

**State of Michigan
In The Supreme Court
On Appeal from the Michigan Court of Appeals**

IN RE D.V. LANGE, MINOR.

Supreme Court No. 166509

Court of Appeals No. 362365

Wayne County Circuit Court
Case No. 2021-000658-NA

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**AMICUS CURIAE BRIEF OF
THE CHILDREN'S LAW SECTION OF
THE STATE BAR OF MICHIGAN**

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STATEMENT OF JURISDICTION

Amicus Curiae Children's Law Section¹ concurs in the statement of jurisdiction contained in the Appellant-Mother's supplemental brief. (Appellant's Supplemental Brief, p. 9).

¹ Pursuant to MCR 7.312(H)(5), the undersigned certifies that no counsel for a party authored this brief in whole or in part and no party, or other person outside of the amicus curiae, made a monetary contribution intended to fund the preparation or submission of this brief.

STATEMENT OF THE QUESTIONS INVOLVED

In its March 13, 2024 order granting oral argument on the application, this Court posed the following questions to the parties:

- (1) Whether the Court of Appeals correctly found that the Trial Court should have assumed jurisdiction over the minor child pursuant to MCL 712A.2(b)(1) and (2) under the circumstances of this case?
- (2) Whether *In re Hockett*, 339 Mich App 250; 981 NW2d 534 (2021), was correctly decided?
- (3) Whether DVL would qualify as a dependent homeless minor pursuant to MCL 712A.2(b)(3)(A)?

Amicus curiae Children's Law Section answers those questions as follows:

- (1) The Court of Appeals' finding that the Trial Court should have assumed jurisdiction pursuant to MCL 712A.2(b)(1) and (2) is incorrect.
- (2) The facts of this matter are sufficiently different from the facts of *Hockett* that this Court can overturn the Court of Appeals' finding regarding jurisdiction pursuant to MCL 712A.2(b)(1) and (2) without overruling *Hockett*.
- (3) Child protective proceedings are sufficiently different from child custody proceedings such that domicile should be treated differently, and even slight disruptions of the home environment can cause a child not to be domiciled with a parent, meaning the Trial Court could assume jurisdiction over DVL pursuant to MCL 712A.2b(3)(A). Further, the Children's Law Section has proposed to the Legislature an amendment to the Juvenile Code which would create a new dependency provision accounting for circumstances such as those present in this and other recent cases.

**STATEMENT OF INTEREST OF AMICUS CURIAE CHILDREN'S
LAW SECTION OF THE STATE BAR OF MICHIGAN**

The Children's Law Section ("the Section" or "CLS") is a recognized section of the State Bar of Michigan, with over 400 members who are attorneys and judges working in Michigan's child welfare system. The Section works to advance the rights and protect the interests of children and families who become involved in matters before the Probate Courts and Family Divisions of the Circuit Courts, in the State of Michigan. The Section strives to improve the courts and agencies serving children and their families, through regular meetings among peers, organizing and attending relevant training events, active engagement by members on multi-disciplinary task forces convened by the Section itself, as well as by the Michigan Department of Health and Human Services ("DHHS"), the State Court Administrative Office ("SCAO"), Michigan Courts, and others. The Section provides services to its membership in the form of educational seminars, and advocating for and commenting on proposed legislation relating to child welfare law topics. The Section also files amicus curiae briefs in selected child welfare law cases with the potential for widespread impact in the field of child welfare law, such as the one before this Court.

The Section concurs with the Appellant-Mother and the Lawyer-Guardian Ad Litem ("LGAL") in this matter that the Court of Appeals erred when it held that the Trial Court should have assumed jurisdiction over DVL pursuant to MCL 712A.2(b)(1) and (2). The Section also concurs that the Trial Court could and should have assumed jurisdiction pursuant to MCL 712A.2(b)(3)(A), as DVL qualified as a homeless or non-domiciled dependent. However, the Section believes that the facts presented by this matter are sufficiently dissimilar to *In re Hockett*, such that this Court could overturn the Court of Appeals' holding without overruling *In re Hockett*.

STATEMENT OF FACTS

The Section concurs with the Statements of Facts as presented by the Appellant-Mother and the LGAL. (Appellant's Supplemental Brief, pp. 11-17; LGAL Supplemental Brief, pp. 1-5).

LEGAL STANDARD

The Section concurs with the standards of review as presented by the Appellant-Mother and the LGAL. (Appellant's Supplemental Brief, p. 18; LGAL Supplemental Brief, pp. 6, 13).

ARGUMENT

- I. The Court of Appeals erred when it found that the Trial Court should have exercised jurisdiction pursuant to MCL 712A.2(b)(1) and (2) as jurisdiction was proper pursuant to MCL 712A.2(b)(3)(A).**

As stated above, the Section concurs with the Appellant-Mother and the LGAL that the Court of Appeals erred when it mandated the Trial Court exercise jurisdiction over DVL and Appellant-Mother pursuant to MCL 712A.2(b)(1) and (2) to the extent that both the Appellant-Mother and the LGAL argue the facts of this matter do not support such a finding. The Section also agrees that jurisdiction was proper pursuant to MCL 712A.2(b)(3)(A), a section of the Juvenile Code that this Court has not formally addressed in any case up to this point.

