INTRODUCTION

“The failure to distinguish between ‘the erroneous exercise of jurisdiction’ and ‘the want of jurisdiction’ is a fruitful source of confusion and errancy of decision.” Yet juvenile courts have often issued opinions confusing these two jurisdictional aspects, resulting in proceedings in which litigation is endless and finality is left wanting. Subsequent decisions have sought to correct this confusion, and still the Michigan Supreme Court is continuously pulled toward an interpretation in which parental rights are prioritized over adherence to time-honored rules outlined in countless legal treatises. Which raises the question: which theory is correct?

In this Note, the author attempts to resolve this problem on the basis of the fundamental doctrine of res judicata, which is applicable to all forms of civil and criminal procedure. While it is true that parents have a vested liberty interest in the care, custody, and control of their children, the author argues that recent Michigan jurisprudence prioritizes this parental right over the rights of children. In direct opposition to the stated goals of the juvenile court, the courts have refused to consider the necessity of permanency for children who are forced into the judicial system as a result of the neglectful and abusive situations created by their parents. This approach is deeply flawed. The better, and arguably only, approach is one in which the traditional limits on collateral attacks are applied in the juvenile system, and in which the judiciary enforces the rule that a parent who wishes to raise a jurisdictional challenge must do so at the appropriate time, or waive such a privilege.

Part I of this Note will address juvenile procedure, explaining the juvenile court process from the filing of the complaint to the termination of parental rights. Part II discusses the traditional rules governing direct and collateral attacks, as well as the restrictions that apply when attempting to attack a jurisdictional or non-jurisdictional defect of a judgment. Part III concerns the competing views of In re Hatcher and Fritts v. Krugh, which have controlled juvenile jurisprudence for the last fifty-eight years. This section then criticizes the Fritts decision, arguing that its holding fails to properly distinguish between subject matter and personal jurisdiction. As a result, the Michigan juvenile courts are able to continually ignore this
important distinction, and cite to Fritts as precedent. Part IV concerns the Michigan Supreme Court’s overruling of the one parent doctrine in In re Sanders, and discusses In re Kanjia’s retroactive application of the Sanders decision. This section concludes with a discussion of In re Jones, which, in the opinion of the author, foreshadows the Michigan Supreme Court’s eventual overruling of Hatcher. Finally, Part V highlights the necessity of prioritizing permanency in the juvenile system. The author then demands that judges and practitioners strive for such permanency through application of the “raise-or-waive” principle.

I. CHILD PROTECTIVE PROCEEDINGS IN MICHIGAN

The juvenile code, as provided in Michigan Compiled Laws (“MCL”) sections 712A.1-712A.32, establishes the procedures by which the government may exercise its parens patriae authority over minor children. Specifically, MCL section 712A.2(b)(1) grants the Family Division of the Circuit Court jurisdiction over child protective proceedings, which are those proceedings concerning juveniles under the age of 18 whose parent has neglected or refused to provide them with proper educational, medical, surgical, or other necessary support. The term “jurisdiction” in this context refers to the Circuit Court’s authority “to hear and decide a case on the basis of a finding of fact that the child belongs to the class of children over whom the court has the power to act,” i.e., subject matter jurisdiction. In order to initiate a child protective proceeding, a petition must be filed with the Family Division of the Circuit Court containing facts that constitute an offense against a child under MCL section 712A.2(b).

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properly care for a child. Upon the filing of the petition, the respondent parent may admit the allegations, plead no contest, or, alternatively, demand an adjudication and contest the merits of the petition.

Child protective proceedings are divided between the adjudicative phase and the dispositional phase. The court begins with the adjudicative phase, which involves a determination of whether the court may exercise personal jurisdiction over the subject children based on the statutory requirements of MCL section 712A.2(b). Further, the adjudicative phase determines whether the respondent parent is subject to the dispositional authority of the court due to that parent’s unfitness. In this phase, the state has the burden of proving by a preponderance of the evidence one or more of the statutory grounds for personal jurisdiction alleged in the petition. If the court concludes that the child does not fall within its jurisdiction, it must dismiss the petition. However, if the allegations are proven, the respondent parent is deemed to be “unfit,” and the court will proceed to the dispositional phase, which may result in termination of parental rights. An erroneous exercise of personal jurisdiction may be challenged at any of the mandatory review hearings. Alternatively, a parent may request a hearing no later than twenty days after a termination order, or any time the court has personal jurisdiction over the child. These statutory provisions guarantee that a respondent parent is allowed the necessary time to review and challenge the trial court’s exercise of jurisdiction.

7. Sanders, 852 N.W.2d at 529. See MICH. CT. R. 3.971 (2016); MICH. CT. R. 3.972.
8. Sanders, 852 N.W.2d at 529.
10. In re Sanders, 852 N.W.2d at 529. See MICH. CT. R. 3.972(E).
11. Brock, 499 N.W.2d at 756.
13. Sanders, 852 N.W.2d at 530.
15. Hatcher, 505 N.W.2d at 839 (citing MICH. COMP. LAWS § 712A.21).
16. Id.
If personal jurisdiction is established, the proceeding will next enter the dispositional phase. In this phase, the Circuit Court is granted broad authority to effectuate orders affecting adults as are necessary to ensure the child’s well-being. The implementation of such orders is considered incidental to the court’s personal jurisdiction over the child. The exercise of this authority may include ordering a parent to comply with a petitioner’s case services plan, ordering a petitioner to file a petition for the termination of parental rights, or any other action involving the respondent parent and the child. Thus, the dispositional phase will determine the measures to be taken with respect to a child within the court’s jurisdiction, and against any adult, whether party to the proceeding or not. If certain requirements are met, the Circuit Court may terminate the respondent parent’s rights as early as the initial dispositional hearing. If such a termination occurs, a motion for rehearing must be filed within 14 days after the date of the order terminating parental rights. Additionally, under MCR 3.993(A), an aggrieved party may appeal any of the following court orders as of right:

1) an order of disposition placing a minor under the supervision of the court or removing the minor from the home,
2) an order terminating parental rights;
3) any order required by law to be appealed to the Court of Appeals, and
4) any final order.

18. In re Macomber, 461 N.W.2d 671 n.4 (Mich. 1990). See Mich. Comp. Laws § 712A.6 (2016). Personal jurisdiction may also be referred to as statutory jurisdiction, as the statute specifically denotes that the Family Division of the Circuit court will have the ability to exercise jurisdiction over the child.
21. Id.
23. Mich. Ct. R. 3.973(A) (2016) (emphasis added). See In re Sanders, 852 N.W.2d 524, 534 n.10 (Mich. 2014) (where the Michigan Supreme Court noted that “the phrase ‘when applicable’ can... be interpreted to mean that when the person meeting the definition of ‘any adult’ is a presumptively fit parent, the court’s authority during the dispositional phase is limited by the fact that the state must overcome the presumption of parental fitness by proving the allegations in the [child protective] petition.”).
24. Sanders, 852 N.W.2d at 530 (citing Mich. Ct. R. 3.977(E)).
However, MCR 2.993(A)(1) requires that the order appealed be an order of disposition, such as an order terminating parental rights.\textsuperscript{27} Therefore, a party who wishes to challenge a court’s establishment of personal jurisdiction, i.e., an order of adjudication, must do so via direct attack following the adjudication or during a rehearing or review hearing.\textsuperscript{28} A party may not, however, challenge an allegedly erroneous judgment via collateral attack following an order of disposition.\textsuperscript{29} Thus, a party’s ability to successfully avoid a prior defective judgment will depend on whether the court classifies the party’s attack as direct or collateral.\textsuperscript{30}

\section{CHALLENGING A FINAL JUDGMENT}

\subsection{Identification of an Attack as Direct or Collateral}

When determining if an attack is direct or collateral, the court must consider if the subsequent action is instituted for the purpose of setting aside, correcting, or modifying the initial judgment.\textsuperscript{31} If the answer is yes, the attack will usually be considered direct, for the attack upon the judgment in such cases is primary to the purpose of the proceeding.\textsuperscript{32}

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\item MICHIGAN CHILD PROTECTIVE PROCEEDINGS BENCHBOOK ch 20.3 (Michigan Judicial Institute, 4th ed. 2016), https://mjieducation.mi.gov/documents/benchbooks/14-cpp/file (citing In re McCarrick/LaMoreaux, 861 N.W.2d 303, 309 (Mich. Ct. App. 2014) (Thus, “a respondent parent may appeal [as of right] (1) an order of disposition that places a minor under the supervision of the court, or (2) an order of disposition that removes the minor from the home.”)).
\item MICHIGAN CHILD PROTECTIVE PROCEEDINGS BENCHBOOK ch 20.3 (Michigan Judicial Institute, 4th ed. 2016), https://mjieducation.mi.gov/documents/benchbooks/14-cpp/file. See Wangler, 853 N.W.2d at 410, rev’d on other grounds, 498 Mich. 911 (2015) (quoting In re SLH, 747 N.W.2d 547, 551 (Mich. Ct. App. 2008)) (“If termination occurs at the initial disposition as a result of a request for termination contained in the original, or amended, petition for jurisdiction, then an attack on the adjudication is direct and not collateral, as long as the appeal is from an initial order of disposition containing both a finding that an adjudication was held and a finding that the children came within the jurisdiction of the court.”).
\item MICHIGAN CHILD PROTECTIVE PROCEEDINGS BENCHBOOK ch 20.3 (Michigan Judicial Institute, 4th ed. 2016), https://mjieducation.mi.gov/documents/benchbooks/14-cpp/file. See Wangler, 853 N.W.2d at 410, rev’d on other grounds, 498 Mich. 911 (2015) (quoting In re SLH, 747 N.W.2d 547, 551 (Mich. Ct. App. 2008)) (“If termination occurs at the initial disposition as a result of a request for termination contained in the original, or amended, petition for jurisdiction, then an attack on the adjudication is direct and not collateral, as long as the appeal is from an initial order of disposition containing both a finding that an adjudication was held and a finding that the children came within the jurisdiction of the court.”).
\item Id. at 607.
\end{enumerate}
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However, as will be explored in further detail below, if the purpose of the proceeding is to obtain some relief other than the setting aside of the judgment, and the attack upon the judgment is secondary, the attack will be considered collateral, irrespective of whether the other relief sought is necessary.\textsuperscript{33}

