

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of CHARLES LASURE III, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CHARLES LASURE II,

Respondent-Appellant,

and

ANNETTE FONDAW,

Respondent.

UNPUBLISHED

January 6, 2004

No. 248529

Mason Circuit Court

Family Division

LC No. 02-000074-NA

Before: Donofrio, P.J., and Griffin and Jansen, JJ.

MEMORANDUM.

Respondent-appellant appeals as of right from the trial court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(a)(ii), (c)(i), (g), (h), and (j). We affirm.

On appeal, respondent-appellant argues that he was denied due process of law when the trial court did not permit him to be physically present for the termination hearing. At the time of the hearing, respondent-appellant was incarcerated in administrative segregation at Marquette Prison. Although he did not physically attend the hearing, he did participate by telephone and was represented by counsel, who was present at the hearing. In support of his position, respondent-appellant primarily relies on our decision in *In re Render*, 145 Mich App 344; 377 NW2d 421 (1985). We find that the facts in the present case are distinguishable from those in *Render*. In the present case, respondent-appellant was able to actually participate in the hearing telephonically and had the opportunity, with the assistance of counsel, to present evidence favorable to himself at the hearing. Moreover, when *Render* was decided, the statute then in effect required the parent to be present at the termination hearing. *Render, supra* at 349. The current version of the statute does not require that the parent be present, but, instead, only requires that the parent receive notice of the hearing. MCL 712A.19(2)(c).

Our decision in *In re Vasquez*, 199 Mich App 44; 501 NW2d 231 (1993), is instructive in the present case. In *Vasquez*, decided after the Legislature enacted the amended MCL 712A.19(2)(c), this Court rejected the notion “that an incarcerated parent is entitled as a matter of absolute right to be present at the dispositional hearing,” and, instead, reasoned that “[i]n light of present-day telecommunications, other means that fall short of securing the physical presence of a parent are available to ensure that an incarcerated prisoner receives due process at a dispositional hearing.” *Vasquez, supra* at 48-49.

In the present case, we cannot conclude that respondent-appellant’s physical absence from the termination hearing amounted to a violation of his due process rights. Although respondent-appellant was not physically present at the hearing, he was able to fully participate in the hearing by telephone. Our conclusion is also supported by MCR 2.004, which specifically contemplates that an incarcerated parent might participate in a termination hearing by telephone. See MCR 2.004(C), (E)(5), and (F).

Affirmed.

/s/ Pat M. Donofrio
/s/ Richard Allen Griffin
/s/ Kathleen Jansen