- A. The term "domicile" within the meaning of MCL 712A.2(b)(3)(A) requires the domicile of the child and that of the parent to diverge, creating a different domicile for the child by operation of law.**

Pursuant to MCL 712A.2(b)(3)(A), a court can acquire jurisdiction over a child

[i]f the juvenile is dependent and is in danger of substantial physical or psychological harm. The juvenile may be found to be dependent when any of the following occurs:

- (A) The juvenile is homeless or not domiciled with a parent or other legally responsible person.

The Section accepts and agrees with the Appellant-Mother's definition of "homeless" within the meaning of the statute and also agrees that the Trial Court could have utilized MCL 712A.2(b)(3)(A) because DVL was "homeless" at the time the petition was filed. (Appellant's Supplemental Brief, pp. 30-34). The Section, however, disagrees with the Appellant-Mother that DVL remained domiciled with her within the meaning of the statute.

As noted by the LGAL, the plain language of MCL 712A.2(b)(3)(A) "specifies that jurisdiction is appropriate where a child is, "homeless or not domiciled with a parent," which suggests that the parent may have a domicile but that the child does not—or cannot—live there." (LGAL Supplemental Brief, p. 15). The statute uses both the term "homeless" and "not domiciled with a parent," which, under the rules of statutory interpretation, generally means the terms "connote different meanings." *Honigman Miller Schwartz & Cohn LLP v City of Detroit*, 505 Mich 284, 317; 952 NW2d 358 (2020) (quoting *United States Fid Ins & Guar Co v Mich Catastrophic Claims Ass'n (On Rehearing)*, 484 Mich 1, 14; 795 NW2d 101 (2009)).

This Court in *Grange Ins Co v Lawrence* explained that "[f]or over 165 years, Michigan courts have defined domicile to mean the place where a person has his true, fixed, permanent home, and principal establishment, and to which, whenever he is absent, he has the intention of returning." 494 Mich 475, 493; 835 NW2d 363 (2013) (internal quote marks omitted). *Grange* goes on to analyze how to determine the domicile of a minor child, concluding that "the child's domicile is determined by reference to the domicile of his or her parents." *Id.* at 503. The ultimate holding of *Grange*, concerning how to determine a child's domicile in the event the child's parents are divorced is somewhat paradoxical in nature, as highlighted by

Justice Zahra's concurrence in that case when discussing a situation where the parents share joint physical custody. *Id.* at 527-537 (Zahra, J. Concurring). *Grange* affirmatively states that a person, including a child, cannot have two domiciles, and that, when determining the domicile of the child, the controlling concern is who is awarded physical custody. *Id.* 511-512. While there is no custody order present in this case, the statutory language of "not domiciled with a parent" presents a similar sort of paradox when the *Grange* definition is applied.

Grange highlights two key points regarding the establishment of a child's domicile that are relevant to the analysis of MCL 712A.2(b)(3)(A): first, that the intent of the child is irrelevant as they do not have the capacity to acquire their own domicile and second, that a child cannot have more than one domicile. Applying the first of these points to MCL 712A.2(b)(3)(A) and the facts of this case, clearly, a child, particularly a mentally ill child such as DVL, cannot make the decision to no longer be domiciled with a parent. Under the *Grange* definition, either the parent has decided that the child should not be domiciled with them, or it has occurred by operation of law (such as a custody order). Here, the Appellant-Mother clearly did not wish to have DVL remain or return to the home. (Court of Appeals Opinion, pp. 1-2). While the facts are not clear as to when (if ever) the Appellant-Mother wished for DVL to return, the history of this case paints a clear picture of a parent attempting to treat her child outside of the home as much as possible for the safety of the other children involved. (Court of Appeals Opinion, pp. 1-2). As the Appellant-Mother's intent is the only controlling consideration, as there is no custody order in this matter, and because DVL cannot legally have two domiciles this intent for DVL not to return to the Appellant-Mother's home was sufficient to establish that DVL was not domiciled with the Appellant-Mother at the time the petition was filed such that the Trial Court could have exercised jurisdiction over DVL pursuant to MCL 712A.2(b)(3)(A). *See Grange*, 494 Mich at 503, 511-512.

B. The Section has proposed a fix to the Legislature to address the factual scenario presented by this and other recent cases.

In her concurring opinion in the *In re Holbrook* case, another case that is extremely similar to the case at bar, Justice Cavanaugh urged the Legislature to consider possible alternatives for state intervention “without requiring courts to adjudicate parents as unfit when they are struggling to support children with complex mental health needs.” *In re Holbrook*, 513 Mich 898, 903; 997 NW2d 28 (2023) (Cavanaugh, J. Concurring). The Section agrees with the sentiment of Justice Cavanaugh and has proposed a legislative fix through its Legislative Committee.