The definition of a direct attack is “an attempt to amend, correct, reform vacate, or enjoin the execution of same in a proceeding instituted for that purpose . . . .”\textsuperscript{34} In application of this definition, the courts have recognized three broad categories of direct attack:

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\item A motion for a new trial seasonably made before the court rendering the judgment, or an appeal or other proceeding to obtain a nullification of a judgment by a higher court;
\item a motion to vacate or set aside a judgment which may be made after the expiration of time for an appeal or an ordinary motion for a new trial; or
\item a plenary equitable action to vacate or enjoin the enforcement of a judgment.\textsuperscript{35}
\end{enumerate}

If a party challenging a jurisdictional defect makes his attack in one of the above forms, that party will avoid the restrictions applicable to those making a collateral attack.\textsuperscript{36} Nevertheless, in order to challenge a prior judgment with a direct attack, a party must satisfy requirements particular to the form of direct attack employed.\textsuperscript{37} For example, a party may challenge a jurisdictional defect of a judgment through direct appeal, but the period for bringing an appeal may be sharply curtailed by statute.\textsuperscript{38}

In contrast, a collateral attack is defined as a “tactic whereby a party seeks to circumvent an earlier ruling of the court by filing a subsequent action in another court, i.e., an action with an independent purpose and contemplative of another form of relief that depends on the overruling of a prior judgment.”\textsuperscript{39} While the law of each jurisdiction specifies the remedies available to a party who wishes to challenge a judgment, the majority view is stated as follows:

[An assailant is pursuing a [] direct attack when he strikes at the judgment with one of the procedural weapons thus placed at his disposal [by the law of that jurisdiction], and per contra that his assault is essentially collateral when attempted without such legal means. The courts of many jurisdictions are guided by such test in passing upon the direct and collateral character of an attack, pronouncing it direct when

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\item \textsuperscript{33} Id.
\item \textsuperscript{34} Crawford v. McDonald, 33 S.W. 325, 327 (Tex. 1895).
\item \textsuperscript{35} The Value of the Distinction Between Direct and Collateral Attacks on Judgments, \textit{supra} note 30, at 530–31.
\item \textsuperscript{36} Id. at 531.
\item \textsuperscript{37} Id.
\item \textsuperscript{38} Id.
\item \textsuperscript{39} 21A \textsc{Fed. Proc.: Lawyer’s Ed.} (2008) § 51:221.
\end{itemize}
waged by a proceeding which the law provides for the purpose and collateral when attempted in any other manner. 40

Further, many states adhere to the rule that a challenge which would constitute a direct attack will be deemed a collateral attack if the party seeking to set aside the judgment does so as a means of obtaining additional relief requested. 41 To clarify, if a party attempts to set aside a judgment on account of some alleged irregularity, the attack is considered direct because the sole object of the proceeding is to deny the validity of the judgment. 42 However, where a successful plaintiff in the original proceeding attempts to enforce his judgment in a subsequent action, or where an unsuccessful defendant seeks to assert an additional claim, but may do so only by invalidating the original decision, the challenge will be deemed collateral in nature. 43 This rule was illustrated in *Turner v. Bell*. 44 In *Turner*, the plaintiff brought an action to declare void *ab initio* a court’s decree of divorce from her former husband on the grounds of fraud and lack of jurisdiction. 45 However, the plaintiff’s motivation in filing such a suit was to obtain homestead and dower rights in her former husband’s estate. 46 The court labeled this proceeding a collateral attack, as the main purpose of the plaintiff’s action was not to set aside the divorce decree, but to establish rights in the property of the deceased. 47

B. Setting Aside a Judgment: Jurisdictional and Non-Jurisdictional Defects

A party’s desire to attack a judgment of the court arises due to that party’s dissatisfaction with a jurisdictional or non-jurisdictional “defect” in a judicial proceeding. 48 A so-called non-jurisdictional defect will usually appear in the form of a procedural irregularity or mistake of law. 49 Notably, a non-jurisdictional defect of an inferior court will never be subject to collateral attack, as these judgments are considered merely

40. FREEMAN, supra note 31, at 606.
41. _The Value of the Distinction Between Direct and Collateral Attacks on Judgments_, supra note 30, at 533.
42. HENRY CAMPBELL BLACK, A TREATISE ON THE LAW OF JUDGMENTS (2d ed.) vol. 1, § 252.
43. _The Value of the Distinction Between Direct and Collateral Attacks on Judgments_, supra note 30, at 533–34.
44. 279 S.W.2d 71 (1955). See also _The Value of the Distinction Between Direct and Collateral Attacks on Judgments_, supra note 30, at 534.
45. _The Value of the Distinction Between Direct and Collateral Attacks on Judgments_, supra note 30, at 534.
46. Id.
47. Id. at 535.
48. Id. at 526.
49. Id.
voidable, but not void.\textsuperscript{50} Such a judgment, entered by a court of general jurisdiction, is entitled to a presumption of regularity and may not be collaterally attacked unless said judgment is void.\textsuperscript{51} Therefore, a judgment that is facially valid, despite procedural errors, is not subject to collateral attack.\textsuperscript{52} For a judgment to be valid, the court must have jurisdiction over both the person and the subject-matter, and if either element is proved to be wanting, the judgment is void.\textsuperscript{53} Consequently, for a judgment to be void, and therefore subject to collateral attack, the court must lack either personal jurisdiction over the parties, or subject matter jurisdiction over the action.\textsuperscript{54}

The rule against collateral attacks applies to every judgment, order, decree, or judicial proceeding, of whatever species, that is not absolutely void.\textsuperscript{55} A mere defective finding, or the absence of any findings of fact by the trial court will therefore never render a judgment void, and may only be challenged by way of a direct appeal.\textsuperscript{56} Moreover, a judgment cannot be collaterally attacked on the grounds that it was merely wrong or erroneous and could be reversed on appeal or set aside on direct attack.\textsuperscript{57} Thus, whether a judgment is irregular or erroneous is not a legitimate inquiry in a suit brought for its enforcement.\textsuperscript{58}

Consequently, a jurisdictional defect in a judgment will always render the judgment void.\textsuperscript{59} When a judgment is rendered void as the result of a jurisdictional defect, the judgment is said to be a nullity, and supported by no presumptions.\textsuperscript{60} It may, therefore, be impeached in any action, direct or collateral.\textsuperscript{61} The rationale underlying this doctrine has been stated as follows:

Every court confronted with a [lawsuit] of any kind is under both the necessity and the duty of determining whether or not it has jurisdiction to entertain the suit, and it necessarily has jurisdiction to make this determination. If it determines erroneously that it has jurisdiction, its own erroneous determination does not give it any true jurisdiction of the

\textsuperscript{50} W. B. Martindale, \textit{The Collateral Attack of Judgments}, 52 CENT. L.J. 420 (1901).
\textsuperscript{51} \textit{Id.} at 421.
\textsuperscript{52} \textit{Id.} at 420.
\textsuperscript{53} \textit{Id.} at 420–22.
\textsuperscript{54} \textit{Id.}
\textsuperscript{55} \textit{BLACK, supra note 42, § 246.} See also 15 STANDARD PROC. 397 (“The prohibition against collateral impeachment applies to all kinds of judgments and decrees, whether made upon consideration of the merits or not.”).
\textsuperscript{56} Martindale, \textit{supra note 50}, at 420.
\textsuperscript{57} \textit{Id.}
\textsuperscript{58} \textit{Id.}
\textsuperscript{59} \textit{The Value of the Distinction Between Direct and Collateral Attacks on Judgments, supra note 30, at 526.}
\textsuperscript{60} Martindale, \textit{supra note 50}, at 420.
\textsuperscript{61} \textit{Id.}
case as a whole, and its judgment is in general void and therefore subject to collateral attack . . . 62

When an attack on a defective judgment is considered collateral, it will be subject to additional limitations not present if an attack is branded direct. 63 Most notably, claim preclusion may be applied to bar a challenge of an alleged jurisdictional defect in the original action. 64 In this case, a party will be precluded from challenging the court’s assumption of subject matter jurisdiction on the grounds that the court, having personal jurisdiction, expressly determined that it had subject matter over the action, and the subject party, having litigated the issue, has already received his day in court. 65 Additionally, a party may be prohibited from challenging a court’s subject matter or personal jurisdiction if said party made a special appearance in the original proceeding to contest jurisdiction over his person, or if the party appeared and participated in an in rem proceeding. 66 Therefore, a party in this situation may challenge a jurisdictional defect via collateral attack only when the court lacked personal jurisdiction and the party entered no appearance in the original proceeding, or if the court lacked subject matter jurisdiction and the party did not participate in the proceeding. 67

III. COLLATERAL ATTACKS IN THE JUVENILE DIVISION

A. The Modern Rule: In re Hatcher

In 1993, the Michigan Supreme Court decided the case of In re Hatcher. 68 In Hatcher, the court addressed whether a respondent parent may challenge a trial court’s assumption of subject matter jurisdiction on direct appeal from a termination order, and if so, should the judgment terminating respondent’s parental rights be declared void ab initio. 69 In reaching its holding, the court emphasized the importance of finality of judgments for children, and declared that application of the traditional rule governing collateral attacks is necessary in child protective proceedings. 70

In the petition, the Department of Social Services alleged that the respondent mother’s chronic illness, coupled with the respondent father’s

62. The Value of the Distinction Between Direct and Collateral Attacks on Judgments, supra note 30, at 527 n.9 (quoting Old Tr. Co. v. Porter, 88 N.E.2d 135, 139 (1949)).
63. The Value of the Distinction Between Direct and Collateral Attacks on Judgments, supra note 30, at 527.
64. Id. at 527.
65. Id.
66. Id. at 527–28.
67. Id. at 528.
69. Id. at 835.
70. Id. at 846–47.
drug and alcohol abuse, prevented the parents from adequately caring for their minor child.\textsuperscript{71} On November 15, 1989, the probate court held a preliminary hearing.\textsuperscript{72} Although both parents received adequate notice of the proceedings, neither chose to attend.\textsuperscript{73} At this hearing, the court authorized the filing of the petition, finding probable cause that the listed allegations were true, that reasonable efforts had been made to avoid placement, and that releasing the child to the parents would “present a substantial possibility of harm to the infant.”\textsuperscript{74} The court thus proceeded to the adjudicative phase, and an initial trial was held on January 12, 1990, with both parents in attendance and represented by counsel.\textsuperscript{75} At trial, both mother and father stipulated that the court should assume temporary wardship over the child.\textsuperscript{76} Therefore, the court chose to proceed without testimony from either parent regarding the allegations contained in the petition.\textsuperscript{77} Three subsequent review hearings were held, at which time neither mother nor father challenged the jurisdiction of the court.\textsuperscript{78} On January 28, 1991, a permanency planning hearing\textsuperscript{79} was held, and testimony was offered establishing that the father was a frequent cocaine user, and had done little to establish a parental relationship with the child.\textsuperscript{80} In an order dated August 29, 1991, the probate court terminated respondent’s parental rights.\textsuperscript{81} Respondent then appealed, arguing that the termination proceedings were void ab initio, as the probate court never assumed proper subject matter jurisdiction.\textsuperscript{82} The Court of Appeals agreed, and reversed the termination decision.\textsuperscript{83} On August 7, 1992, the child’s

