STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of BREANNA DARBY, ALLYSSIA GALVIN, and DONZELL JR. GALVIN II, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DONZELL GALVIN,

Respondent-Appellant,

and

TORRENCE DARBY,

Respondent.

UNPUBLISHED
December 21, 2004

No. 255515
Bay Circuit Court
Family Division
LC No. 02-007662-NA

Before: Murphy, P.J., and White and Kelly, JJ.

MEMORANDUM.

Respondent-appellant appeals by right from the trial court's order terminating his parental rights to his minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (h). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

We reject respondent-appellant's claim that the trial court's conduct of the termination proceeding denied him due process of law. US Const, Am XIV; Const 1963, art 1, § 17. The record shows that respondent-appellant, who was incarcerated for the murders of the children's mother and maternal grandmother, was present at the termination hearing via telephone, that he had an opportunity to consult with advisory counsel, and that advisory counsel was then re-appointed. The arguments that respondent-appellant wanted to raise concerning custody and visitation were not relevant to the termination phase of the proceedings in the trial court. Custody had been determined at earlier hearings where respondent-appellant chose to represent himself. Respondent-appellant fails to identify any relevant information or evidence that he sought to present to the court but was denied an opportunity.

While respondent-appellant had a right to be present at the termination hearing, that right is not absolute. *In re Vasquez*, 199 Mich App, 44, 47-49; 501 NW2d 231 (1993). We conclude

that the trial judge properly balanced the private interest of the respondent, the risk of an erroneous decision, and the probable value of the substitute procedural safeguards. *Id.* at 46-48. Moreover, in coming to a proper constitutional balance, the trial court also considered the fiscal and administrative burdens entailed in returning respondent-appellant from prison for a short hearing. It was not necessary that respondent-appellant be physically present, where his conviction and sentence for the murder of the children's mother and grandmother absolutely precluded him from ever being a custodial parent to his children.

We also reject respondent-appellant's claim that he was denied the effective assistance of counsel at the termination hearing. Respondent-appellant had discharged all three attorneys that the trial judge had appointed. Respondent-appellant's effort to delay the termination hearing by insisting that the court hear irrelevant evidence did not render his lawyer ineffective, and the trial court correctly decided that the termination hearing should proceed. Further, respondent-appellant cannot show that his counsel's alleged errors had any effect on the termination outcome because there was no real defense to the petition to terminate his parental rights. See *In re CR*, 250 Mich App 185, 198; 646 NW2d 506 (2002)(prejudice required).

Affirmed.

/s/ William B. Murphy
/s/ Helene N. White
/s/ Kirsten Frank Kelly