To address situations such as those in *Holbrook* and this case, the Section has proposed that the Legislature amend MCL 712A.2(b)(3) by adding two new jurisdictional grounds under the dependency provisions. The first would allow jurisdiction when, through no fault of the parent, guardian, or legal custodian, the child is without proper mental or behavioral health care, or mental or behavioral services are insufficient to meet the needs of the child. The second would allow jurisdiction when the child creates an unreasonable risk of harm to members of their household and is beyond the control of a parent, guardian, or legal custodian. Because both of these added sections would fall under the dependency portion of the statute, neither would require a finding of parental culpability.

The Section, like Justice Cavanagh in *Holbrook*, recognizes that there are situations, including this case, where jurisdiction over the child is necessary to provide for their mental health needs even if the parent is blameless for the circumstances. The Section’s proposed legislative fix would accomplish what Justice Cavanagh proposed. It is not necessary to resolve this case favorably to the family as a whole, though.

II. The facts presented by this matter are sufficiently dissimilar to the facts of *In re Hockett* such that this Court can overturn the Court of Appeals' opinion in this matter without overruling *In re Hockett*.

The Section argues, consistent with the Section's prior position in the case of *In re Holbrook*, that *In re Hockett* was correctly decided. The Section also believes that *Hockett* is sufficiently factually distinct from the current case such that this Court can (and should) overturn the decision in this matter without overruling *Hockett*. This approach would be in line with this Court's preferred course of adhering to decided cases. *See Robinson v Detroit*, 462 Mich 439, 463; 613 NW2d 307 (2000) (adhering to decided cases "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.")

There are essentially two factual dissimilarities between the current case and the *Hockett* case: (1) the involvement of the respondent parent in causing the mental health crisis that led to DHHS involvement and (2) the child's history of mental health crises. The mother in *Hockett* was homeless after having recently been evicted for reasons not explained in the Court of Appeals' opinion. *Hockett*, 339 Mich App at 253. This eviction appears to have been the catalyst for the child in that case, NRH's, acute mental health crisis, as prior to this NRH had been receiving in-home therapy twice per week and taking multiple medications without severe incident. *Id.* at 252. Additionally, the mother in *Hockett* left NRH with a family friend, where he threatened to harm another child in the home as well as threatening suicide, leading to the police being called, NRH being taken to the hospital, and the mother refusing to pick NRH up after he received some treatment. *Id.* at 253.

In contrast, in this case, the Appellant-Mother had been actively treating DVL's mental health issues for years, including several rounds of hospitalization, medication, out-patient therapy, and even placement in an out-of-state residential facility for six months, yet DVL's issues were only worsening. (Court of Appeals Opinion, pp. 1-2). Following the incident where DVL attempted to burn down the Appellant-Mother's home, DVL

received no treatment at the hospital, instead he simply sat in the waiting room while the hospital attempted to find him a suitable placement. (Court of Appeals Opinion, p. 2). Clearly, these two parents are dissimilarly situated such that this Court could find that the rationale of *Hockett* is not applicable to the Appellant-Mother and DVL.

Further, “[b]efore this Court overrules a decision deliberately made, it should be convinced not merely that the case was wrongfully decided, but also that overruling it will result in less injury than following it.” *People v Graves*, 458 Mich 476, 480-481; 581 NW2d 229 (1998) (quoting *McEvoy v City of Sault Ste Marie*, 136 Mich 172, 178; 98 NW 1006 (1904)). It is unclear to the Section whether overruling *Hockett* would result in less injury than allowing it to stand. As noted by the Appellant-Mother, the number of children in Michigan facing mental health crises is steadily increasing. (Appellant’s Supplemental Brief, pp. 12-13 n 1). While the Section hopes that many, if not all, parents will be like the Appellant-Mother in this matter and take every possible action or step to ensure the safety and well-being of a mentally ill child, the Section also understands that there are many parents who are responsible for or aware of their children’s mental health issues and do not take steps to adequately address them, or, like the mother in *Hockett* bear some responsibility in a failure of treatment. The *Hockett* decision allows for children in those situations to be adequately protected from harm and ensures they will receive the help they need, without necessitating a finding of culpability on the part of those children’s parents. *Hockett*, 339 Mich App at 256. However, as noted above, the Section has also presented a possible solution to the Legislature, which, if enacted, would prevent the application of MCL 712A.2(b)(1) and (2) to other parents like the Appellant-Mother in this matter, who by all accounts did absolutely everything to ensure the safety of DVL and the Appellant-Mother’s other children. Until such a time as there is a better mechanism to do so, the protection and safety of children should remain a paramount concern for this Court, as well as others, and *Hockett* does assist in that regard.

RELIEF REQUESTED

The Section concurs that this Court should overturn the Court of Appeals' opinion in this matter mandating the Trial Court to assume jurisdiction over DVL pursuant to MCL 712A.2(b)(1) and (2), as jurisdiction was proper pursuant to MCL 712A.2(b)(3)(A). However, the Section does not believe overruling *In re Hockett* is necessary to accomplish a reversal in this matter, as *In re Hockett* was correctly decided and this matter is factually distinct from *Hockett*.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this document complies with the formatting rules in MCR 7.212(B) and MCR 7.312(A). I certify that this document contains 2,370 countable words. The document is set in Georgia Pro, and the text is in 12-point type with 18-point line spacing and 12 points of spacing between paragraphs.

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