\textsuperscript{71} Id. at 836.
\textsuperscript{72} Id.
\textsuperscript{73} Id.
\textsuperscript{74} Hatcher, 505 N.W.2d at 836.
\textsuperscript{75} Id. at 836.
\textsuperscript{76} Id.
\textsuperscript{77} Id.
\textsuperscript{78} Id. at 836–37.
\textsuperscript{79} See id. at 837 n.5 (“A permanency planning hearing is required after a child has spent twelve months in foster care and parental rights to the child have not been terminated. The hearing is based on the premise that a failure to quickly decide on a long-term care plan for the child could be detrimental to the minor. At the hearing, the court may decide that (1) the child should return home, (2) the child should continue in foster care for a limited specified time or on a long-term basis, or (3) the agency has demonstrated that termination of parental rights may be in the child’s best interests. Mich. Comp. Law § 712A.19a; Mich. Ct. R. 5.973(C)(1).”).
\textsuperscript{80} In re Hatcher, 505 N.W.2d at 837.
\textsuperscript{82} In re Hatcher, 505 N.W.2d at 837.
\textsuperscript{83} Id.
guardian ad litem filed an application for leave to appeal to the Supreme Court of Michigan.  

In attempting to restore his parental rights, the respondent father initiated his appeal from the termination order, but collaterally attacked the subject matter jurisdiction of the proceeding at which the probate court assumed temporary wardship over the child. Respondent argued that an assumption of subject matter jurisdiction requires an independent determination by the court, through testimony of the parent, whether the allegations in the petition are true as to support the court’s jurisdiction. Further, a court may not establish such jurisdiction as the result of a party’s stipulation to a temporary wardship. Thus, the probate court’s failure to receive testimony from the respondent parents rendered the temporary wardship proceedings void for want of essential jurisdiction, and therefore the collateral attack was permissible. However, respondent’s argument confused the distinction between whether or not the court has subject matter jurisdiction over the action, and whether the court has properly exercised its discretion in applying that jurisdiction.

The Michigan Constitution grants the juvenile court subject matter jurisdiction over juvenile dependents. According to Hatcher, a court may properly assume subject matter jurisdiction over a proceeding “when the action is of a class the court is authorized to adjudicate, and the claim stated in the complaint is not clearly frivolous.” The court must then make its own determination regarding the existence of a basis for “statutory jurisdiction.” Pursuant to MCL section 712A.2(b)(2), juvenile courts have jurisdiction over a large class of cases involving children, which includes those where a child’s parents are abusive or neglectful. In this context, jurisdiction refers to the court’s power to “hear and decide a case on the basis of a finding of fact that the child belongs to the class of children over whom the court has the power to act.” A valid exercise of statutory jurisdiction is established by a finding at the adjudication of probable cause that the allegations contained in the petition are true. In the instant case, such jurisdiction was established when the referee found probable cause.

84. Id. at 837–38.
85. Id. at 839.
86. Id.
87. Id.
88. In re Hatcher, 505 N.W.2d at 839.
89. Id. at 840.
90. Id. at 838.
91. Id. at 839.
93. In re Hatcher, 505 N.W.2d at 838.
94. Id. at 839–40.
that the allegations listed in the petition, neglect, criminality, drunkenness, and failure to maintain proper custody, were true.95 "Consequently, it was proper for the court to invoke its jurisdiction, assuming the court also had jurisdiction of the parties . . . ." 96 As proper subject matter and personal jurisdiction had been established, any procedural errors that may have occurred in the exercise of jurisdiction, and which did not affect the court’s establishment of jurisdiction, could not be challenged via collateral attack.97 According to Jackson City Bank & Trust v. Fredrick,

Want of jurisdiction must be distinguished from error in the exercise of jurisdiction. Where jurisdiction has once attached, mere errors or irregularities in the proceedings, however grave, although they may render the judgment erroneous and subject to be set aside in a proper proceeding for that purpose, will not render the judgment void, and until set aside it is valid and binding for all purposes and cannot be collaterally attacked. Error in the determination of questions of law or fact upon which the court’s jurisdiction in the particular case depends, the court having general jurisdiction of the cause and the person, is error in the exercise of jurisdiction. Jurisdiction to make a determination is not dependent upon the correctness of the determination made.98

Here, respondent argued that the court’s failure to establish facts at trial to establish a temporary wardship rendered the court’s subject matter jurisdiction void.99 This argument, however, addresses the procedure by which the court proceeded after it had established proper subject matter and statutory jurisdiction over the action.100 As such, the challenged defect was one which did not affect the court’s jurisdiction, and thus was not susceptible to collateral attack. Respondent could have challenged the court’s exercise of jurisdiction by directly attacking the sufficiency of the petition or the creation of the temporary wardship.101 However, respondent chose not to institute such an attack, and instead agreed to the placement of the child with the maternal grandmother.102 As a result, respondent waived his right to challenge the court’s jurisdiction, as such a challenge may only be instituted via direct attack within the proper statutory timeframe:

Where the probate court erroneously exercises its [personal] jurisdiction, the error is analogous to a mistake in an information or in binding over a criminal defendant for trial. Such an error can, of course, be challenged in a direct appeal. It cannot, however, be

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95. Id. at 840.
96. Id.
97. Id.
98. Id. (quoting Jackson City Bank & Tr. v. Fredrick, 260 N.W. 908, 910 (1935)).
99. In re Hatcher, 505 N.W.2d at 838.
100. Id.
101. Id.
102. Id.
challenged years later in a collateral attack. If such a delayed attack were always possible, decisions of the probate court would forever remain open to attack, and no finality would be possible.\textsuperscript{103}

Thus, in keeping with the traditional rule governing collateral attacks, the court held that a party who wishes to attack the court’s exercise of jurisdiction may do so on direct appeal following the court’s disposition, or during a rehearing or review hearing, but may not collaterally attack such jurisdiction.\textsuperscript{104} According to the court: “Our ruling today severs a party’s ability to challenge a probate court decision years later in a collateral attack where a direct appeal was available. It should provide repose to adoptive parents and others who rely upon the finality of probate court decisions.”\textsuperscript{105}

B. Pre-Hatcher Jurisprudence: Fritts v. Krugh

In reaching its holding, the \textit{Hatcher} court overturned the long-standing precedent of \textit{Fritts v. Krugh}. In \textit{Fritts}, the Michigan Supreme Court allowed a respondent father to collaterally attack an order of termination on the grounds that the probate court exceeded its statutory authority in instituting such an order, and therefore effectively lacked subject matter jurisdiction over the proceeding.\textsuperscript{106} In overturning this decision, the \textit{Hatcher} court sought not only to correct the obvious procedural defects allowed for in \textit{Fritts}, but specifically challenge a case that allowed for a long-line of child protective proceedings plagued by excessive litigation and unfairness to the subject children.

The facts of the \textit{Fritts} case are as follows: In July of 1952, following a marital dispute, respondent father abandoned his two small children and their mother.\textsuperscript{107} Although the mother initially attempted to provide a suitable life for her children, she was soon forced to turn to the state for help.\textsuperscript{108} She thus approached the local juvenile court to arrange for her children to be put up for adoption.\textsuperscript{109} A formal petition was drafted in which the mother represented that the father was a chronic alcoholic, that he had an abusive relationship with the child’s mother, and that he had abandoned the family.\textsuperscript{110} Finally, the petition stated that the mother wished to place the children up for adoption, containing the language, “I therefore,

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\item\textsuperscript{103} \textit{Id.} at 840–41 (quoting \textit{In re Adriason}, 306 N.W.2d 487, 491 (Mich. Ct. App. 1981)).
\item\textsuperscript{105} \textit{In re Hatcher}, 505 N.W.2d at 842–43.
\item\textsuperscript{106} \textit{Fritts v. Krugh}, 92 N.W.2d 604 (Mich. 1958).
\item\textsuperscript{107} \textit{Id.} at 606.
\item\textsuperscript{108} \textit{Id.} at 607.
\item\textsuperscript{109} \textit{Id.}
\item\textsuperscript{110} \textit{Id.} at 608.
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\end{footnotesize}
pray that the Juvenile Court take jurisdiction of said child.”

Mother signed these papers, and relinquished her children to foster care services. However, approximately two weeks later, the mother and father reconciled, and undertook to return their children home. Upon receipt of notice of a hearing on the adoption petition, the father wrote the probate judge to notify him of their reconciliation, and request that they regain custody of their children. When the date of the hearing arrived, both parents were in attendance. However, no stenographer was present, respondents were not represented by counsel, and no parties were sworn. The only evidence offered was the reading of a report by the county agent, which recited the facts of the petition, and detailed three separate conferences at which the county agent and the probate judge unsuccessfully attempted to dissuade the mother from her intention to give up the children. Nevertheless, neither the mother nor the father contested the truth or falsity of this report. The probate court thus ordered that the children be made permanent wards of the court and committed to the Michigan Children’s Institute for the purpose of adoption. The order also contained the following language:

And It Is Further Ordered, That should this child for any reason fail to adjust in her present environment, and should the natural parents at that time prove that they have been able to reestablish a satisfactory family life and are then able to properly care for this child, they will be first in line for the replacement of this child.

