the court had jurisdiction over the minors by personal service and over the respondent by personal service in open court, establishing personal jurisdiction.

¶ 13 Respondent additionally argued the court lacked jurisdiction because her children are part of the trust corpus of the MSTTA pursuant to the Religious Corporation Act (“RCA”) (805 ILCS 110/0.01 *et. seq* (West 2010)). Respondent has misunderstood the purpose of that Act. The RCA provides means for a religious organization to incorporate as a legal entity. *See* 805 ILCS 110/35 (West 2013). However, the RCA does not allow a religious corporation to only be subject to its own laws and not those of the State; it is nowhere in the language of the statute. Additionally, the respondent’s contention that her children are part of the trust corpus of the MSTTA is without merit because children are not property that can be conveyed. The United States’ abolishment of slavery is the strongest evidence that people cannot be property. *See* U.S. Const., amend. XIII, § 1 (“neither slavery nor

involuntary servitude \*\*\* shall exist within the United States.”). Additionally, *In re Marriage of Bhati*, 397 Ill. App. 3d 53, 65 (2009), the court held that a child is not property that can be divided nor property someone can hold a possessory interest in. Thus, we find the trial court had jurisdiction over this action because the neglect petitions were justiciable matters under the Juvenile Court Act and Illinois constitution, and the court also had personal jurisdiction over the parties.

¶ 14 The next issue is whether the respondent was denied her first or fourth amendment rights. Respondent presents several ways she claims her constitutional rights were violated. First, respondent alleges her first amendment rights were violated for being accused of medical neglect while she was practicing her religious beliefs and customs. The first amendment reads, in pertinent part, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” U.S. Const., amend. I. Nonetheless, this right has been limited by state and federal courts. *See Prince v. Massachusetts*, 321 U.S. 158, 166 (1944); *People ex rel. Wallace v. Labrenz*, 411 Ill. 618, 625-26 (1952). In *Labrenz*, the parents of a neglected minor alleged their right to freedom of religion was abridged when the court ordered a blood transfusion against their religious beliefs. *Labrenz*, 411 Ill. at 625. Due to a disease known as erythroblastosis fetalis, doctors determined the minor was in need of blood transfusion; otherwise the minor risked death or substantial mental impairment. *Id.* at 620. The parents refused to consent to the transfusion based on their religious beliefs. *Id.* at 621. The Supreme Court reasoned the “freedom of religion and the rights of parents to the care and training of their children are to be accorded the highest possible respect in our basic scheme.” *Id.* at 625. In limiting the freedom of religion, the Supreme Court has ruled that laws may limit the freedom to practice religion. *See id.* at 625-26 (citing *Reynolds v. United States*, 98 U.S. 145, 166 (1878) (overruled on other grounds, *Patrick v. LeFevre*, 745 F. 2d 153, 157 (2nd Cir. 1984)) (stating “Laws

are made for the government of actions, and while they cannot interfere with mere religious beliefs and opinions, they may with practices.”)). Furthermore, although the freedom of religion and the rights of parenthood are given high respect, they are not without limitation. *Id.* at 625. The freedom of religion does not include religious practices that expose a child to ill health. *Id.* at 626 (citing *Prince*, 321 U.S. at 166). This court reviews *de novo* whether an individual’s constitutional rights were violated. *In re A.W.*, 231 Ill. 2d 92, 106 (2008).

¶ 15 Here, respondent’s first amendment right to freedom of religion was not violated. Respondent contends that her Islamic religion, specifically the way of the Nazirite, is opposed to traditional medical care. She “seeks to live a preventative lifestyle where she cares for her family and self in such a way that traditional medical care is not necessary for their health.” Following the discovery of the redness on A.E.’s stomach, respondent applied herbal remedies to the infected area, rather than risk the side effects of traditional medicine. Respondent had noticed the redness nearly one week before seeking medical attention. Approximately four days before seeking treatment, respondent had noticed pus coming out of A.E.’s belly button, but still refused to seek proper medical treatment. Although the freedom of religion and parenting is to be given the highest respect, these rights are not without limitation. The attending physician noted that the mortality rate for all infants with A.E.’s condition is 7-15%. He concluded that the failure to seek medical care put A.E. at serious risk of harm and constituted medical neglect. Respondent is certainly allowed to be of the opinion that traditional medical care is not necessary, but that does not mean she can practice those beliefs to the extent they provide for the ill health of her children. Furthermore, we hold the respondent’s religious practices do not allow her to avoid seeking proper medical care on behalf of A.E., and those practices also provide for an injurious environment to both A.E. and D.T.