The above order acted to assume permanent wardship over the children, and effectively severed all parental rights of the parents to the children. The parents thus instituted a collateral attack, in the form of a habeas corpus action, challenging the Circuit Court’s institution of orders that effectively terminated their parental rights. The judge, upon hearing

111. Id. at 607–08 (“The undersigned being the mother of the said legitimate minor child and having legal authority to make and execute this consent, do hereby consent to the adoption of said child and the change of name of said child, as prayed for in petition of said court.”).
112. Fritts, 92 N.W.2d at 607.
113. Id. at 609.
114. Id. (“I am writing to you regarding my children Sally Ann Doyle Jr. Me and my life have talk things over we have decided to make a home for are children. Wish to know if we could get them before the 4th of August. If so write and let me know soon.”).
115. Id.
116. Id. at 609.
117. Id.
118. Fritts, 92 N.W.2d at 610.
119. Id. at 609.
120. Id. at 610.
121. Id.
122. Id.
the writ of habeas corpus, entered orders removing the two children from their proposed adoptive homes and returned them to parental custody. The foster parents, with whom the children lived most of their lives, then filed an appeal with the Michigan Supreme Court.

The court first noted that the lower court’s conclusion that the probate proceedings were invalid for want of sufficient notice was incorrect. The notice of the adoption hearing properly informed the parents that their parental rights were at stake, and it was therefore unnecessary for the notice to contain reference to any particular method of adoption. The court further found that the petition on which the hearing was based adequately alleged jurisdictional facts of neglect. Therefore, the court determined that there existed no procedural deficiency in the record of sufficient substance to warrant the use of a habeas action, and further, “to pry with legal diligence at the technical crevices in old cases which pertain to child custody and adoption matters could spring open a Pandora’s box of troubles.” Nevertheless, the court determined that there existed a “glaring defect of substance” which would justify the circuit court’s allowance of a habeas proceeding, i.e., the lack of evidence presented at the hearing on which the probate judge based his termination order. Thus, the Fritts court allowed for a collateral attack on the court’s jurisdiction based on a non-jurisdictional, procedural irregularity.

According to Fritts, there are three aspects to a juvenile hearing: (1) a determination of jurisdiction; (2) the adjudication of the issue of neglect; and (3) the determination of disposition. “It is necessary first to determine . . . that the alleged act falls within the purview of the statutes fixing the court’s jurisdiction of the subject matter, and that all necessary parties have been given due notice so that the requirements of due process have been met.” Second, having determined that the court has proper subject matter and personal jurisdiction, the court should then determine the facts. Based on these guidelines, the court concluded:

[T]he probate court had jurisdiction of the persons and the subject matter for purposes of hearing the neglect complaint. The children resided in the county concerned. The essential parties had notice. The mother’s petition in the instant case served to allege neglect and

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123. Id. at 606.
124. Fritts, 92 N.W.2d at 606.
125. Id. at 610.
126. Id.
127. Id. at 610–11.
128. Id. at 611.
129. Id. (quoting Harmsen v. Fizzell, 87 N.W.2d 161, 171 (Mich. 1957)).
130. Fritts, 92 N.W.2d at 611 (quoting Harmsen, 87 N.W.2d at 171).
131. Id.
132. Id.
dependency of the two children. The essential facts alleged were the father’s abandonment of her and them, the break-up of the family and the absence of any support for the children.\footnote{133}

Despite this finding of sufficient jurisdiction, the court then determined that respondent father’s letter notifying the court of the parents’ reconciliation should have provided the court with notice that the facts pertaining to neglect had changed materially.\footnote{134} Consequently, the court’s right to take custody of the subject children was in dispute, as the alleged “jurisdictional facts” of abandonment and the breakup of the family were no longer applicable.\footnote{135} According to \textit{Fritts},

\begin{quote}
[w]here there is a dispute about the basic facts, adult witnesses should be sworn . . . . It is good policy to permit parents . . . to give testimony in narrative form with as few technical objections as possible. It should be remembered, however, that the juvenile court hearing is not a criminal, but essentially and legally a civil proceeding of a chancery nature, and the rules of equity procedure and evidence should be followed. Unimportant technicalities need not be emphasized. In addition, the judge should eliminate hearsay and accept the testimony of competent witnesses only. Guaranteeing the basic rights of the individual is a responsibility of the judge even though the child or his parents may not be aware of or claim them at the time.\footnote{136}
\end{quote}

Therefore, the court determined that a parent’s sworn testimony of neglect must be heard before a judge may take jurisdiction and enter orders of disposition affecting the rights of the parents.\footnote{137} Next, the court must proceed with a determination of whether the testimony offered is that which affords support for an order taking temporary or permanent custody.\footnote{138} In reaching this conclusion, the court noted the “obvious unconstitutionality” of a statute which would allow temporary facts of neglect to support an order of permanent wardship:

\begin{quote}
Where, for example, a . . . family is confronted with the sudden emergency of a house destroyed by fire—the proven lack of proper shelter for the children . . . could not, under our concept of due process, support an order of the court taking permanent custody and severing all parental rights.\footnote{139}
\end{quote}

\begin{thebibliography}{99}
\bibitem{133} \textit{Id.}
\bibitem{134} \textit{Id.}
\bibitem{135} \textit{Id.}
\bibitem{136} \textit{Fritts}, 92 N.W.2d at 611–12 (quoting \textsc{Nat.’l Prob. \\& Parole Ass’n, Guides for Juvenile Court Judges, 61} (Marjorie Bell, 2d ed. 1963)).
\bibitem{137} \textit{Id.} at 612.
\bibitem{138} \textit{Id.} at 612–13.
\bibitem{139} \textit{Id.} at 613.
\end{thebibliography}
Thus, in order for a court to permanently sever the natural and legal rights of parents to the custody of their children, a court must exhibit that there was evidence of long-time neglect or serious threats to the future welfare of the children.\textsuperscript{140} If long-term neglect is not established, and the court nevertheless proceeds with an order of permanent wardship, such an order will exceed the court’s statutory authority, and will therefore be subject to collateral attack.\textsuperscript{141} As a result, the Michigan Supreme Court held that the probate court’s order terminating respondents’ parental rights was void for want of jurisdictional facts of neglect, and therefore the habeas action that returned the children to their natural parents was proper.\textsuperscript{142}

C. A Criticism of the Fritts Decision

The holdings in \textit{Fritts} and \textit{Hatcher} demonstrate the two competing theories that have dominated juvenile jurisprudence. The \textit{Fritts} theory presents a broad interpretation of allowable collateral attacks, emphasizing the need for procedural safeguards to protect a parent’s important liberty interest in the care, custody, and control of their children.\textsuperscript{143} In contrast, the \textit{Hatcher} theory follows the traditional rules governing collateral attacks in all civil and criminal proceedings. While the \textit{Fritts} court exhibits a “pro-parent” attitude, the \textit{Hatcher} court focuses on finality of judgments, and the need for children to achieve permanency. Raising the question: which theory is correct? The Michigan Supreme Court seemingly decided this question in 1993, with its decision in \textit{In re Hatcher} and overruling of \textit{Fritts v. Krugh}.\textsuperscript{144} Yet, as this Note posits, the court has since slipped back toward a parent-centric juvenile system, in which the substantive due process rights of neglectful and abusive parents are prioritized over the needs of children.

In order to understand why the \textit{Hatcher} theory is superior, one must uncover the flawed legal reasoning existing in \textit{Fritts}. The \textit{Fritts} court ultimately held that an order terminating parental rights may be collaterally attacked on the basis of a lack of subject matter jurisdiction if the petition created a temporary wardship without evidentiary basis to support the decision.\textsuperscript{145} However, the proper test of jurisdiction is “whether the court had power to enter upon the inquiry, not whether the proceedings were

\textsuperscript{140} Id.
\textsuperscript{141} Id.
\textsuperscript{142} Fritts, 92 N.W.2d at 613.
\textsuperscript{143} See \textit{id.} at 617 (stating that a collateral attack via writ of habeas corpus is a precious safeguard of personal liberty and there is no higher duty than to maintain it unimpaired). See \textit{In re Hatcher}, 505 N.W.2d 834, 841 (Mich. 1993) (“In its reasoning, the \textit{Fritts} Court attempted to correct what it perceived to be a gross lack of procedural due process.”).
\textsuperscript{144} In re Hatcher, 505 N.W.2d 834 (Mich. 1993).
\textsuperscript{145} See generally \textit{Fritts}, 92 N.W.2d 604 (Mich. 1958).
regular, or its conclusions was right or wrong.”

This rule is reflected in Hatcher’s conclusions that subject matter jurisdiction is established when the proceeding is of a class the court is authorized to adjudicate and the claim stated in the complaint is not clearly frivolous. Hatcher further recognized that “[subject matter] jurisdiction to make a determination is not dependent on the correctness of the determination made.” It therefore becomes clear that the Fritts court confuses the distinction between when the court has properly assumed subject matter jurisdiction over the case at hand, and when the court is effectuating orders pursuant to its exercise of jurisdiction over the child. As reflected in In re Adrianson,

Where the probate court erroneously exercises its jurisdiction, the error is analogous to a mistake in an information or in binding over a criminal defendant for trial. Such error can, of course, be challenged on direct appeal. It cannot, however, be challenged years later in a collateral attack.

The dissenting opinion in Fritts properly identified this important distinction:

the decision of the probate judge upon the issue of neglect remains a matter to be corrected if in error, but not of jurisdiction. If he is wrong, if he makes a mistake, indeed if he blunders, it is only that and nothing more. If he has jurisdiction of the parties and the subject matter he does not lose it by making a mistake for he has jurisdiction to make mistakes.

Thus, the court properly assumed subject matter jurisdiction when it considered the face of the petition and determined that the case was of a class that the probate court was authorized to adjudicate. It then proceeded to enter a dispositional order, in the form of a temporary wardship, pursuant to its exercise of personal jurisdiction. Although the parents may find this exercise in error, an erroneous exercise of jurisdiction renders a judgment merely voidable, and therefore may only be impeached by direct attack. Accordingly, the respondent parents in Fritts were limited to challenging such an order on direct appeal within the statutory time prescribed.

146. Martindale, supra note 50, at 421.
147. In re Hatcher, 505 N.W.2d at 842.
148. Id. at 840 (quoting Jackson City Bank & Tr. v. Fredrick, 260 N.W. 908, 910 (1935)).
149. Id.
150. Id. at 841 (quoting In re Adrianson, 306 N.W.2d 487, 491 (Mich. Ct. App. 1981)).
151. Id. at 842 (quoting Fritts v. Krugh, 92 N.W.2d 604, 628 (Mich. 1958) (Smith, J., dissenting)).
152. Martindale, supra note 50, at 420.
153. Id.
Instead, in an attempt to remedy what it perceived to be a gross lack of procedural due process, the Fritts court “blurred the distinction between the existence of subject matter jurisdiction and the exercise of [personal] jurisdiction to justify the collateral attack.” 154 However, as the Hatcher court properly identified, “[i]f such a delayed attack were always possible, decision of the probate court would forever remain open to attack, and no finality would be possible.”155

Fritts’ exceptional deviation from the traditional rule is evidenced by its explanation of the court’s valid subject matter jurisdiction:

We believe the probate court had jurisdiction of the persons and the subject matter for purposes of hearing the neglect complaint. The children resided in the county concerned. The essential parties had notice. The mother’s petition in the instant case served to allege neglect and dependency of the two children. The essential facts alleged were the father’s abandonment of her and them, the break-up of the family and the absence of any support for the children.156

Yet, despite this initial finding, the Fritts court suggests that no “jurisdictional facts of neglect” existed from which the court could make a reasonable prediction of future neglect, and thus subject matter jurisdiction was improper. 157 At the time of the hearing, however, the mother had signed a sworn petition attesting to the fact that the father no longer wanted the children, that he drank and continually abused the mother, and that he had abandoned his family.158 The county agent’s report also reflected that this was not the first break up the Fritts family had undergone.159 In fact, one year before the particular proceeding was instituted, Mrs. Fritts had petitioned the court for a divorce on the grounds of gross neglect of duty and extreme mental cruelty, while also obtaining a restraining order to prevent Mr. Fritts from molesting her.160 Additionally, it is important to note that not only did the judge have before him at this hearing these facts, but the parents themselves.161 To say that the judge had no basis on which to assume subject matter jurisdiction is patently unsound. As Justice Smith acknowledged in his dissenting opinion:

In this proper sense of the word jurisdiction the Juvenile Court in the instant case had jurisdiction to make the order appealed from. The parties were before it, the case described in the petition was within the class of cases which the Act gives the court power to deal with—to wit,
a case involving a question of adequate parental care of a person under
the age of eighteen—and the petition on its face stated a cause of action.
That the evidence failed to support the petition did not affect the
jurisdiction of the court, in the proper sense of the term, to hear the
cause and to make the order. But it did, as we have pointed out above,
make the action of the court erroneous and subject to reversal on appeal.
The decision is eminently sound. The [broad] use of the word
“jurisdiction” as synonymous with “error” can only serve to introduce
untold confusion in the law.162

The Fritts court contended that the probate court should have been on
notice that the substantive jurisdictional facts of neglect had materially
changed, as the respondent father wrote to the court regarding the
reconciliation of his marriage.163 Therefore, even if the court had initially
assumed proper subject matter jurisdiction, the reconciliation of the family
eliminated the facts of neglect on which the probate court assumed subject
matter jurisdiction, and thus the permanent wardship order was beyond the
statutory capability of the court. According to Justice Smith, this argument
is also unconvincing:164

If by this is meant that the trial court, having jurisdiction of the parties
and the subject matter, lost such jurisdiction because of the allegedly
erroneous charge, it is complete and utter nonsense. A court, having
jurisdiction, does not lose it by erroneously charging, by erroneously
directing a verdict, or as here by (allegedly) erroneously entering an
order respecting custody.165

Justice Smith further criticized Fritts’ conclusion that a permanent
wardship may only be supported by a finding of long-term neglect, noting
that the court’s ability to determine at what point neglect becomes “long-
term” would be nearly impossible.166 To this point, he inquires:

How many times must the mother be required to appeal to the public
authorities? How many times must the children go hungry? How often
must the children witness the mother’s beatings? [A determination of
neglect], in our opinion, depends not upon the clock or calendar but
upon all of the surrounding circumstances, the nature of the act or acts,
the conditions under which committed, the provocations or lack thereof,
and all of the many-colored hues going to make up the spectrum of
life.167

162.  Fritts, 92 N.W.2d at 629–30 (Smith, J., dissenting) (emphasis added).
163.  Id. at 611 (majority opinion).
164.  Id. at 630 (Smith, J., dissenting).
165.  Id.
166.  Id. at 628.
167.  Id. at 629.
The *Fritts* theory therefore runs counter to the weight of legal reasoning regarding subject matter jurisdiction. As *Fritts* suggests, to uphold the distinction between proper assumption and proper exercise of jurisdiction might have the effect of depriving the courts of the power to strike down an unjust order which is patently ultra vires, or an order entered in obvious violation of constitutional rights. In application, however, the broadening of this rule allows for a party to collaterally attack nearly any action of the court, thus expanding the length of litigation, and ignoring the importance of permanency and stability for children. This conclusion is supported by the circumstances of the *Fritts* children. Sally Fritts was just two years of age when her mother petitioned the court to put her in an adoptive home. At the time of the opinion, Sally was nine years old, and had spent most of her life in the adoptive home that she grew to know. Although the circumstances surrounding a mother giving up her children are notably tragic, should a judgment in which a child was awarded a stable, loving home be subject to attack by a respondent who has changed her mind about wanting to be a parent? To do so would subject the children to further instability, and potentially further neglect. The *Fritts* solution also ignores the situation of foster parents, who have long cared for these children through infancy, and whose rights are ignored in place of biological, potentially unfit, parents. The judiciary simply must not allow for a collateral attack “years later, when the memories have grown dim and the rights long been regarded as vested, [where] any disgruntled litigant may reopen the old wound and once more probe its depths . . .” Rather, our primary concern must be the welfare of the children. To bar a collateral attack in these circumstances does not eliminate all forms of correcting a judgment. Rather, adherence to this doctrine requires that the courts require a jurisdictional challenge to be made in the proper form provided, i.e., a direct attack of the judgment within the statutory time allotted. The respondents in this case were not confronted with a situation in which a writ of habeas corpus was their only solution. They participated in the proceeding at which the allegations in the petition were announced, and chose not to challenge such allegations at that time. Yet

168.  *In re* Hatcher, 505 N.W.2d 834, 842 (Mich. 1993).
169.  *Fritts*, 92 N.W.2d at 616.
170.  *Id.* at 626 (Smith, J., dissenting).
171.  *Id.*
172.  *Id.*
173.  *Id.* (“[I]s it within the power to salve those wounds after these many years? Are we now to recreate her tragedy in the lives of the children? And what of the situation of those who have cared for these children through the long years of infancy?”)
174.  *Id.*
175.  *Fritts*, 92 N.W.2d at 630 (Smith, J., dissenting).
176.  *Id.* at 626.
177.  *Id.* at 627.
Fritts would have us hold to a standard by which habeas corpus proceedings are allowable because the neglect alleged in the petition was not neglectful enough. Allowing for these challenges ignores the rights of children to a stable, permanent parental figure. But the Fritts court ignores this important consideration, and instead concludes that the right of a parent to the custody of their children is paramount to any other person, and to weigh the rights of foster parents against the rights of natural parents would be inappropriate. Yet we must remember that these rights of natural parents are not absolute, but rather are subject to termination in cases such as these. Further, we must not weigh the rights of natural parents against foster parents, but against the rights of the children to a stable, loving home. As the dissent in Fritts states:

We need not, we assume, protest our jealousy of the rights of natural parents to their children. But these rights are not indestructible by the parents themselves. The parents may, by their own acts of cruelty or degradation, forfeit rights that we, under other circumstances, would protect and implement by every resource at our command.

D. The Expansion of Fritts: In re Ferris

Nevertheless, the broad rule enumerated in Fritts retained its precedential value for several years, with its holding allowing for collateral attacks in several child protection cases. For instance, in In re Ferris the court determined that a court’s exercise of jurisdiction that occurs subsequent to the adjudicative phase is susceptible to collateral attack if the challenged procedural defect is one which results in the court assuming jurisdiction when it ought not have.

The facts of the case indicated that jurisdiction was predicated on a decision by the jury about whether or not the respondent father had neglected his minor child. At trial, a psychologist testified regarding her evaluation of respondent based on his personal history. Her conclusions suggested that a generational cycle of abuse could predispose respondent to abusive tendencies toward his minor child. Prior to hearing this testimony, the jury was instructed that it could not find that the court had adequate personal jurisdiction based on speculation of future conduct. Rather, the jury was tasked with determining whether or not the child was

178. Id. at 630.
179. Id. at 616 (majority opinion).
180. Id. at 629 (Smith, J., dissenting).
182. Id. at 472.
183. Id.
184. Id.
185. Id.
neglected and whether the family home was unfit. Ultimately, the probate court entered an order of termination as to respondent father’s parental rights. Father subsequently appealed this order of termination, but specifically challenged the evidentiary ruling of the adjudicative hearing. In response, the guardian ad litem filed a motion to affirm, arguing that respondent was precluded from raising issues arising in the adjudicative hearing on appeal following the order of termination. The guardian argued that respondent was limited to raising such an issue on direct appeal to the Circuit Court immediately following the adjudicative hearing.

The court began its analysis with the case of In re Kurzawa, a juvenile delinquency case in which the probate court invoked subject matter jurisdiction under the delinquency provision of MCL section 712A.2(a). Nearly two years following the delinquency action, the caseworker petitioned the probate court for a termination of parental rights. However, none of the several petitions filed contained the type of physical neglect and deprivation contemplated by MCL section 712A.2(b) authorizing termination of parental rights. Nevertheless, respondents’ parental rights were terminated on the basis of deprivation of emotional well-being of the child. In reaching its decision, the Court of Appeals noted that “termination proceedings must be based upon the neglect provisions of [MCL section 712A.2(b)] rather than the delinquency provisions of [MCL section 712A.2(a)].” In the appellate court’s view, the trial court erred in assuming subject matter jurisdiction over the case, and as a result, the termination order was declared void ab initio. Importantly, the Kurzawa decision was predicated on a parent’s right to the custody to his or her child as an element of liberty guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution.