¶ 16 Next, respondent asserts that her fourth amendment right to be free from unreasonable search and seizure was violated when her children's medical records were obtained without her consent. The fourth amendment is designed to protect against *unreasonable* searches and seizures. *See* U.S. Const., amend. IV. Illinois law allows a law enforcement officer to take custody of a minor who the officer believes to be neglected. 705 ILCS 405/2-5 (West 2010). Additionally, the Act provides, "At all times during temporary custody or shelter care, the court may authorize a physician, a hospital or any other appropriate health care provider to provide medical, dental or surgical procedures if such procedures are necessary to safeguard the minor's life or health." 705 ILCS 405/2-11 (West 2010). Illinois statute also states that during the period of temporary custody, DCFS shall have the authority, responsibilities and duties that a legal custodian would under subsection (4) of Section 1-3 (705 ILCS 405/1-3(9) (West 2010)) of the Act. 20 ILCS 505/5(m) (West 2010).

¶ 17 As needed for the care of children under its protection, DCFS has the authority to obtain medical records while children are in its custody. The ability to access medical records is necessary to accomplish the other duties and responsibilities to which DCFS is obligated as a legal custodian and to perform these functions while serving the best interests of the child. We conclude that the respondent's argument that her children's records were unconstitutionally seized is without merit. The respondent also contended the documents should not have been used at trial because they were illegally obtained. The respondent cited to *Mapp v. Ohio*, where the issue pertained to the admissibility of evidence. *See Mapp v. Ohio*, 367 U.S. 643, 660 (1961) (holding illegally obtained evidence is inadmissible in state court). It is unclear whether respondent is arguing the use of the records in court violated her fourth amendment rights or whether DCFS obtaining records of the children violated her rights. In either case, the Act provides for the admissibility of medical records

in abuse and neglect cases. *See* 705 ILCS 405/2-18 (West 2013). Importantly, the respondent did not object to the admission of A.E.'s medical records at trial. Because the medical records were properly admitted at trial and/or DCFS had the authority to obtain the records for the care and best interests of the children, the respondent's fourth amendment rights were not violated.

¶ 18 Finally, the last issue is whether the court had jurisdiction when the Moorish Science Temple of America was not named as a party. Respondent asserts MSTA was a necessary party and the trial court erred by failing to join it in the proceedings. The minors' parent(s), guardian(s), legal custodian(s), or responsible relative(s) have the right to be present at the abuse and neglect hearings. 705 ILCS 405/1-5(1) (West 2010). Representatives of an agency or administration that have an interest in the minor also have the *right to be heard*, but they are not to become a party to the action. 705 ILCS 405/1-5(2)(a) (West 2010). The Act defines an "agency" as "a public or private child care facility legally authorized or licensed by this State for placement or institutional care or for both placement and institutional care," and it defines an "association" as "any organization, public or private, engaged in welfare functions which include services to or on behalf of children but does not include "agency" as herein defined." 705 ILCS 1-3(3), (4) (West 2010). Whether the circuit court properly exercised its jurisdictional authority is reviewed *de novo*. *John C.M.*, 382 Ill. App. 3d at 558.

¶ 19 Here, because the MSTA is not a parent or relative of A.E. or D.T., it would need to be the legal guardian or custodian of the children in order to be a necessary *party* to this case. No evidence was submitted to the court that showed that guardianship or legal custody had been granted to the MSTA. Adoption documents were provided to the court that were dated *after* the filing of the neglect petitions and *between* August 12-16, 2012. However, the documents merely appear to make the minors, A.E. and D.T., and the respondent members of the MSTA. The proper adoption proceedings

for purposes of legal custody do not appear to have been followed. *See* 750 ILCS 50/0.01 *et. seq* (West 2010). Additionally, even if the MSTAs were determined a proper agency or administration, which is unlikely under the language of the statute and the evidence, it would only have the opportunity to be heard at the hearings. Therefore, by failing to have the MSTAs appear before the court, the respondent forfeited her ability to have them be heard in her defense. Even if the MSTAs were required to be a party because of its interest in the property in dispute, the argument fails because, again, children are not “property.” *See* U.S. Const., amend. XIII, § 1; *Bhati*, 397 Ill. App. 3d at 65. Furthermore, the respondent’s contention that the children were conveyed to the MSTAs cannot be sustained because children are not “property” that can be conveyed to an estate. We find MSTAs were not a necessary party and the trial court did not err by failing to join them.

¶ 20 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 21 Affirmed.