186. Id.
187. In re Ferris, 391 N.W.2d at 469.
188. Id.
189. Id.
190. Id.
192. In re Ferris, 391 N.W.2d at 469.
193. Id.
194. Id.
195. Id.
196. Id.
197. Id.
198. In re Kurzawa, 290 N.W.2d 431, 436 (Mich. Ct. App. 1980) ("A substantial deprivation of a constitutionally protected right cannot be wrought by imparting overgeneralized meaning to vague statutory language. Consistent with these principles, the phrase 'deprived of emotional well-being' cannot be employed as a catch-all jurisdictional grant. The phrase must be considered in its context to require proof of seriously neglectful parents.").
The *Ferris* court then turned to the case of *In re Adrianson*,\(^\text{199}\) which rejected the holding in *Kurzawa*, concluding that the Court of Appeals “painted with too broad a brush.”\(^\text{200}\) The court recognized that the decision in *Adrianson* drew a careful distinction between the erroneous exercise of jurisdiction and the lack of jurisdiction, concluding that mere irregularities in the adjudication constituted an erroneous exercise of jurisdiction.\(^\text{201}\) Further, *Adrianson* noted that “only a deficiency in the petition to invoke the [] court’s jurisdiction creates a true lack of jurisdiction” subject to collateral attack.\(^\text{202}\) *Ferris* also emphasized the Michigan Supreme Court’s decision in *Buczkowski v. Buczkowski*,\(^\text{203}\) which stated, in pertinent part:

> The failure to distinguish between “the erroneous exercise of jurisdiction” and “the want of jurisdiction” is a fruitful source of confusion and errancy of decision. In the first case the errors of the trial court can only be corrected by appeal or writ of error. In the last case its judgments are void, and may be assailed by indirect as well as direct attack . . . . The judgment of a court of general jurisdiction, with the parties before it, and with power to grant or refuse relief in the case presented, though the judgment is contrary to law as expressed in the decisions of the supreme court or the terms of a statute, is at most only an erroneous exercise of jurisdiction, and as such, is impregnable to an assault in a collateral proceeding.\(^\text{204}\)

Moreover, the court correctly identified that the broad interpretation of subject matter jurisdiction, enumerated in cases such as *Fritts*, has the potential to detrimentally affect the length of litigation, and therefore should not be followed:

> The [broad interpretation states] that a court had no “jurisdiction” to take certain legal action when what is actually meant is that the court had no legal “right” to take the action, that it was in error. If the loose meaning were correct it would reduce the doctrine of res judicata to a shambles and provoke endless litigation, since any decree or judgment of an erring tribunal would be a mere nullity . . . . It must constantly be borne in mind . . . . that] “[t]here is a wide difference between a want of jurisdiction, in which case the court has no power to adjudicate at all, and a mistake in the exercise of undoubted jurisdiction, in which case the action of the trial court is not void although it may be subject to


\(^{200}\) *In re Ferris*, 391 N.W.2d at 469 (citing *In re Adrianson*, 306 N.W.2d 487 (Mich. Ct. App. 1981)).

\(^{201}\) *Id.* at 470.

\(^{202}\) *Id.* at 470.

\(^{203}\) 88 N.W.2d 416 (Mich. 1958).

\(^{204}\) *In re Ferris*, 391 N.W.2d at 470 (quoting Buczkowski v. Buczkowski, 88 N.W.2d 416, 419 (Mich. 1958) (internal quotations omitted) (emphasis added)).
direct attack on appeal. This fundamental distinction runs through all the cases.”

Yet, despite this analysis, the Ferris court concluded that Adrianson’s understanding of jurisdiction was “overly narrow.” The court determined that the adjudicative phase is designed to determine whether or not the court may assume jurisdiction, and therefore an error in this phase may be attacked by any proceeding, direct or collateral. However, the court cautioned that such an error must be one that led to the erroneous assumption of subject matter jurisdiction, rather than any error.

In reaching its decision, Ferris relied heavily on the majority decisions in Fritts and Kurzawa. “[This] line of cases holds that an erroneous assumption of jurisdiction over a child renders the court’s actions void ab initio and thus is subject to attack at any time.” However, the dissent in Fritts points out a flaw in this analysis. It is important to remember that “[e]rror in the determination of questions of law or fact upon which the court’s jurisdiction in the particular case depends . . . is error in the exercise of jurisdiction.” Yet, in Kurzawa, the court found that the probate court had erred in assuming subject matter jurisdiction as the facts of the petition failed to allege parental neglect. This holding goes against the greater weight of jurisprudence which holds that jurisdiction which is predicated on the facts of the petition, i.e., personal jurisdiction, may only be challenged via direct attack. Again, as in Fritts, the court confuses whether the court has properly assumed subject matter jurisdiction with its proper exercise, and thus allows for the voiding of a judgment which, under the traditional rule, is considered “binding for all purposes.”

What the Court in In re Kurzawa really may have meant was that the trial court’s exercise of jurisdiction was erroneous, as opposed to the court’s lacking jurisdiction. Thus, the Court may have improperly

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205. Id. (quoting Buczkowski v. Buczkowski, 88 N.W.2d 416, 419 (Mich. 1958)).
206. In re Ferris, 391 N.W.2d at 471.
207. Id. at 472.
208. Id.
209. Id. at 469–72.
211. Id. at 491.
212. Id. (quoting Jackson City Bank & Tr. v. Frederick, 260 N.W. 908, 910 (1935)).
214. See In re Ferris, 391 N.W.2d at 473 (Bronson, J., concurring) (“I can think of no other civil action in which failure of proofs in support of a complaint will divest a court of jurisdiction when the proper parties are before the court and the subject matter of the complaint is cognizable by the court.”).
215. In re Adrianson, 306 N.W.2d at 491 (quoting Jackson City Bank & Tr. v. Frederick, 260 N.W. 908, 910 (1935)).
concluded that the probate court proceedings were void ab initio, for in such case they were merely voidable upon attack on direct appeal.\textsuperscript{216} The \textit{Ferris} court also misses this important distinction. Consequently, \textit{Ferris} has the effect of broadening the rule in \textit{Fritts} to not only allow for collateral attacks of a court’s subject matter jurisdiction based on a subsequent factual development that “deprive[s] the court of jurisdiction,” but nearly \textit{any} error arising in the adjudicative hearing.\textsuperscript{217}

IV. THE ONE PARENT DOCTRINE

A. The One Parent Doctrine’s Unconstitutionality: \textit{In re Sanders}

In 2013, the Michigan Supreme Court decided the case of \textit{In re Sanders}, declaring use of the “one parent doctrine” in child protective proceedings to be unconstitutional.\textsuperscript{218} The one parent doctrine is a procedural device, implemented by the decision in \textit{In re CR},\textsuperscript{219} through which a court may interfere with a parent’s right to their children solely because the other parent has been adjudicated as unfit.\textsuperscript{220} “In other words, the one-parent doctrine essentially imposes joint and several liability on both parents, potentially divesting either of custody, on the basis of the unfitness of one.”\textsuperscript{221} Because the inquiry involved in the determination of personal jurisdiction is focused solely on the child, the one parent doctrine posits that once there has been an adjudication, the court may exercise its dispositional authority over “any adult,” regardless if said adult is party to the action.\textsuperscript{222} The doctrine therefore removes the requirement that a

\begin{footnotesize}
\begin{enumerate}
\item \textit{Id.} at 492.
\item \textit{In re Ferris}, 391 N.W.2d at 473. The frustration with utilizing \textit{Fritts} as precedent was further stated in the concurring opinion in \textit{Ferris}: “In essence what \textit{Fritts} has said is that for a probate court to acquire jurisdiction in a matter of neglected children (1) the proper parties must be before the court, (2) the petition must state facts that are cognizable by the court, and (3) there must be sufficient proofs to support the petition. Without this third additional element, the probate court lacks jurisdiction, and any orders resulting therefrom are void. I can think of no other civil action in which a failure of proofs in support of a complaint will divest a court of jurisdiction when the proper parties are before the court and the subject matter of the complaint is cognizable by that court. I would urge the Supreme Court to review and reconsider its holding in \textit{Fritts} . . . .” \textit{Id.} (Bronson, J. concurring).
\item \textit{In re Sanders}, 852 N.W.2d 524, 527 (Mich. 2014).
\item \textit{In re Sanders}, 852 N.W.2d at 527.
\item \textit{Id.}
\end{enumerate}
\end{footnotesize}
petitioner prove the adult to be unfit before they are subject to the dispositional authority of the court.223

In reaching its holding, the court in Sanders noted that the Fourteenth Amendment provides for heightened protection against interference with fundamental rights and liberty interests by the government.224 One such fundamental right is the right of parents over the care, custody, and control of their children.225 As stated in In re JK,226 “[p]arents have a significant interest in the companionship, care, custody, and management of their children, and the interest is an element of liberty protected by due process.”227 However, parental rights are not absolute, and the state retains a duty to protect the moral, emotional, mental, and physical welfare of a child through its parens patriae power.228 Such power allows for parental rights to be terminated on neglectful and abusive parents.229 Nonetheless, the United States Constitution recognizes a presumption that fit parents act in the best interest of their children, and that “there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of fit parents to make the best decisions concerning the rearing of their children.”230 Consequently, parental rights have been afforded protection through the application of cases such as Stanley v. Illinois, holding that all parents are constitutionally entitled to a hearing on their fitness before their children are removed from their custody.231 Because the one parent doctrine allowed for the impermissible interference of a parent’s constitutional right to their child without due process, Sanders was bound to reject it.232

The court began this analysis with an overview of the Eldrige factors, noting that, in order to determine “what process is due” the court must consider: (1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.233 Here, the private interest at stake—a parent’s fundamental right to direct the care, custody, and control of their child—is a core liberty interest recognized by the

223. In re Sanders, 852 N.W.2d at 531.
224. Id.
225. Id. at 527.
227. In re Sanders, 852 N.W.2d at 531 (quoting In re JK, 661 N.W.2d 221).
228. Id. at 532.
229. Id.
230. Id. (quoting Troxel v. Granville, 530 U.S. 57, 68–69 (2000)).
232. In re Sanders, 852 N.W.2d at 534.
Fourteenth Amendment. The court noted that “[e]ven when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life.” With respect to the second factor, the court determined that the state has an important interest in protecting the safety of minors, and, under certain circumstances, this involves placement of the child with a nonparent guardian. According to Sanders, the balance between a parent’s interest and the state’s interest is achieved by considering the following:

When a child is parented by a fit parent, the state’s interest in the child’s welfare is perfectly aligned with the parent’s liberty interest. But when a father or mother is erroneously deprived of his or her fundamental right to parent a child, the state’s interest is undermined as well: “[T]he State registers no gain towards its declared goals when it separates children from the custody of fit parents.” In other words, the state ordinarily has an equally strong interest in ensuring that a parent’s fitness, or lack thereof, is resolved before the state interferes with the parent-child relationship. Thus, the probable value of extending the right to an adjudication to each parent in a child protective proceeding benefits both public and private interests alike.

Although the court recognized the increased burden that would accompany the requirement of adjudication of every parent, it reasoned that such a requirement would reduce the risk of a parent’s erroneous deprivation of an important liberty interest: the right to parent his or her child. As the adjudicative phase represents the only fact-finding phase of the proceedings, a court may not constitutionally deprive a parent of an important right based on their participation in the dispositional phase alone, as dispositional hearings simply do not serve the same function. In this phase, the court’s focus is the available services that will reflect the best interests of the children. Here, “there is no presumption of fitness in favor of the unadjudicated parent,” and further, “[t]he procedures afforded to parents during [this phase] are not related to the allegations of unfitness because . . . the court . . . assumes a previous finding of parental unfitness.” Thus, the court determined that the procedural protections afforded during the dispositional phase of the proceedings were inadequate to

234. In re Sanders, 852 N.W.2d at 535.
235. Id. (quoting Santosky v. Kramer, 455 U.S. 743, 753 (1982)).
236. Id.
237. Id. at 535–36 (quoting Stanley v. Illinois 405 U.S. 645, 652 (1972)).
238. Id. at 536. See also In re Sanders, 852 N.W.2d at 539 (“The Constitution does not permit the state to presume rather than to prove a parent’s unfitness ‘solely because it is more convenient to presume than to prove.’”).
239. Id. at 536.
240. In re Sanders, 852 N.W.2d at 536.
241. Id.
constitute due process on a non-party parent, and therefore, the one parent doctrine was rendered unconstitutional.\textsuperscript{242} Ultimately, the \textit{Sanders} court held that, “due process requires a specific adjudication of a parent’s unfitness before the state can infringe the constitutionally protected parent-child relationship.”\textsuperscript{243} 

As a result of the \textit{Sanders} decision, several challenges to the courts’ use of the one parent doctrine as a method of termination ensued.\textsuperscript{244} In 2014, the Michigan Court of Appeals addressed this issue in the case of \textit{In re Kanjia}.\textsuperscript{245} The \textit{Kanjia} court first noted that in such a challenge, as an attack on the court’s exercise of jurisdiction, the respondent would be required to directly appeal the initial order of adjudication that granted the court personal jurisdiction.\textsuperscript{246} Despite this acknowledgement, the court then concluded that, “a \textit{Sanders} challenge, raised for the first time on appeal from an order of termination, does not constitute a collateral attack on jurisdiction, but rather a direct attack on the trial court’s exercise of its dispositional authority.”\textsuperscript{247} The Court of Appeals reasoned that a non-party parent raising a \textit{Sanders} challenge does not wish to collaterally attack the trial court’s exercise of jurisdiction at the adjudication, but rather is directly attacking the termination order instituted without due process.\textsuperscript{248} Thus, the court allowed a respondent to ignore the statutory time afforded for an appeal of an adjudication order, and rather wait to institute such an attack until the dispositional phase had ended, and the termination order was entered.\textsuperscript{249} 

\textbf{B. In re Jones}

The decision in \textit{Kanjia} initially appeared limited in scope—applying only to those decisions pending on appeal in which terminations were made through use of the one parent doctrine.\textsuperscript{250} However, Michigan courts soon began to apply the same reasoning in \textit{Kanjia} to that of non-\textit{Sanders} cases, resulting in a broadening of the rule on collateral attacks, and a shift back toward the pro-parent rule enumerated in \textit{Fritts}. The transition back toward such a rule is best evidenced by the Michigan Supreme Court’s handling of the case of \textit{In re Jones}, in which the court, without explanation,
vacated the determination of the trial court, and indirectly allowed for an impermissible collateral attack on the court’s jurisdiction.  

In August of 2013, the Department of Health and Human Services filed a petition for the removal of three minor children from respondent mother’s home. The allegations contained in the petition stated: (1) that respondent slept in a camper, located on a campsite next to a lake, while the children played outside without supervision; (2) that RJ, a toddler, walked along a well-traveled highway by herself while respondent was inside the home bathing another child; and (3) that respondent grabbed RJ by her hair to prevent her from walking onto a roadway when the family was walking home from the store. During the preliminary hearing, the trial court determined that it could exercise personal jurisdiction over the children, and authorized the filing of the petition in light of respondent’s admissions to three of the allegations. Although the trial court failed to comply with the provisions of MCR section 3.971(C) in accepting respondent’s plea, the trial court record clearly indicated that the court would have personal jurisdiction over the children if it accepted respondent’s admissions. At the close of the preliminary hearing, the children were placed in their father’s care. Between September of 2013 and May of 2014, respondent was offered a number of services to address her parenting skills and anger issues, resulting in the return of the children to respondent’s home in May of 2014. Nevertheless, by September of that year, a supplemental petition for removal was filed, alleging that: (1) respondent lifted RJ off of a shopping cart by her hair, forcefully pushed RJ against a wall, and yelled at RJ with her face inches away from RJ’s face; (2) respondent placed tape over GJ’s and RJ’s mouths to make them stop talking; and (3) respondent pushed GJ with her foot, dragged GJ out of the store using GJ’s foot, and then pushed the cart into GJ while GJ was on the ground. The trial court thus instituted an emergency order to remove the children from respondent’s care, and in October 2014, a supplemental

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253. Id. at *1.
254. Id.
255. Id. See Mich. Ct. R. 3.971(C) (“(1) Voluntary Plea. The court shall not accept a plea of admission or of no contest without satisfying itself that the plea is knowingly, understandingly, and voluntarily made. (2) Accurate Plea. The court shall not accept a plea of no contest without establishing support for a finding that one or more of the statutory grounds alleged in the petition are true, preferably by questioning respondent unless the offer is to plead no contest. If the plea is no contest, the court shall not question the respondent, but, by some other means, shall obtain support for a finding that one or more of the statutory grounds alleged in the petition are true . . . .”).
257. Id.
258. Id. at *2.
petition was filed seeking termination of parental rights. At the time of this filing, the children had been under the jurisdiction of the court for 303 days. Respondent’s rights were terminated pursuant to MCL sections 712A.19b(3)(c)(i) and (j), noting that although respondent had made progress in regard to maintaining a clean environment and providing food for the children, she was unable to demonstrate progress regarding her anger and parenting her children in a safe manner.

Respondent thus appealed the trial court’s order terminating her parental rights, asserting that the trial court erroneously assumed jurisdiction over her children on the basis of her admissions. Respondent further argued that although MCR section 3.971(A) allows a court to establish personal jurisdiction by accepting a plea from respondent, the court did not comply with these procedures, and therefore jurisdiction was erroneous. Further, without an appropriate plea, the court was required to hold an adjudication to determine whether the court could properly exercise jurisdiction over the child pursuant to MCL section 712A.2(b). Additionally, respondent’s failure to preserve the issue for appeal was insignificant, as a court may still review such an issue if there is plain error affecting the party’s substantial rights. Therefore, according to respondent, failure to inform respondent that her admission would form the basis of the court’s jurisdiction denied her due process rights to contradict the allegations.

In its opinion, the Court of Appeals first noted that “[m]atters affecting the court’s exercise of its jurisdiction may be challenged only on direct appeal of the jurisdictional decision, not by collateral attack in a subsequent appeal of an order terminating parental rights.” As the Appellee’s brief correctly states:

An Appellant may not challenge the Trial Court’s original adjudication, i.e. its original exercise of jurisdiction, when on appeal Appellant is challenging a termination [that] took place after the DHS filed a supplemental petition seeking that termination. Such a challenge would

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259. Id.
262. Id. at *1.
263. Appellant’s Brief, supra note 260, at 34.
264. Id. at 37.
265. Id. at 33.
266. Id.
be an impermissible collateral attack on the original order of adjudication.\textsuperscript{268}

The only accepted exception to this rule comes when termination occurs at the initial disposition as a result of a request for termination contained in the original, or amended, petition for jurisdiction.\textsuperscript{269} Such an exception is predicated on the fact that a respondent’s opportunity to directly appeal the trial court’s original exercise of jurisdiction comes at the time of termination.\textsuperscript{270} If the traditional rule following collateral attacks were followed under these circumstances, respondent would have no opportunity to appeal an alleged erroneous exercise of jurisdiction during the adjudication.\textsuperscript{271} Yet this is not the situation in Jones. Respondent had a chance to appeal as of right the trial court’s establishment of jurisdiction over the children during the adjudicative phase. She chose not to, and instead raised such an attack following, what the court described as, “a lengthy period of attempts at reunification” and termination of her parental rights.\textsuperscript{272} Therefore, the Court of Appeals properly held that respondent’s challenge of the court’s exercise of personal jurisdiction during the adjudicative phase may not be raised on direct appeal from the order terminating respondent’s parental rights, as such a challenge constitutes an impermissible collateral attack.\textsuperscript{273} In reaching this holding, the court cited to the ruling in Hatcher, noting that an error in the exercise of jurisdiction may be challenged in a direct appeal, but may not “be challenged years later in a collateral attack.”\textsuperscript{274}

But this was not the end of Jones. On December 23, 2015, the Michigan Supreme Court granted application for leave to appeal, stating that its review would be limited to the following issues:

(1) whether this Court’s opinion in In re Hatcher . . . was correctly decided in applying the collateral attack rule to bar a challenge to the adjudication as part of an appeal from an order terminating parental rights, notwithstanding the entry of intervening dispositional orders that were appealable of right, see MCR 3.993(A)(1); if not, (2) what must a respondent do to preserve for appeal any alleged errors in the adjudication, and (3) what effect, if any, does a party’s failure to utilize an appeal of right offered under the Court Rules have on that party’s

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\begin{itemize}
\item 268. Appellee’s Brief, supra note 260, at 14. See In re SLH, 747 N.W.2d 547, 551–52
\item 269. In re Jones, 2015 WL 6506175, at *2. See In re SLH, 747 N.W.2d at 551.
\item 270. See generally In re SLH, 747 N.W.2d 547.
\item 271. Id.
\item 272. In re Jones, 2015 WL 6506175, at *3.
\item 273. Id.
\item 274. Id. (quoting In re Hatcher, 505 N.W.2d 834, 841 (Mich. 1993)).
\end{itemize}
\end{flushleft}
subsequent appeal of that issue, in light of the interests of reasonable finality in child protective proceedings, which intimately involve the interests and well-being of children, while promoting the goal of reconciliation between parents and children.275

Yet the Michigan Supreme Court never heard such an appeal. On February 17, 2016, the Michigan Supreme Court vacated the trial court’s order of termination and the judgment of the Court of Appeals without argument and without opinion.276 Thus, the Michigan Supreme Court allowed respondent to challenge the trial court’s order of adjudication on appeal from the order of termination—an impermissible collateral attack.

V. PROPOSED SOLUTION

The law aims to invest judicial transactions with the utmost permanency consistent with justice. That the formal pronouncements of legal tribunals upon cases submitted to them should enjoy every possible degree of finality and conclusiveness and would seem to be a necessary predicate to proper functioning of courts themselves. To permit their decisions to be evaded or disregarded for insufficient cause or in modes not sanctioned by law would tend to disrupt the administration of justice and bring courts into disrepute. Public policy requires that a term be put to litigation and that judgments, as solemn records upon which valuable rights rest, should not lightly be disturbed or overthrown. Litigants, of course, must be provided with some remedy to gain relief from an erroneous or unwarranted judgment. And in recognition of such necessity, the law has established appropriate proceedings to which a judgment party may always resort when deems himself wronged by the court’s decision. If he so wishes, he may seek relief from the judgment by some timely move in the court rendering it . . . . If he omits or neglects to test the soundness of the judgment by these or other direct methods available for that purpose, he is in no position to urge is defective or erroneous character when it is pleaded or produced in evidence against him in subsequent proceedings.277

275. In re Jones, 872 N.W.2d 503.
276. In re Jones, 874 N.W.2d 129 (Mich. 2016) (“By order of December 23, 2015, this Court granted the application for leave to appeal the October 27, 2015 judgment of the Court of Appeals. On order of the Court, the joint motions for immediate consideration and requesting this Court to vacate the circuit court order terminating the respondent’s parental rights are considered, and they are GRANTED. We VACATE our December 23, 2015 order granting leave to appeal, VACATE the October 27, 2015 judgment of the Court of Appeals, VACATE the Ontonagon Circuit Court’s order adjudicating jurisdiction over the children of the respondent mother and the February 16, 2015 order terminating the respondent’s parental rights to the children, and REMAND this case to the circuit court for a new adjudication determination.”).
277. FREEMAN, supra note 31, at 602.
A. Permanency: The Right of a Child to be Appropriately Parented

Freeman’s conclusion above stresses the importance of finality of judgments, stating that to proceed in any other manner would “disrupt the administration of justice and bring the courts into disrepute.” Yet, these principles, applicable to all forms of the law, have not been adhered to in the juvenile context. Oftentimes, “justice” in the juvenile system leads to the disruption of a family. The courts have thus responded by emphasizing the need for procedural protections for parents, noting the threat of deprivation of that parent’s liberty interest. However, problems arise when these parents are afforded significant due process protections, only to be adjudicated as unfit. It becomes evident that the courts, in considering the needs of the parents, have failed to consider the needs of children. “While much has been done to improve the lot of children involved in the child welfare system, especially as they have attained the right to legal representation by appointment of counsel or a guardian ad litem, the process remains focused on the constitutional rights of the parents and not those of the children.” As a result, a stable home life appears unattainable for the children who are held in limbo while their parents pursue endless litigation fueled by parental due process safeguards. Why are these protections only afforded to parents? Do not the children involved also deserve a right to be well-parented? As Matthew A. Skeens noted:

It seems to me extremely likely that, to the extent parents and families have fundamental liberty interests in preserving such intimate relationships, so, too, do children have these interests, and so, too, must their interests be balanced in the equation. At a minimum, our prior cases recognizing that children are, generally speaking, constitutionally protected actors require that this Court reject any suggestion that when it comes to parental rights, children are so much chattel.

Therefore, the only solution is to require the courts to balance the rights of children with the rights of their parents. To allow the juvenile court to disregard the needs of juveniles and focus on the parent’s right to custody reduces a child’s status to that of property of the parent. The courts must direct their efforts toward the underlying policy of the juvenile court: permanency for children.

279. Id. at 21.
280. Id. at 10.
It has been said that permanency is a “vital but often misunderstood aspect of child welfare law.”281 In the child welfare context, permanency is defined as a legally permanent, nurturing family for every child.282 When a child is removed from the home, permanency efforts focus on either returning said child to her parents, or placing her with another permanent family.283 Yet, “[o]nce removal from the home occurs, the children must rely solely upon the state and judiciary system to determine with whom they will be placed while out of the care of their parents, and when permanency and stability will ultimately be achieved.”284 As a result, permanency is not an easily achieved goal, as reunification of a child with his or her natural parents it not always within the child’s best interests.285 Nevertheless, other permanency options are available, most times in the form of adoption.286 Oftentimes, a child’s relationship with an adoptive parent may develop into the type of relationship that satisfies the needs of the child.287 “While biology often bolsters a permanent bond with a parent, the psychological relationship between a child and adult is the most important aspect in developing permanency”:288

[T]he psychological child-parent relationship is not wholly positive but has its admixture of negative elements. Both partners bring to it the combination of loving and hostile feelings that characterize the emotional life of all human beings, whether mature or immature… Whether an adult becomes the psychological parent of a child is based thus on day-to-day interaction, companionship, and shared experiences. The role can be fulfilled either by a biological parent or by an adoptive parent or by any other caring adult—but never by an absent, inactive adult, whatever his biological or legal relationship to the child may be.289

Whatever the situation, children require permanency to develop healthy relationships, as permanent family structures develop self-esteem, social competence, emotional adjustment, behavioral self-control, and sense of identity.290 Thus, in order to achieve this goal, judges and practitioners must balance a child’s rights against that of a parent’s rights.291 The judiciary must recognize that a child should be afforded a substantive due

281. Id.
282. Id.
283. Id.
284. Skeens, supra note 278, at 10.
285. Id.
286. Id.
287. Id.
288. Id. at 10–11.
289. Id. at 11.
290. Skeens, supra note 278, at 11.
291. Id. at 13.
process right to permanency once the adjudicated parents have been deemed unfit.  

The concept of an evolving “story of freedom,” combined with the tremendous advances in the understanding of the neurology of children and their development, renders the legal tradition of vesting abusive parents with an impenetrable liberty interest in their right to parent -at the expense of a child’s right to have a stable and healthy family- irrelevant . . . This theory fosters an adversarial system that pits the interests of the state against the liberty interests of parents. States are just now beginning to change this model to offer more protections for children, such as ensuring them the right to counsel. However, that is the exception rather than the rule. It remains common for a child to have little or no say in what happens to her, in what plan the court might order to provide services to her parents, or even whether she will be placed with relatives or foster parents if she is removed from her parents.

The juvenile court is predicated on the idea that a state has the duty to protect these rights of children as a parens patriae. Therefore, the courts must consider that, once removed, it is common that a child may remain in a temporary home for years, or in the alternative, move from home to home. What makes child protective proceedings different from adult proceedings is the impact that the litigation has on the children, as they grow and develop throughout the judicial process. This passage of time has a greater impact on them than any other litigant. Although there are many factors that lead to this result, the most significant is “the current model wherein parents are pitted against the state, in . . . proceedings, focused not on a child’s right to have a stable family, but on the parents’ rights.”

“Ensuring the parents’ procedural due process rights are protected, even after an adjudication of unfitness, only further slows the entire case . . . to a crawl.”

The better way to proceed is a system in which the primary goal of child protective proceedings is permanency for children. This is achieved by adherence to the idea that children have a fundamental right to

292. \textit{Id.} at 17.
293. \textit{Id.} at 17, 24–25.
294. \textit{Id.} at 17.
295. \textit{Id.}
297. \textit{Id.}
298. \textit{Id.} at 17.
299. \textit{Id.} at 17–18.
300. \textit{Id.} at 20–21.
a stable and healthy family, but only after there is a finding that their parent is unfit.

**B. Respondent Parents Must “Raise It or Waive It”**

Therefore, to achieve this goal of permanency, this Note concludes that a court must adhere to the important standards outlined in *Hatcher*, that is: an appeal of a judgment must only take a certain form and may only proceed through certain venues. The court may not, alternatively, allow for impermissible collateral attacks on final judgments, lengthening litigation and ignoring the interests of children. This rule is expressed in the “raise-or-waive” doctrine, which dictates that “a party must first raise an argument at the trial court level before asserting that argument on appeal.” Further, the raise-or-waive rule cautions that even a constitutional right may be forfeited by a failure to make a timely assertion of that right. Among the listed rationales for implementing this rule is “encouraging finality in the court systems.” However, the raise-or-waive rule is not absolute. Notably, a common exception to the rule includes a jurisdictional defect. Thus, unless the lower court has committed an error that affects the court’s proper assumption of jurisdiction, an aggrieved party must raise a challenge to that exercise of jurisdiction at the appropriate time, or forever waive such a right. In the federal system, the majority of the courts will not recognize that a criminal conviction secured under an unconstitutional statute constitutes a jurisdictional defect as to void the judgment. Although the Supreme Court has recognized that a deprivation of an important constitutional right may rise to the level of a jurisdictional defect, it has only allowed for such an exception in extremely limited circumstances. More recently, the Court has moved toward an approach where the concept of jurisdictional defects is narrowed, and parties are forced to follow the raise-or-waive rule, despite the threat of deprivation of an important liberty interest. The rule should be applied no differently in the juvenile context. Although an important liberty interest is at stake for parents, respondents should not be exempt from following proper court procedure at the expense of their children. Thus,

301. *Id.*


303. *Id.* at 913.

304. *Id.* at 916.

305. *Id.*

306. *Id.* at 917.

307. *Id.*

308. Walters, *supra* note 302, at 931.

309. *Id.* at 914.

310. *Id.*
the Michigan Courts should proceed with caution in implementing a rule resembling *Fritts*. To do so would not only go against the greater weight of authority and jurisprudence, but against the stated aims of the juvenile court.

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